

EXECUTION VERSION

Operation Number 40284

SUBORDINATED LOAN AGREEMENT

between

JOINT-STOCK COMMERCIAL BANK FOR SOCIAL DEVELOPMENT

UKRSOTSBANK

and

**EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT**

Dated: 27 July 2009

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This **SUBORDINATED LOAN AGREEMENT** (this "Agreement") dated 27 July 2009 between **JOINT-STOCK COMMERCIAL BANK FOR SOCIAL DEVELOPMENT UKRSOTSBANK**, an open joint stock company organised and existing under the laws of Ukraine (the "Borrower") having its registered office at 29 Kovpaka Street., Kyiv, 03150, Ukraine, represented by the Chairman of the Management Board of the Borrower Mr. Borys Tymonkin and the Chief Financial Officer of the Borrower Mr Harald Vertneg, acting on the basis of the Charter and the **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**, an international organisation formed by treaty ("EBRD") having its legal address at One Exchange Square, London, EC2A 2JN, represented by Senior Banker Mr. Alexander Pavlov, acting on the basis of a power of attorney.

ARTICLE I - DEFINITIONS

Section 1.01. Definitions

Wherever used in this Agreement (including the Schedule and the Exhibits), unless the context otherwise requires, the following terms have the following meanings:

"Affiliate"	means, with respect to any person, any other person, directly or indirectly, controlling, controlled by, or under common control with, such person.
"Auditors"	means such firm of independent accountants as the Borrower may from time to time appoint as its auditors in accordance with Section 5.01(h).
"Authorisation"	means any consent, registration, filing, agreement, notarisation, certificate, license, approval, permit, authority or exemption from, by or with any Governmental Authority, whether given or withheld by express action or deemed given or withheld by failure to act within any specified time period and all corporate, creditors' and shareholders' approvals or consents.
"Basle Capital Accord"	means the report on "International Convergence of Capital Measurement and Capital Standards" dated July 1988 of the Basle Committee on Banking Supervision, as amended from time to time.
"Business Day"	means a day (other than a Saturday or Sunday) on which commercial banks are open for the transaction of general business (including dealings in foreign exchange and foreign currency deposits) in London, England and Kyiv, Ukraine and on which commercial

	banks and foreign exchange markets settle payments in the Loan Currency in New York, USA
“Calculation Date”	has the meaning given to it at Section 3.13 (c) (vi) of this Agreement.
“Calculation period”	has the meaning given to it at Section 3.13 (c) (vii) of this Agreement.
"Capital"	means the sum of the Borrower's Tier 1 Capital and Tier 2 Capital, as such terms are defined in, calculated in accordance with, and subject to the limits, restrictions and deductions set forth in, the Basle Capital Accord .
“Cash and Cash Equivalent”	means cash in hand and overnight correspondent account balances and overnight placements with OECD banks and the NBU which are unrestricted for immediate withdrawal (excluding any amounts held for mandatory reserve requirements).
"Charter"	means, in respect of any company, corporation, partnership, enterprise or other entity, its charter, founding act, articles of incorporation and bylaws, memorandum and articles of association, statutes or similar instrument.
"Coercive Practice"	means the 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, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.
"Collusive Practice"	means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.
"Commitment Period"	means the period commencing on the date of this Agreement and terminating on the date falling sixty (60) days after the date of this Agreement.
“Cumulative Liquidity Gap Ratio”	means the ratio obtained by the following: $\frac{(\text{Total Assets} + \text{Undisbursed Parent's Liquidity Line} - \text{Total Liabilities, all taken in each Maturity Band}) \times 100}{/}$

Total Liabilities in each Maturity Band.

"Corrupt Practice"	means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.
"Country of Operation"	means Ukraine.
"Default Interest Period"	means, with respect to any amount overdue under this Agreement, a period commencing on the day on which such amount becomes due or, as the case may be, on the last day of the previous Default Interest Period with respect to such overdue amount, and ending on a Business Day selected by EBRD.
"Disbursement"	means the disbursement of the Loan pursuant to Section 3.02 or, as the context may require, the principal amount thereof from time to time outstanding.
"Disbursement Date"	means the date on which the Disbursement is made.
"Discount Rate"	has the meaning given to it at Section 3.13 (c) (viii) of this Agreement.
"Dollars", "USD" or "\$"	means the lawful currency of the United States of America.
"EBRD Anti-Corruption Guidelines"	means EBRD's Definitions and Guidelines for Private Sector Operations (Fraud and Corruption) attached hereto as Schedule 1.
"EBRD Performance Requirements"	means the Performance Requirements dated May 2008 and related to EBRD's Environmental and Social Policy dated May 2008 (or, as the context may require, any one of such Performance Requirements).
"eManual"	means the electronic environmental and social risk management manual for financial intermediaries maintained by EBRD on its website, as amended from time to time.
"Equity"	means the aggregate value of total assets minus total liabilities of the Borrower, calculated on the basis of

	the most recently delivered semi-annually or, as the case may be, annual, Financial Statements.
"Event of Increased Risk"	means any one of the events or occurrences specified in Section 6.01.
"Exposure"	<p>means:</p> <p>(i) the aggregate principal or nominal amount owed to the Borrower and accrued interest, penalties and other amounts due in respect of the principal, whether direct or contingent, by a counterparty, or, in the case of a Single Party, by a group of counterparties, in respect of money borrowed, equity or debt raised, guarantees, letters of credit or debt instruments issued or confirmed and other off-balance sheet engagements; less</p> <p>(ii) any such amount which is fully secured by rights of off-set against Cash and Cash equivalents in equivalent amounts and comparable maturities placed with the Borrower.</p>
"Financial Statements"	<p>(i) with respect to any Financial Year means the consolidated and unconsolidated financial statements (including a balance sheet, income statement, statement of changes in equity, cash flow statement and notes comprising a summary of significant accounting policies and other explanatory notes) of the Borrower and its Subsidiaries prepared in accordance with IFRS; and</p> <p>(ii) with respect to any quarterly period of any Financial Year the consolidated and unconsolidated (as the case may be) balance sheet and income statement of the Borrower and its Subsidiaries prepared in accordance with the Group Reporting Standards.</p>
"Financial Year"	means the period commencing each year on 1 January and ending on the following 31 December, or such other period as the Borrower may from time to time designate as the accounting year of the Borrower.

“Financing Agreements”	means any of the following Financing Agreements, each in form and substance acceptable to EBRD: <ul style="list-style-type: none"> a. the Letter of Information; b. this Agreement; c. the Mandate Letter; and d. the Memorandum of Understanding.
“Fixed Interest Period”	has the meaning given to it at Section 3.05 (b) (i) of this Agreement.
“Fixed Rate”	has the meaning given to it at Section 3.13 (c) (iii) of this Agreement.
“Floating Rate”	has the meaning given to it at Section 3.13 (c) (iv) of this Agreement.
"Foreign Currency"	means any currency other than Hryvnia.
"Fraudulent Practice"	means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.
"Governmental Authority"	means the government of any country, or of any political subdivision thereof, whether state, regional or local, and any agency, authority, branch, department, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government or any subdivision thereof (including any supra-national bodies), and all officials, agents and representatives of each of the foregoing.
“Group Reporting Standards”	means the reporting standards of the UniCredit Group.
“Group Liquidity Policy”	means the liquidity policy of Unicredit Group valid as of May 2009 in a form and substance satisfactory to EBRD.
"Hryvnia"	means the lawful currency of Ukraine.
"IFRS"	means International Financial Reporting Standards issued or adopted by the International Accounting Standards Board and consistently applied, as amended

from time to time.

"Interbank Rate"

means:

- a. for the first Interest Period, the offered rate per annum for deposits in Dollars which appears on the Reference Page as of 11:00 a.m. London time on the relevant Interest Determination Date for the period which equals the duration of such Interest Period (or if no such appears on the Reference Page for a period equal to the duration of such Interest Period but rates ("Reference Rates") do appear on the Reference Page both for a period which is shorter than and for a period which is longer than the duration of such Interest Period, the Interbank Rate shall be the rate (rounded upward, if necessary, to four decimal places) that would be applicable for the period equal to the duration of such Interest Period as determined through the use of straight-line interpolation by reference to the Reference Rate that appears on the Reference Page for the period that is the next shorter in length than the duration of such Interest Period and the Reference Rate that appears on the Reference Page for the period that is the next longer in length than the duration of such Interest Period; and
- (b) for each subsequent Interest Period, the offered rate per annum for deposits in Dollars which appears on the Reference Page as of 11:00 a.m., London time, on the relevant Interest Determination Date for the period which is closest to the duration of such Interest Period (or, if two periods are equally close to the duration of such Interest Period, the average of the two relevant rates);

provided that if, for any reason, the Interbank Rate cannot be determined at such time by reference to the Reference Page, the Interbank Rate for such Interest Period shall be the rate per annum which EBRD determines to be the arithmetic mean (rounded upward, if necessary, to four decimal places) of the offered rates per annum for deposits in Dollars in an amount comparable to the amount of the

Loan scheduled to be outstanding during such Interest Period for a period equal to such Interest Period which are advised to EBRD by at least two major banks active in the London interbank market selected by EBRD.

"Interest Conversion Period"	means the period starting on the Interest Payment Date following the Disbursement Date and ending on the Interest Payment Date falling on or immediately after the fifth anniversary of the Disbursement Date.
"Interest Determination Date"	means, for any Interest Period, the date two London Banking Days prior to the first day of such Interest Period.
"Interest Fixing Date"	means a London Banking Day that is selected by the Borrower as such in accordance with paragraph (b) of Section 3.05 (<i>Interest</i>) and that is at least two London Banking Days before the first day of the Fixed Interest Period.
"Interest Fixing Request"	means a request to fix the interest rate on the Loan substantially in the form set out in Exhibit E (<i>Form of Request to Fix Interest Rate</i>).
"Interest Payment Date"	means any day which is 28 January or 28 July in any year; provided, however, that, if any Interest Payment Date would otherwise fall on a day which is not a Business Day, such Interest Payment Date shall be changed to the next succeeding Business Day in the same calendar month or, if there is no succeeding Business Day in the same calendar month, the immediately preceding Business Day.

"Interest Payment Suspension Event"	means any one of the events or occurrences specified in Section 3.05(j).
"Interest Period"	means the period commencing on the Disbursement Date and ending on the next Interest Payment Date and each period of six months thereafter commencing on an Interest Payment Date and ending on the next Interest Payment Date; provided that, if such Disbursement is made less than 15 Business Days prior to the next Interest Payment Date, the first Interest Period for such Disbursement shall commence on the date of such Disbursement and end on the Interest Payment Date following the next Interest Payment Date.
"Large Party Exposure"	any single Exposure larger than 10% of Equity.
"Letter of Information"	means the letter delivered to EBRD by the Borrower containing the Borrower's representations regarding all material facts concerning the use of the Disbursements, the organisation, status, operations, affiliations, liabilities and assets of the Borrower and other matters incident to the transactions contemplated by this Agreement, and any amendment or supplement to such letter which is accepted by EBRD.
"Lien"	means any mortgage, pledge, charge, privilege, priority, hypothecation, encumbrance, assignment, lien, attachment, set-off or other security interest of any kind or any other agreement or arrangement having the effect of conferring security upon or with respect to, or any segregation of or other preferential arrangement with respect to, any present or future assets, revenues or rights, including any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy.
"Loan"	means the maximum principal amount of the loan provided for in Section 3.01 or, as the context may require, the principal amount thereof from time to time outstanding.
"Loan Currency"	means the currency in which the Loan is denominated as set forth in Section 3.01.
"London Banking Day"	means a day (other than a Saturday or Sunday) on which commercial banks are open for the transaction of general business (including dealings in foreign

	exchange and foreign currency deposits) in London, England.
"Mandate Letter"	means the letter agreement between the Borrower and EBRD dated 23 March 2009.
"Margin"	means 10.00% per annum.
"Market Disruption Event"	means: <ul style="list-style-type: none"> (a) on the Interest Determination Date for the relevant Interest Period or the Default Interest Determination Date for the relevant Default Interest Period, in each case whether or not during the Interest Conversion Period, the Reference Page is not available and none or only one of the major banks active in the London interbank market supplies a rate to EBRD to determine the Interbank Rate for Dollars for the relevant Interest Period or the default interest rate for Dollars for the relevant Default Interest Period, as the case may be; or (b) before close of business in London on the Interest Determination Date for the relevant Interest Period or the Default Interest Determination Date for the relevant Default Interest Period (in each case whether or not during the Interest Conversion Period) EBRD determines that the cost to EBRD of obtaining matching deposits in the London interbank market would be in excess of the Interbank Rate.
"Material Adverse Effect"	means any event or circumstance which in the reasonable opinion of EBRD, is likely to have a material adverse effect on: <ul style="list-style-type: none"> (a) the ability of the Borrower to perform or comply with any of its obligations under any Financing Agreement; or (b) the legality, validity, enforceability and binding nature of any of the Financing Agreement or the legal rights, remedies and priorities of EBRD under any Financing Agreement; or (c) the Borrower's business, operations, financial condition or prospects.

“Maturity Band”	means each of the following periods: 0 to 30 days, 0 to 90 days, 0 to 180 days, 0 to 360 day and 0 to over 360 days.
“Memorandum of Understanding”	means the memorandum of understanding between EBRD and UniCredit Bank Austria AG dated 8 June 2009.
"NBU"	means the National Bank of Ukraine.
"NBU Notification"	means written confirmation of an electronic notification issued by the NBU that the Borrower has notified the NBU of the execution of this Agreement.
"NBU Permit"	means the permit granted by the National Bank of Ukraine (NBU) pursuant to the Order of Regulating Banks’ Activities in Ukraine, approved by the Resolution of the Board of the NBU No. 368 dated 28 August 2001 (as amended from time to time) (“Regulation 368”).
“NBU Prudential Requirements”	means the prudential ratios established from time to time by the NBU and which the banks established and operating in Ukraine are required to comply with as published in the Herald of the National Bank of Ukraine or if not published or before their publication in the Herald of the National Bank of Ukraine, at such time when the applicable prudential ratios take effect.
“NPL’s” or “Non-Performing Loans”	<p>means the sum of:</p> <ul style="list-style-type: none"> (i) each Exposure of which any portion is, on a non-accrual basis, 90 days or more in arrears, or for which there is otherwise doubt that payment will be made in full; (ii) each Exposure that is written down, or fully provisioned but remains on the Borrower’s balance sheet; and (iii) each Exposure of which any portion has been restructured due to the borrowers inability to service the loan as per original schedule more than twice during the lifetime of the loan.
“Open Credit Exposure Ratio”	<p>means the ratio obtained by dividing:</p> <ul style="list-style-type: none"> (i) NPL’s less total loan loss reserves in respect thereof; by (ii) Tier 1 Capital calculated in accordance with, and

subject to the limits, restrictions and deductions set forth in, the Basle Capital Accord.

“Open Foreign Currency Exposure”	means the ratio obtained by the following: $\frac{\text{Total Assets in each Currency}}{\text{Total Liabilities in the same currency}} / \text{Equity}$
“Original Income Stream”	has the meaning given to it at Section 3.13 (c) (i) of this Agreement.
“Parent Company”	means UniCredit S.p.A., a bank with Registered Office in Genoa, Via Dante, 1, and Head Office in Milan, Piazza Cordusio, Parent Company of the UniCredit Group.
"Potential Event of Increased Risk"	means any event which, with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would become an Event of Increased Risk.
"Prohibited Practice"	means any Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.
"Reference Page"	means the display of London interbank offered rates of major banks for deposits in the Loan Currency designated as page LIBOR01 on Reuters services (or such other page as may replace LIBOR01 on Reuters services for the purpose of displaying London interbank offered rates for deposits in the Loan Currency).
"Regulation 368"	means the Order of Regulating Banks' Activities in Ukraine, approved by the Resolution of the Board of the NBU No. 368 dated 28 August 2001 (as amended from time to time), or any regulation of the NBU or other law that may replace such regulation from time to time.
"Related Party Exposure"	means, with respect to any person the aggregate amount of all transactions (including indemnities and guarantees to third parties), both on and off balance sheet, with a Related Party of such person.
"Repayment Date"	has the meaning given to it in paragraph (a) of Section 3.08 (<i>Repayment and No Termination</i>).
"Risk Weighted Assets"	means the aggregate of the Borrower's balance sheet assets and off-balance sheet engagements, weighted

	for credit risk in accordance with the Basle Capital Accord.
"Senior Indebtedness"	means any and all present and future liabilities of the Borrower other than Subordinated Indebtedness.
"Senior Loan Agreement"	means the loan agreement between the Borrower and EBRD dated 19 May 2008.
"Single Party"	means with respect to any person, such person and all Affiliates of such person.
"Single Party Exposure"	means, with respect to any person, the aggregate amount of all transactions of such person (including indemnities and guarantees to third parties), both on and off balance sheet with a Single Party.
"Subordinated Indebtedness"	means any and all present and future liabilities of the Borrower, which in the event of liquidation (whether solvent or in the course of bankruptcy proceedings) of the Borrower are subordinated in right of payment to the claims of all other creditors preferred by virtue of Article 96 of the Law of Ukraine On Banks and Banking Activity.
"Subsidiary"	means, with respect to any entity, any other entity over 50% of whose capital is owned, directly or indirectly, by such entity or which is otherwise effectively controlled by such entity.
"Substitute Income Stream"	has the meaning given to it at Section 3.13 (c) (ii) of this Agreement.
"Tax" or "Taxes"	means any tax, royalty, stamp or other duty, assessment, levy, charge, value added tax, or impost of any nature whatsoever (including any related penalty or interest) imposed under any law.
"Tier 1 Capital"	means the Borrower's "main capital" (<i>osnovnyi kapital</i>) as such term is defined in Regulation 368.
"Tier 2 Capital"	means the Borrower's "additional capital" (<i>dodatkovy kapital</i>) as such term is defined in Regulation 368.
"Total Assets"	means, at any time, the book value of all of the Borrower's assets.
"Total Deposits"	means at any time the aggregate amount of customer deposits owing by the Borrower.

"Ukrainian Accounting Standards"	means accounting principles generally accepted in Ukraine and consistently applied.
"Undisbursed Parent's Liquidity Line"	means the liquidity line made available to the Borrower on request by UniCredit Bank Austria AG, less any disbursed amounts.
"UniCredit Group (UCG)"	means the Parent Company and those of its subsidiaries, (a) in which the Parent Company holds directly or indirectly 50% or more of the shares (or similar rights of ownership) or voting rights or (b) which are controlled by the Parent Company or (c) which are listed from time to time on the UniCredit Group website at http://www.unicreditgroup.eu/dazen ("Selected credit and financial institutions of UniCredit Group").

Section 1.02. Interpretation

- (a) In this Agreement, unless the context otherwise requires, words denoting the singular include the plural and vice versa.
- (b) In this Agreement, a reference to a specified Article, Section, Schedule or Exhibit shall be construed as a reference to that specified Article or Section of, or Schedule or Exhibit to, this Agreement.
- (c) In this Agreement, a reference (i) to an amendment or to an agreement being amended includes a supplement, variation, assignment, novation, restatement or re-enactment, and (ii) to an agreement shall be construed as a reference to such agreement as it may be amended from time to time.
- (d) In this Agreement, the headings and the Table of Contents are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.
- (e) In this Agreement, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting shares, by contract or otherwise.
- (f) In this Agreement, an Event of Increased Risk is outstanding or continuing until it has been remedied or waived by EBRD in writing.
- (g) In this Agreement, any reference to "law" means any law (including, any common or customary law) and any treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgement, order, writ, injunction, determination,

award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or the compliance with which is in accordance with general practice in such jurisdiction.

- (h) In this Agreement, any reference to a provision of law, is a reference to that provision as from time to time amended or re-enacted.
- (i) In this Agreement, a reference to a "person" includes any person, natural or juridical entity, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and references to a "person" include its successors in title, permitted transferees and permitted assigns. Reference to "party" in the definitions of "Coercive Practice", "Collusive Practice", "Corrupt Practice", "Fraudulent Practice" and in the EBRD Anti-Corruption Guidelines shall be construed as including any person within the meaning of the first sentence of this Section 1.02(i).
- (j) In this Agreement, "including" and "include" shall be deemed to be followed by "without limitation" where not so followed.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations

The Borrower represents and warrants as follows:

- (a) The information contained in the Letter of Information remains true.
- (b) The Borrower is an open joint stock company, validly incorporated and existing under the laws of Ukraine.
- (c) The Borrower is a bank within the meaning of the Law of Ukraine "On Banks and Banking Activity" No 2121-III dated 7 December 2000 (as the same may be amended, supplemented or replaced from time to time).
- (d) The Borrower holds a general banking license issued by the NBU which authorises it to carry out financial and lending transactions of all types in any currency and which has not been suspended, modified or revoked since the time of its issuance and such licence has been in full force and effect since the date of its issuance. The Borrower is in compliance with all mandatory norms established by the NBU for authorised banks, and it is otherwise in good standing with the NBU.
- (e) The Borrower has the corporate power to enter into and perform this Agreement and any of the Financing Agreements to which it is a party.
- (f) This Agreement and any of the Financing Agreements to which the Borrower is a party have been duly authorised and executed by the Borrower and constitute valid

and legally binding obligations of the Borrower, enforceable in accordance with their respective terms.

- (g) The making of this Agreement and any of the Financing Agreements to which the Borrower is a party and the compliance with their respective terms:
 - (i) does not, and will not, result in violation of the Borrower's Charter or any provision contained in any law applicable to the Borrower;
 - (ii) does not, and will not, conflict with or result in the breach of any provision of, or require any consent under, or result in the imposition of any Lien under, any agreement or instrument to which the Borrower is a party or by which the Borrower or any of its assets is bound; and
 - (iii) does not, and will not, constitute a default or an event which, with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would become a default under any such agreement or instrument.
- (h) No Authorisations from any Governmental Authority are required for the due execution, delivery or performance by the Borrower of this Agreement or any of the Financing Agreements to which it is a party, or their validity or enforceability, except for the registration of this Agreement with the NBU. The only Authorisation from any Governmental Authority required for treatment of the Loan as Tier 2 Capital for the purposes of Regulation 368 is the NBU Permit.
- (i) The Borrower's payment obligation under this Agreement constitutes a direct, unconditional and unsecured obligation of the Borrower and the indebtedness incurred by the Borrower hereunder ranks and will rank in priority of payment at least equal with all other present and future Subordinated Indebtedness.
- (j) There is no Tax of any Governmental Authority of Ukraine to be imposed on or by virtue of the execution, delivery or performance of this Agreement or any of the Financing Agreements to which the Borrower is a party or necessary to ensure the legality, validity, enforceability or admissibility in evidence of any such agreements in Ukraine.
- (k) The Borrower is not in default under any material agreement, obligation or duty to which it is a party or by which it or any of its properties or assets is bound and there exists no Event of Increased Risk or Potential Event of Increased Risk or Interest Payment Suspension Event.
- (l) The Borrower is not in violation of any law applicable to it and presently in effect, except for such violations which will not or could not reasonably be expected to result in a Material Adverse Effect. The Borrower is in compliance with all applicable laws concerning money laundering.

- (m) Neither the Borrower nor any officers, directors, authorised employees, Affiliates, agents or representatives of the Borrower has committed or engaged in, with respect to any transactions contemplated by this Agreement, any Prohibited Practice.

Section 2.02. Acknowledgement and Warranty

- (a) The Borrower acknowledges that it has made the representations and warranties contained in Section 2.01 with the intention of inducing EBRD to enter into this Agreement and that EBRD has entered into this Agreement on the basis of, and in full reliance on, each of such representations and warranties.
- (b) In respect of all representations and warranties provided in this Article II, such representations and warranties shall be deemed to be repeated and given again on and as of the date of submission of the Disbursement application and on the Disbursement Date.
- (c) The Borrower acknowledges that:
 - (i) a Market Disruption Event may occur at any time on or after the date of this Agreement;
 - (ii) the Borrower bears the risk of any change in circumstances caused by a Market Disruption Event; and
 - (iii) the occurrence of a Market Disruption Event does not suspend or terminate the obligations of the Borrower under this Agreement.

ARTICLE III - LOAN

Section 3.01. Amount, Currency and Use of Proceeds

- (a) On and subject to the terms and conditions of this Agreement, EBRD agrees to lend to the Borrower an amount of USD 100,000,000 (one hundred million Dollars).
- (b) Subject to the NBU Permit and also Section 3.18, the Loan is intended to be classified as subordinated debt and included by the Borrower in its Tier 2 Capital and the proceeds of it shall be used by the Borrower in accordance with the provisions of Section 5.01(k). Without affecting the obligations of the Borrower in any way, EBRD shall not be obliged to concern itself with such application.

Section 3.02. Disbursement

- (a) Subject to Section 3.03 and Article IV, the Loan shall be disbursed by EBRD on any Business Day during the Commitment Period in one single Disbursement upon request of the Borrower.
- (b) The Borrower may request the Disbursement by submitting to EBRD an original application for such Disbursement at least seven (7) Business Days prior to the proposed date of such Disbursement. The Disbursement application shall be in the form of Exhibit A and in substance satisfactory to EBRD and, unless EBRD otherwise agrees, shall be irrevocable and binding on the Borrower. For the avoidance of doubt, any such Disbursement is conditional on the satisfaction of all conditions precedent.

Section 3.03. Suspension and Cancellation

- (a) From time to time, EBRD may, by notice to the Borrower, suspend or cancel the Borrower's right to the Disbursement:
 - (i) if an Event of Increased Risk has occurred and is continuing; or
 - (ii) if the Board of Governors of EBRD shall have decided in accordance with Article 8, paragraph 3, of the Agreement Establishing the European Bank For Reconstruction and Development that access by the Country of Operation to EBRD resources should be suspended or otherwise modified; or
 - (iii) if a Market Disruption Event occurs.

Upon the issuance of such notice by EBRD, the right of the Borrower to request the Disbursement shall be suspended or cancelled as indicated in the notice. The exercise by EBRD of the right of suspension shall not preclude EBRD from exercising its right of cancellation as provided in this Section 3.03, either for the same or another reason, and shall not limit any other rights of EBRD under this Agreement.

Section 3.04. Fees

- (a) The Borrower shall pay to EBRD during the Commitment Period a commitment fee at the rate of 0.75% per annum on so much of the Loan as has not, from time to time, been disbursed to the Borrower or cancelled. The commitment fee shall accrue on a day to day basis from the date which is 10 days after the date of this Agreement. The commitment fee shall be calculated on the basis of the actual number of days elapsed in the relevant period and a 360-day year and shall be due and payable in arrears on each Interest Payment Date (even though no interest may be payable on such date).
- (b) The Borrower shall pay to EBRD a facility fee of USD 1,000,000 (one million dollars) (1.00% of the Loan). Such facility fee shall be due and payable on the

earlier of four (4) Business Days prior to the date of the Disbursement or ten (10) Business Days after the date of this Agreement.

- (c) The fees referred to in this Section 3.04 are exclusive of any Tax which might be chargeable in connection with such fees. If any such Tax becomes chargeable, the Borrower shall pay such Tax to EBRD at the same time that the relevant fee becomes due and payable.

Section 3.05. Interest

Subject to Section 3.07:

- (a) Except as provided in Section 3.05(b) and 3.06, the Borrower shall pay interest on the principal amount of the Loan from time to time outstanding during each Interest Period for such Disbursement at a rate equal to the sum of (i) the Margin and (ii) subject to Section 3.07 (*Market Disruption*), the Interbank Rate for such Interest Period.

(b)

- (i) Only once during the Interest Conversion Period and subject to the remaining sub-paragraphs of this paragraph (b) and the maximum interest rate established by the NBU for subordinated loans granted to Ukrainian banks, the Borrower may elect, for a period of not less than two successive Interest Periods and provided always that such period shall begin and end on an Interest Payment Date (the “Fixed Interest Period”), to pay interest at a fixed rate on the principal amount of the Loan from time to time outstanding during the Fixed Interest Period. For the avoidance of doubt, the Borrower cannot elect to pay interest at a variable rate on part of the Loan and interest at a fixed rate on the other part of the Loan.
- (ii) In order to make the election referred to in the above sub-paragraph (b)(i), the Borrower must deliver a duly completed Interest Fixing Request to EBRD not less than five (5) London Banking Days before the proposed Interest Fixing Date.
- (iii) An Interest Fixing Request shall:
 - (A) unless EBRD otherwise agrees in writing, be irrevocable and binding on the Borrower;
 - (B) specify the proposed Interest Fixing Date, provided that the proposed Interest Fixing Date must be a date that is after the date on which all the conditions precedent set out in Article IV (*Conditions Precedent*) have been fulfilled;
 - (C) be accompanied by such documents as are necessary to satisfy EBRD that:

- (i) all Authorisations that are required for the interest rate conversion and payment of interest at a fixed rate have been obtained and are in full force and effect; and
 - (ii) the rights of EBRD under this Agreement will not be discharged, limited or impaired by the interest rate conversion or the payment of interest at a fixed rate.
- (iv) An Interest Fixing Request may not be delivered to EBRD if:
 - (A) an Event of Increased Risk or Potential Event of Increased Risk has occurred and is continuing; or
 - (B) a Market Disruption Event has occurred and is continuing.
- (v) If:
 - (A) EBRD is satisfied that the above sub-paragraphs (ii) to (iv) have been complied with, it will determine the applicable fixed interest rate on the Interest Fixing Date in accordance with sub-paragraph (vi) below and promptly notify the Borrower of that rate; or
 - (B) EBRD is not satisfied that the above sub-paragraphs (ii) to (iv) have been complied with, interest will accrue on the Loan at the rate determined in accordance with paragraph (a) above.
- (vi) During the Fixed Interest Period, interest will accrue on the Loan at a rate equal to the sum of:
 - (A) the applicable Margin; and
 - (B) the fixed interest rate that EBRD is willing to make available to the Borrower based on the creditworthiness of the Borrower and the forward fixed interest rate for Dollars which is available to EBRD in the interest rate swap market on the Interest Fixing Date for the Fixed Interest Period, taking into account the principal repayment and interest payment schedules for the Loan.
- (vii) During the period starting on the last day of the Fixed Interest Period until the final Repayment Date, interest will accrue at the rate determined in accordance with paragraph (a) above
- (c) Notwithstanding Section 3.05(a) and (b), if an Event of Increased Risk has occurred the Borrower shall, for so long as such Event of Increased Risk continues, be obliged to pay interest on the *principal amount* of the Loan from time to time outstanding during each Interest Period at a rate which is 2% per annum higher than the rate which would otherwise be payable by it in accordance with the above paragraphs (a) or (b), as applicable. The determination by EBRD that an Event of Increased Risk has occurred and is continuing shall be final and conclusive and binding on the Borrower. EBRD shall notify the Borrower when it determines that an Event of Increased Risk is no longer continuing.

- (d) Interest shall:
- (i) accrue on a monthly basis from and including the first day of an Interest Period to but excluding the last day of such Interest Period;
 - (ii) be calculated on the basis of the actual number of days elapsed and a 360-day year, in the case of interest accruing at a variable rate specified in paragraph (a) above;
 - (iii) be calculated on the basis of the actual number of days elapsed and a 365-day year, in the case of interest accruing at a fixed rate specified in paragraph (b) above; and
 - (iv) be due and payable on the Interest Payment Date which is the last day of the relevant Interest Period.
- (e) Except as otherwise provided in Section 3.07 (*Market Disruption*), on each Interest Determination Date, EBRD shall determine the interest rate applicable during the relevant Interest Period and promptly give notice thereof to the Borrower. Each determination by EBRD of the interest rate applicable to any portion of the Loan shall be final, conclusive and binding upon the Borrower unless shown by the Borrower to the satisfaction of EBRD that any such determination has involved manifest error.
- (f) Without prejudice to EBRD's other rights in respect of the occurrence of any Event of Increased Risk, the application of the interest rates in accordance with this Section 3.05 has been agreed by the parties in recognition of the aggravated risk profile faced by EBRD in case an Event of Increased Risk arises and reflects a genuine pre-estimate of EBRD's likely minimum losses in any such case.
- (g) Any interest payable under this Agreement shall not be capitalised.
- (h) Without prejudice to Section 3.05(d), the interest accrued hereunder shall be accrued by the Borrower on a monthly basis solely for the purposes of compliance with paragraph 3.7, Section 3, Chapter III of Regulation 368 and applicable Ukrainian accounting rules for interest and fee income and expense of the Borrower.
- (i) The Borrower shall not make advance payments of any interest payable under this Agreement.
- (j) The Borrower may, and shall if the NBU so requests, by prior written notice to EBRD no less than 5 Business Days prior to the Interest Payment Date for the relevant Interest Period, suspend the payment of interest due hereunder, in the event that any of the following (an "**Interest Payment Suspension Event**") occurs: (i) the deterioration of the financial standing of the Borrower (including non-compliance with mandatory provisions requirements, minimum amount of regulatory capital requirement, regulatory capital adequacy, regulatory capital to total assets ratio, liquidity requirements, each such term as defined in Regulation 368), provided that the assets qualified as negative (as such term is defined in

Regulation 368) exceed 10 per cent of the total assets of the Borrower; no positive financial result has been shown for the respective reporting period (quarter); or (ii) entering by the Borrower and the NBU into a written agreement on a program for the financial recovery of the Borrower; provided, in each case that all other requirements set forth by the then applicable mandatory provisions of Ukrainian laws and regulations providing grounds for such suspension of payment of interest have been otherwise satisfied and provided further that, to the extent required by rules and regulations of the NBU, the Borrower has insufficient net income (as so determined) to enable it to make payments of interest hereunder in the relevant period. Together with such notice, the Borrower shall provide EBRD with written confirmation of the necessity of and basis for such suspension issued by the NBU.

- (k) In case an Interest Payment Suspension Event has occurred and is continuing, the Borrower shall:
 - (i) forthwith thereupon notify EBRD thereof;
 - (ii) undertake all actions necessary to cure such Interest Payment Suspension Event;
 - (iii) weekly furnish to EBRD a written report on the actions so taken and the outcome thereof; and
 - (iv) provide EBRD with such other information as EBRD may from time to time reasonably request.
- (l) If, in the reasonable opinion of the Borrower or EBRD, the Interest Payment Suspension Event has been cured or has otherwise ceased to continue, the Borrower shall promptly notify the NBU thereof in writing (with a copy to EBRD) and shall procure the delivery by the NBU of a written confirmation to the effect that the relevant Interest Payment Suspension Event no longer continues.
- (m) All amounts of interest that become due and payable pursuant to this Section 3.05 (including accrued default interest pursuant to Section 3.06) during the time when an Interest Payment Suspension Event is continuing shall be payable by the Borrower within 10 Business Days following the day on which the Borrower has obtained a written confirmation from the NBU that such Interest Payment Suspension Event no longer continues.

Section 3.06. Default Interest on Overdue Amounts

- (a) If the Borrower fails to pay when due any amount payable by it under this Agreement, the overdue amount shall bear interest at a rate equal to the sum of:
 - (i) 2.0% per annum;
 - (ii) the Margin; and
 - (iii) the interest rate per annum offered in the London interbank market on the date two London Banking Days prior to the first day of the relevant Default

Interest Period (or, at EBRD's option, on the first day of such Default Interest Period) (the "**Default Interest Determination Date**") for a deposit in the Loan Currency of an amount comparable to the overdue amount for a period equal to the relevant Default Interest Period or, if a Market Disruption Event has occurred, the rate which expresses as a percentage rate per annum the cost to EBRD of funding the Loan from whatever source EBRD may reasonably select (or, at the option of EBRD, the relevant Interbank Rate, if available).

- (b) Default interest shall
 - (i) accrue from day to day from the due date to the date of actual payment, after as well as before judgement, if any;
 - (ii) be calculated on the basis of the actual number of days elapsed and a 360-day year;
 - (iii) be compounded at the end of each Default Interest Period; and
 - (iv) be due and payable forthwith upon demand.
- (c) Each determination by EBRD of the interest rates applicable to overdue amounts and of Default Interest Periods shall be final, conclusive and binding upon the Borrower unless shown by the Borrower to the satisfaction of EBRD that any such determination has involved manifest error.
- (d) For the avoidance of doubt, where the Borrower shall fail to repay the entirety of the principal amount of the Loan on the Repayment Date, interest shall accrue on such overdue amount only under this Section 3.06 and not also under Section 3.05.

Section 3.07. Market Disruption

- (a) If a Market Disruption Event occurs, EBRD shall promptly notify the Borrower. If EBRD notifies the Borrower of the occurrence of a Market Disruption Event, interest shall accrue on the Loan at a rate equal to the sum of:
 - (i) (if the Loan is subject to interest at a variable rate in accordance with paragraph (a) of Section 3.05 (*Interest*)) interest on the Loan will accrue at a rate equal to the sum of:
 - (A) the applicable Margin; and
 - (B) the rate which expresses as a percentage rate per annum the cost to EBRD of funding the Loan from whatever source EBRD may reasonably select (or, at the option of EBRD, the relevant Interbank Rate, if available), as notified by EBRD to the Borrower as soon as practicable and in any event before interest is due to be paid in respect of the relevant Interest Period; or

- (ii) (if the Loan is subject to interest at a fixed rate in accordance with paragraph (b) of Section 3.05 (*Interest*)) interest on the Loan will accrue at a rate equal to the fixed interest rate determined in accordance with that paragraph (b) of Section 3.05 (*Interest*), including the applicable Margin,

until EBRD has given notice to the Borrower that the Market Disruption Event has ceased to exist.

- (b) If a Market Disruption Event has occurred, EBRD shall have the right, in its discretion, to change the duration of any relevant Interest Period by sending to the Borrower a written notice thereof. Any such change to an Interest Period shall take effect on the date specified by EBRD in such notice.
- (c) If a Market Disruption Event has occurred, EBRD shall be entitled to determine the interest rate applicable during the relevant Interest Period and give notice thereof to the Borrower on or before the end of the first Interest Period following such Market Disruption Event.
- (d) Notwithstanding Section 3.07(a), if a Market Disruption Event occurs and EBRD or the Borrower so requires, within five Business Days of the notification by EBRD pursuant to Section 3.07(a) above, EBRD and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest applicable to the Loan. Any alternative basis so agreed shall take effect in accordance with its terms and replace the interest rate then in effect pursuant to Section 3.07(a) above. If agreement cannot be reached, the Borrower may prepay the Loan on the next Interest Payment Date in accordance with Section 3.09(a).

Section 3.08. Repayment and No Termination

- (a) The Borrower shall repay the Loan in one single instalment on the Interest Payment Date on or immediately following the 10th anniversary of the Disbursement (the "Repayment Date").
- (b) Subject to compliance with Ukrainian law, the Borrower shall not prepay all or any part of the Loan and this Agreement may not be terminated prior to the fifth anniversary of the Disbursement Date.

Section 3.09. Prepayment

- (a) The Borrower may not prepay the Loan pursuant to this Section 3.09 if to do so would breach the then applicable regulations of the NBU and unless the Borrower has received a permit of the NBU for the subordinated debt prepayment if obtaining such permit is required by the then applicable regulations of the NBU. The Borrower may not otherwise prepay the whole or any part of the outstanding principal amount of the Loan except at the times and in the manner expressly provided for in this Agreement.

- (b) The Borrower shall have the right to prepay all (but not any part) of the principal amount of the Loan then outstanding, on the first Interest Payment Date to occur five years after the date of Disbursement or on any Interest Payment Date thereafter and on not less than 30 days' prior notice to EBRD and subject to approval from the NBU; provided that the Borrower shall pay to EBRD at the same time all accrued interest and other amounts payable on the principal amount of the Loan to be prepaid and all other amounts due and payable hereunder.
- (c) If on any Interest Determination Date to occur five years after the date of the Disbursement EBRD determines that the rate of interest to be paid by the Borrower on the principal amount of the Loan pursuant to Section 3.05 of this Agreement is higher than the maximum interest rate established by the NBU for subordinated loans on the date of this Agreement, the Borrower shall, by written notice to EBRD to that effect, prepay the whole (but not part only) of the outstanding principal amount of the Loan together with accrued interest on the next Interest Payment Date following the date which is ten (10) Business Days after such Interest Determination Date or on such earlier date as may be required by applicable regulations of the NBU. Any such notice of prepayment given by the Borrower to EBRD shall (i) be accompanied by the certificate of the Borrower confirming the existence of the relevant circumstances permitting such a prepayment, (ii) be irrevocable and (iii) oblige the Borrower to make such prepayment subject to the limitations and requirements established by the NBU, if and to the extent applicable at the time of prepayment.
- (d) Notwithstanding the provisions of Sections 3.08 and 3.09 above, EBRD shall have the right to demand that the Borrower prepays the Loan in full or in part as provided below in this Section 3.09(d), together with accrued interest (up to but excluding the date of such payment) thereon:
- (i) at any time if the NBU fails to provide the Borrower with the NBU Permit in respect of the full amount of the Loan within 90 calendar days after the date of this Agreement or any such other later date as may be determined at EBRD's discretion; or
 - (ii) at any time after the issue of the NBU Permit if as a result of any amendment to, clarification of or change in (including a change in interpretation of) applicable Ukrainian law or regulations, the NBU withdraws the NBU Permit or the NBU Permit ceases to apply to the principal amount of the Loan in respect of which it was issued.
- (e) Upon the receipt of a notification of a planned change in shareholding structure under paragraph (n) of Section 6.01 (*Events of Increased Risk*), EBRD has a right to request the Borrower to:
- (i) promptly undertake all actions and submit to the NBU all documents necessary to obtain NBU's consent to the prepayment of the Loan, including procuring an increase of its share capital in an amount at least equal to the principal amount of the Loan then outstanding;

- (ii) furnish to EBRD weekly reports on the actions so undertaken and the outcome thereof; and
- (iii) upon receiving the prior written consent of EBRD, on the next Business Day following receipt of the NBU's consent for the prepayment of the Loan, prepay the principal amount of the Loan then outstanding, together with accrued interest and other amounts payable to EBRD under the Loan Agreement.

No prepayment fees shall be payable by the Borrower in relation to any prepayment made in accordance with this Section 3.09.

Section 3.10. Payments

- (a) All payments of principal, interest, fees, expenses and any other amounts due to EBRD under this Agreement shall be made, without set-off or counterclaim, in the Loan Currency (or, in the case of costs and expenses of EBRD, in the currency in which such costs and expenses were incurred), for value on the due date, to the following account or such other account as EBRD may from time to time designate by notice to the Borrower.

Account Bank: Citibank, New York

Swift Code: CITIUS33XXX

For the account of: European Bank for Reconstruction and Development, London

Account number: 36125585

Swift Code: EBRDGB2L

Payment Reference: DTM No. 40284

- (b) The sums to be disbursed by EBRD to the Borrower hereunder shall be payable in the Loan Currency for value, unless otherwise agreed by the Borrower and EBRD, on the value date requested by the Borrower in its Disbursement application and to the following account or such other account as the Borrower may designate in its Disbursement application (with instructions to transfer such sums, at the Borrower's risk and expense, to such account as the Borrower may designate in its Disbursement application).

Account Bank: The Bank of New York Mellon, New York NY

Account number: 8900260947

Swift Code: IRVTUS3NXXX

- (c) If the due date for any payment under this Agreement would otherwise fall on a day which is not a Business Day, then such payment shall instead be due on the next succeeding Business Day in the same calendar month or, if there is no succeeding Business Day in the same calendar month, the immediately preceding Business Day.
- (d) EBRD shall have the right, to the fullest extent permitted by law, to set off any overdue amount owed by EBRD to the Borrower, whether or not matured, against any amount then due and payable by the Borrower under this Agreement, whether or not EBRD has demanded payment by the Borrower of such amount and regardless of the currency or place of payment of either such amount. EBRD shall have the right, to the fullest extent permitted by law, to deduct from the proceeds of the Disbursement any fees and other amounts then due and payable by the Borrower to EBRD under this Agreement.

Section 3.11. Insufficient Payments

- (a) If EBRD at any time receives less than the full amount then due and payable to it under this Agreement, EBRD shall have the right to allocate and apply the amount received in any way or manner and for such purpose or purposes under this Agreement as EBRD in its sole discretion determines, notwithstanding any instruction that the Borrower may give to the contrary.
- (b) The Borrower shall indemnify EBRD against any losses resulting from a payment being received, or a claim being filed or an order or judgement being given, hereunder in a currency or place other than the currency and place specified in Section 3.10(a). The Borrower shall pay such additional amount as is necessary to enable EBRD to receive, after conversion to such currency at a market rate and transfer to such place, the full amount due to EBRD hereunder in the currency and at the place specified in Section 3.10(a).

Section 3.12. Taxes

- (a) The Borrower shall pay or cause to be paid, or reimburse EBRD on demand for, all present and future Taxes, now or at any time hereafter levied or imposed by any Governmental Authority of any jurisdiction out of which or through which payments hereunder are made, on or in connection with the payment of any amounts due to EBRD under this Agreement.
- (b) All payments of principal, interest and other amounts due to EBRD under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes; provided, however, that, in the event that the Borrower is prevented by operation of law or otherwise from making such payments free and clear of such deductions or withholdings, the principal, interest or other amount (as the case may be) due under this Agreement shall be increased to such amount as may be necessary to remit to EBRD the full amount it would have received had such payment been made without such deductions or withholdings.

Section 3.13. Unwinding Costs

(a) If, for any reason (including an acceleration pursuant to Section 6.02 (*No Acceleration*)), any amount of the Loan becomes due and payable on a date other than the last day of an Interest Period (subject, where applicable, to the prior written approval of the NBU) and that amount of the Loan is subject to a variable interest rate in accordance with paragraph (a) of Section 3.05 (*Interest*), the Borrower shall pay to EBRD on demand the amount, if any, by which:

(i) the interest which would have accrued on that amount of the Loan from the date on which that amount of the Loan has become due and payable to the last day of the then current Interest Period at a rate equal to the Interbank Rate for such Interest Period;

exceeds:

(ii) the interest which EBRD would be able to obtain if it were to place an amount equal to that amount of the Loan on deposit with a leading bank in the London interbank market for the period commencing on the date on which that amount of the Loan has become due and payable and ending on the last day of the then current Interest Period.

(b) If, at any time:

(i) (A) the Borrower gives a notice pursuant to Section 3.09 (*Prepayment*) of prepayment of any amount of the Loan (subject, where applicable, to the prior written approval of the NBU) and that amount of the Loan is subject to a fixed interest rate in accordance with paragraph (b) of Section 3.05 (*Interest*);

(B) the Borrower is required, pursuant to Section 3.15 (*Illegality*), to prepay any amount of the Loan; or

(C) the Borrower otherwise prepays any amount of the Loan;

(ii) any amount of the Loan which is subject to a fixed interest rate in accordance with paragraph (b) of Section 3.05 (*Interest*) is accelerated pursuant to Section 6.02 (*No Acceleration*) or otherwise becomes due prior to the Repayment Date; or

(iii) any amount of the Loan which is subject to a fixed interest rate in accordance with paragraph (b) of Section 3.05 (*Interest*) is cancelled pursuant to Section 3.03 (*Suspension and Cancellation*) or 3.15 (*Illegality*) or is otherwise cancelled;

the Borrower shall, in addition to any other amounts payable in connection therewith, pay to EBRD on demand the amount, if any, by which the Original Income Stream (as defined below) exceeds the Substitute Income Stream (as defined below); provided that, if the Substitute Income Stream exceeds the Original Income Stream, EBRD shall, on the next Interest Payment Date, credit to

the Borrower, in Dollars, the amount by which the Substitute Income Stream exceeds the Original Income Stream.

(c) For purposes of the above paragraph (b):

(i) **"Original Income Stream"** means the aggregate of the present values of the payments of principal and interest which would have become due to EBRD during the Calculation Period (as defined below) on the amount of the Loan that is subject to a fixed interest rate in accordance with paragraph (b) of Section 3.05 (*Interest*) if such prepayment, acceleration or cancellation had not occurred and if interest accrued on that amount of the Loan at the Fixed Rate (as defined below) during the periods to which such Fixed Rate is in effect and applying the applicable Floating Rate for all other periods.

(ii) **"Substitute Income Stream"** means the sum of:

(A) the aggregate of the present values of any remaining payments of principal and interest which, after taking into account such prepayment, cancellation or acceleration, would become due to EBRD during the Calculation Period on the amount of the Loan which is subject to a fixed interest rate in accordance with paragraph (b) of Section 3.05 (*Interest*) if interest accrued on that amount of the Loan at the Fixed Rate during the periods to which such Fixed Rate is in effect and applying the applicable Floating Rate for all other periods; and

(B) as applicable:

(i) in the case of a prepayment pursuant to Sections 3.09 (Prepayment) or 3.15 (*Illegality*), the present value of the amount of the Loan which is subject to a fixed interest rate in accordance with paragraph (b) of Section 3.05 (*Interest*) and which is to be prepaid, determined by discounting that amount from the date such prepayment becomes due to the Calculation Date (as defined below) at the Discount Rate (as defined below); and/or

(ii) in the case of any other prepayment, the amount of the Loan which is subject to a fixed interest rate in accordance with paragraph (b) of Section 3.05 (*Interest*) and which has been prepaid; and/or

(iii) in the case of an acceleration, the present value of the amount of the Loan which is subject to a fixed interest rate in accordance with paragraph (b) of Section 3.05 (*Interest*) and which has been accelerated, determined by discounting that amount from the date such acceleration becomes effective to the Calculation Date at the Discount Rate; and/or

- (iv) in the case of a cancellation, the present value of the amount of the Loan which is subject to a fixed interest rate in accordance with paragraph (b) of Section 3.05 (*Interest*) and which has been cancelled, determined by discounting that amount from the last day of the Commitment Period to the Calculation Date at the Discount Rate.
- (iii) **"Fixed Rate"** means the fixed interest rate applicable to the relevant amount of the Loan, as specified in paragraph (b)(vi) of Section 3.05 (*Interest*), less the relevant Margin.
- (iv) **"Floating Rate"** means the forward rates for Dollars for the relevant maturities available to EBRD in the interest rate swap and options market on the Calculation Date.
- (v) For purposes of the above sub-paragraph (c)(1) and clause (c)(2)(A), the present value of each payment of principal and interest shall be determined by discounting the amount of such payment from its due date to the Calculation Date using the Discount Rate.
- (vi) **"Calculation Date"** means:
 - (A) in the case of a prepayment pursuant to Sections 3.09 (*Prepayment*) or 3.15 (*Illegality*), the date two (2) Business Days prior to the date such prepayment becomes due or, at EBRD's option, the date such prepayment becomes due;
 - (B) in the case of any other prepayment, the date such prepayment is made or such later date as EBRD may select in its discretion; and
 - (C) in the case of an acceleration or cancellation, the date two (2) Business Days prior to the date such acceleration or cancellation becomes effective or, at EBRD's option, the date such acceleration or cancellation becomes effective.
- (vii) **"Calculation Period"** means:
 - (A) in the case of a prepayment pursuant to Sections 3.09 (*Prepayment*) or 3.15 (*Illegality*), the period starting on the date such prepayment becomes due and ending on the Repayment Date of the Loan pursuant to Section 3.08;
 - (B) in the case of any other prepayment, the period starting on the date such prepayment is made, or such later date as EBRD may select in its discretion, and ending on the Repayment Date of the Loan pursuant to Section 3.08; and
 - (C) in the case of an acceleration or cancellation, the period starting on the date such acceleration or cancellation becomes effective and ending on the Repayment Date of the Loan pursuant to Section 3.08.

- (viii) "**Discount Rate**" means the discount factor for the relevant maturity derived from the par swap curve for Dollars which is available to EBRD in the interest rate swap and options market on the Calculation Date.
- (d) Subject to paragraph (e) below, if any overdue amount is paid on a date other than the last day of a Default Interest Period, the Borrower shall pay to EBRD on demand the amount, if any, by which:
 - (i) the interest which would have accrued on such overdue amount from the date of receipt of such overdue amount to the last day of the then current Default Interest Period at a rate equal to the rate specified in sub-paragraph (a)(iii) of Section 3.06 (*Default Interest on Overdue Amounts*) for such Default Interest Period;

exceeds:
 - (ii) the interest which EBRD would be able to obtain if it were to place an amount equal to such overdue amount on deposit with a leading bank in the London interbank market for the period starting on the Business Day immediately following the date of receipt of that overdue amount and ending on the last day of the then current Default Interest Period.
- (e) The Borrower shall forthwith upon notice from EBRD reimburse EBRD for any costs, expenses and losses incurred by EBRD, and not otherwise recovered by EBRD under the above paragraphs (a), (b) and (c), as a result of:
 - (i) the occurrence of an Event of Increased Risk;
 - (ii) a change in the basis for determining the rate of interest pursuant to paragraphs (b) or (d) of Section 3.07 (*Market Disruption*);
 - (iii) prepayment of any amount of the Loan on a date other than the last day of an Interest Period;
 - (iv) failure by the Borrower to pay any amount when due under this Agreement;
 - (v) failure by the Borrower to borrow in accordance with a Disbursement application submitted pursuant to Section 3.02 (*Disbursement*); or
 - (vi) failure by the Borrower to make any prepayment in accordance with a notice of prepayment delivered pursuant to Section 3.09 (*Prepayment*).
- (f) A certificate of EBRD as to any amount payable under this Section 3.13 (*Unwinding Costs*) shall be final, conclusive and binding on the Borrower unless shown by the Borrower to the satisfaction of EBRD to contain manifest error.

Section 3.14. Increased Costs

The Borrower shall, from time to time on demand of EBRD, reimburse EBRD for any net incremental costs to EBRD of making or maintaining, or committing to make, the Loan which result from the introduction of, or any change in, any applicable law or any applicable guideline or policy (whether or not having the force of law), or any change in the interpretation or application thereof by any Governmental Authority charged with the administration thereof, subsequent to the date of this Agreement. A certificate of EBRD as to the amount of such net incremental costs shall be final, conclusive and binding on the Borrower unless shown by the Borrower to the satisfaction of EBRD to contain manifest error.

Section 3.15. Illegality

- (a) Notwithstanding anything in this Agreement, if it is or becomes unlawful in any jurisdiction for EBRD to make, maintain or fund the Loan, then:
 - (i) EBRD shall deliver to the Borrower a written notice (setting out in reasonable detail the nature and extent of the relevant circumstances) to that effect; and
 - (ii) the Borrower will upon receipt of such notice agree to prepay the Loan and if EBRD so consents, the Borrower shall, on the next Interest Payment Date or such earlier date as EBRD may specify, prepay that portion of the principal amount of the Loan which EBRD notifies to the Borrower as being affected by such change, together with all accrued interest and other amounts payable thereon; and-
 - (iii) upon notice from EBRD, any portion of the Loan which EBRD notifies to the Borrower as being affected by such change and which has not theretofore been disbursed shall be cancelled immediately.
- (b) The prepayment of the Loan pursuant to this Section 3.15 is subject to compliance by the Borrower with the NBU limitations and requirements to the extent applicable at the time of prepayment.
- (c) The delivery of written notice by the EBRD to the Borrower pursuant to this Section 3.15 shall not be construed as an initiation of prepayment of the Loan by EBRD under Section 3.09(a).

Section 3.16. Mitigation

- (a) If, in respect of EBRD, circumstances arise which would, or with the giving of notice would, result in:
 - (i) any Taxes, duties and fees or other charges becoming payable under Section 3.12, or

- (ii) any increased cost becoming payable under Section 3.14, or
- (iii) any prepayment or cancellation under Section 3.15,

then EBRD will take such reasonable steps as may be practicable to mitigate the effects of such circumstances provided always that EBRD will be under no obligation to take such reasonable steps if such action would be materially adverse to the interests of EBRD.

- (b) Section 3.16(a) above, does not in any way limit the obligations of the Borrower under this Agreement.

Section 3.17. Loan Account

EBRD shall open and maintain on its books an account in the Borrower's name showing the Disbursements and repayments thereof and the computation and payment of interest, fees and other amounts due and sums paid hereunder. Such account shall be final, conclusive and binding on the Borrower as to the amount at any time due from the Borrower hereunder absent manifest error.

Section 3.18. Subordination

- (a) Without prejudice to EBRD's right to retain amounts already paid to it in accordance with this Agreement, in the event of any bankruptcy, liquidation or other similar events relating to the Borrower (whether voluntary or involuntary):
 - (i) the claims of EBRD with respect to the repayment of the Loan under this Agreement shall be subordinate in right of payment to the claims of all other creditors under the Senior Indebtedness; and
 - (ii) the obligations of the Borrower in respect of payment obligations other than the repayment of the Loan constitute the direct, unconditional, unsecured and unsubordinated obligations of the Borrower and rank and will rank at least equally and rateably with other unsecured and unsubordinated obligations of the Borrower; and
- (b) The subordination provisions of Section 3.18(a) shall not affect the Borrower's absolute obligation to effect repayment and other payments on the due dates provided for in this Agreement.
- (c) If and for so long as, and to the extent that, the NBU Permit is revoked or cancelled or not extended by the NBU and/or the Loan or any part thereof otherwise fails to qualify as Tier 2 Capital of the Borrower, the limitations under this Agreement generally applicable under Ukrainian law to agreements for borrowing funds on subordinated terms shall not apply, to the extent not prohibited by Ukrainian law, to the Loan or such part thereof, as the case may be, including, for the avoidance of doubt the limitations in Sections 3.05(i), 3.08(b), 3.09(a) and 3.18(a), and the Loan and any other amount payable hereunder shall be treated as Senior Indebtedness of the Borrower in priority to any Subordinated Indebtedness.

ARTICLE IV - CONDITIONS PRECEDENT

Section 4.01. Conditions Precedent to the Disbursement

- (a) The obligation of EBRD to make the Disbursement is subject to the condition precedent that EBRD shall have received the following documents, in form and substance satisfactory to EBRD:
 - (i) An executed original of this Agreement and the Letter of information and an electronic copy of the Memorandum of Understanding and evidence of registration of this Agreement with the NBU.
 - (ii) A certified copy of the Borrower's Charter, as amended to date.
 - (iii) Certified copies of all corporate (including the approval of the supervisory board of the Borrower and, if required by law, shareholder) Authorisations necessary for the due execution, delivery and performance of this Agreement and any other Financing Agreements to which the Borrower is a party and any other documents in implementation hereof by the Borrower, including the authorisations of the persons signing this Agreement to sign this Agreement and to bind the Borrower hereby.
 - (iv) An original certificate of incumbency and authority of the Borrower substantially in the form of Exhibit B.
 - (v) Certified copies of all Authorisations, including creditors' consents, necessary for the execution, delivery and performance of this Agreement and for the transactions contemplated hereby, including, without limitation:
 - (A) the borrowing by the Borrower under this Agreement;
 - (B) the remittance to EBRD of all monies payable in respect of this Agreement; and
 - (C) the carrying on of the business of the Borrower as it is presently carried on and is contemplated to be carried on.
 - (vi) A copy of a letter to the Auditors from the Borrower substantially in the form of Exhibit C.
 - (vii) A copy of a letter to the bank regulatory authorities in Ukraine from the Borrower substantially in the form of Exhibit F.
 - (viii) Written confirmation from the agent for service of process appointed by the Borrower pursuant to this Agreement of its acceptance of such appointment.
 - (ix) The opinion of the Head of the Legal Division of the Borrower, substantially in the form of Exhibit D.

- (x) Receipt by EBRD of the original audited 2008 Financial Statements of the Borrower.
 - (xi) The opinion of CMS Cameron McKenna LLP special English counsel to EBRD.
 - (xii) The opinion of CMS Cameron McKenna L.L.C., special Ukrainian counsel to EBRD.
 - (xiii) A certified copy of the NBU Notification.
 - (xiv) An original of the confirmation certificate issued by the respective State Tax Inspectorate evidencing absence of tax indebtedness.
 - (xv) An original of the certificate issued by the Agency of Bankruptcy of the State Self Supporting Institution, the Ministry of Economy of Ukraine evidencing that no bankruptcy proceedings were initiated against the Borrower.
 - (xvi) An original of an extract from the Unified State Register of Enterprises and Organizations of Ukraine (USREOU) issued to the Borrower immediately prior to execution date of this Agreement.
 - (xvii) A certified copy of the Certificate of Registration of the Borrower issued by the NBU.
 - (xviii) A certified copy of the Certificate of Registration of the Borrower issued by the respective District State Administration.
 - (xix) A certified copy of the Bank Licence of the Borrower.
 - (xx) A certified copy of the authorisation (with any amendments) in relation to the right to carry out operations issued to the Borrower by the NBU.
- (b) The obligation of EBRD to make the Disbursement shall also be subject to the fulfilment, in form and substance satisfactory to EBRD, or at the sole discretion of EBRD the waiver, whether in whole or part and whether subject to conditions or unconditional, of the conditions that, on the date of the Borrower's application for the Disbursement and on the date of the Disbursement:
- (i) The representations and warranties made or confirmed by the Borrower in this Agreement or any other document contemplated hereby shall be true on and as of such dates with the same effect as though such representations and warranties had been made on and as of such dates.
 - (ii) No Event of Increased Risk or Potential Event of Increased Risk shall have occurred and be continuing or shall, in the reasonable opinion of EBRD, be imminent and the Borrower shall not, as a result of the Disbursement, be in violation of its Charter, any provision contained in any agreement or instrument to which the Borrower is a party (including this Agreement) or by which the Borrower is bound or any law applicable to the Borrower.

- (iii) Nothing shall have occurred which, in the reasonable opinion of EBRD, might have a Material Adverse Effect.
- (iv) The Borrower shall be current on all other payments due and payable by the Borrower to EBRD under any agreement or arrangement between the Borrower and EBRD.
- (v) EBRD shall have received an original of the Borrower's timely application for such Disbursement substantially in the form of Exhibit A.
- (vi) EBRD shall have received such other documents and legal opinions as EBRD may reasonably request.
- (vii) The long term senior unsecured debt rating of the Parent Company is not rated below A- by Standard & Poor's or Fitch or below A3 by Moody's.

ARTICLE V - COVENANTS

Section 5.01. Affirmative Covenants

Unless EBRD otherwise agrees in writing, the Borrower shall (and, unless the context requires otherwise, shall ensure that each of its Subsidiaries (if any), shall):

- (a) ensure that its obligations under this Agreement rank in terms of priority of payment at least pari passu with all Subordinated Indebtedness, save those whose claims are preferred by any bankruptcy, insolvency, liquidation, moratorium or similar laws of general application and in any event, in any bankruptcy or liquidation or similar proceedings of the Borrower, in priority to any claims of holders of ordinary or preference shares in the Borrower in respect of any such shares;
- (b) maintain its corporate existence in compliance with all applicable laws;
- (c) conduct its business in compliance with all applicable laws and in accordance with sound financial and banking practices;
- (d) conduct its business in accordance with EBRD Performance Requirements 2 and 9;
- (e) procure the registration of this Agreement with the NBU, apply, in compliance with all requirements of, and within the period prescribed by, Ukrainian law, including, for the avoidance of doubt, Regulation 368, for the NBU Permit, obtain the same and, upon request thereof, maintain it in force (or, where appropriate, renew it), obtain and maintain in force (or, where appropriate, renew) all Authorisations required for the purposes described in Sections 4.01(a)(3) and 4.01(a)(5) and perform and observe all the conditions and restrictions contained in, or imposed on the Borrower by, such registration, the NBU Permit and Authorisations;

- (f) provide evidence to EBRD within six (6) months of the date of this Agreement that the Borrower has, in accordance with EBRD Performance Requirement 9:
- (i) adopted environmental and social due diligence and monitoring procedures for the purposes of making and monitoring its business activities and the Loan;
 - (ii) assigned appropriate management and staff resources for the implementation of environmental and social due diligence and monitoring procedures as outlined in the eManual; and
 - (iii) established a system for dealing with external communications on environmental and social matters.
- (g) maintain an accounting and cost control system and management information system reasonably satisfactory to EBRD and maintain books of account and other records adequate to present fairly the consolidated financial position, financial performance and cash flows of the Borrower and its Subsidiaries and the results of its operations (including records relating to the use of proceeds of the Disbursement) in conformity with IFRS;
- (h) maintain as auditors of the Borrower a firm of independent accountants of international standing and authorise them, by a letter substantially in the form of Exhibit C, to communicate directly with EBRD at any time regarding the Financial Statements provided to EBRD hereunder (provided however that in such circumstances EBRD shall to the extent practicable give prior notice to the Borrower of its intention to communicate with the Auditors, shall allow the Borrower to participate in such meetings and shall provide the Borrower with copies of any written communication relating thereto);
- (i) authorise, by a letter substantially in the form of Exhibit F, the bank regulatory authorities in Ukraine to communicate directly with EBRD at any time regarding the compliance by the Borrower with applicable banking laws and regulations in Ukraine;
- (j) maintain internal procedures satisfactory to EBRD and compliant with applicable Ukrainian laws for the purpose of preventing the Borrower from becoming an instrument for money laundering, terrorism financing, fraud or other corrupt or illegal purposes;
- (k) use the proceeds of the Disbursement in Ukraine to enhance its capital adequacy ratio, expand its loan portfolio and promote lending to the real economy in Ukraine, and otherwise to use such Disbursement proceeds in accordance with sound banking practices and, in any case, in full compliance with applicable laws;
- (l) make timely filing of all Tax returns and governmental reports required to be filed or submitted under any applicable law and pay when due all of its Taxes, including any Taxes against any of its properties, other than Taxes which are being contested in good faith and by proper proceedings and as to which adequate reserves have been set aside for the payment thereof;

- (m) maintain in full force and effect during the term of this Agreement insurance in accordance with the prevailing banking practice in Ukraine against loss, damage and liability and in a manner and with insurers satisfactory to EBRD; perform any obligations with regard to insurance required by EBRD and not do anything (or fail to do anything within its control) whereby any of the insurances are rendered void or voidable or impaired or suspended in whole or in part, or any claims or insurance proceeds become uncollectible in full;
- (n) maintain an assets and liability policy through an internal committee aiming to avoid any material mismatch in currency, interest or duration/term exposure; and
- (o) maintain an agent for service of process (in respect of this Agreement) in London, England acceptable to EBRD.

Section 5.02. Negative Covenants

Unless EBRD otherwise agrees in writing, the Borrower shall not and shall procure that none of its Subsidiaries (if any) shall:

- (a) declare or pay any dividend, or make any distribution on its share capital, or purchase, redeem or otherwise acquire any shares of capital of the Borrower or any option over the same, except out of the Borrower's net income earned in the preceding Financial Year and then only if no Event of Increased Risk or Potential Event of Increased Risk has occurred and is continuing;
- (b) create or permit to exist any Lien on any of its property, revenues or other assets, present or future, except:
 - (i) any Tax or other non-consensual Lien arising by operation of law (including regulations promulgated by the NBU) or other statutory Lien arising in the ordinary course of business, provided that such Lien (other than a Lien for a sum which is not yet delinquent) is discharged within 30 days after the date it is created or, if the validity or amount of such Lien or the sum secured by such Lien is being contested in good faith and by proper proceedings and adequate reserves have been set aside for the payment of such sum, within 30 days after final adjudication; or
 - (ii) any Lien arising in the ordinary course of the Borrower's business and securing obligations of the Borrower which mature not later than one (1) year after the date on which it was originally incurred, provided that the aggregate amount of any Financial Indebtedness secured by such Liens does not, at any time, exceed USD ten million (10,000,000); or
 - (iii) any existing Lien permitted under the Senior Loan Agreement.
- (c) enter into any transaction with any person except in the ordinary course of business, on ordinary commercial terms and on the basis of arm's-length arrangements, or enter into any transaction whereby it might extend more

favourable terms or receive less favourable terms than is ordinary for similar transactions;

- (d) carry on any business other than a banking business in accordance with the laws of Ukraine, either directly or through a Subsidiary;
- (e) make changes, or permit changes to be made, to its Charter in any manner which would be inconsistent with the provisions of this Agreement unless such changes are required as a result of changes in applicable Ukrainian law of mandatory application to the Borrower;
- (f) sell, transfer, lease or otherwise dispose of all or a substantial part of its assets (whether in a single transaction or a series of transactions related or otherwise, and for this purpose “substantial” shall mean assets with an aggregate balance sheet value in excess of 20% of the Borrower’s consolidated total net asset value, as reflected in the latest available Financial Statement of the Borrower);
- (g) undertake or permit or undergo any merger, consolidation, corporate reorganisation or change of control or anything similar which may, in the opinion of EBRD, have a Material Adverse Effect, except for mergers with other members of the UniCredit Group in Ukraine which are previously notified to EBRD in writing;
- (h) enter into any management contract or similar arrangement or agreement whereby its business or operations are managed by any third person;
- (i) enter into any partnership, joint activity, profit-sharing or royalty agreement whereby its income and profits are shared with any third party;
- (j) engage in fraud and corruption and shall not authorise or permit any of its officers, directors, authorised employees, Affiliates, agents or representatives to engage in with respect to any transactions contemplated by this Agreement any Prohibited Practice;
- (k) transfer to EBRD during the term of this Agreement funds in any form (including, without limitation, by the transfer of property, the provision of loans to or other placement of funds with EBRD through deposits, investment accounts or cross deposits, through the conduct of transactions with bills of exchange and promissory notes, the provision of factoring services, guarantees not covered by unconditional security or guarantees for creditors of the Borrower) if such transfer is prohibited by Regulation 368 provided that, for the avoidance of doubt, the Borrower shall and shall procure that its Subsidiaries shall continue to effect:
 - (i) the payment of interest under this Agreement or any other subordinated loan agreement; or
 - (ii) the settlement and other transactions with EBRD pursuant to agreements providing for receipt of loans or other funds by the Borrower from EBRD and repayment thereof, together with all principal, interest, charges and

other payments under the respective loan or other agreements, including, without limitation, this Agreement and provided that any such settlement or similar does not result in crediting or other allocation of capital with EBRD or investments between the Borrower and EBRD,

which is not prohibited by Regulation 368.

- (l) breach any Ukrainian law, including, without limitation, Regulation 368.
- (m) use the proceeds of a Disbursement to finance: (i) the production of arms or military equipment; (ii) the production or export of tobacco products or hard liquor; (iii) casinos or other gambling facilities; (iv) any activities appearing on the Bank's environmental exclusion list; (v) speculative investment activities; or (vi) investments in short-term securities;
- (n) terminate, amend or waive any provision of or consent to an assignment of this Agreement;
- (o) repay any funding of any nature from the Parent Company ahead of its contractual maturity date, except for transactions similar in nature to foreign exchange swaps (that is, for the avoidance of doubt, a transaction whereby the Borrower sells currency and buys back another currency, while the nominal value of the total indebtedness does not materially change). The Borrower shall promptly notify EBRD of any such transaction with a value of over twenty million dollars (USD 20,000,000) or the equivalent (on a cumulative basis over one month). Such a notification can be given by facsimile to EBRD and if EBRD does not object within 5 Business Days then EBRD shall be deemed to have consented.

Section 5.03. Financial Covenants

Unless EBRD otherwise agrees, the Borrower shall at all times:

- (a) comply with the NBU Prudential Requirements;
- (b) maintain a ratio of Capital under Basle Accord to Risk Weighted Assets of not less than 10%;
- (c) maintain a ratio of Tier 1 Capital (as defined in the Basle Capital Accord) to Risk Weighted Assets of not less than 7%;
- (d) comply with the Group Liquidity Policy and maintain a Cumulative Liquidity Gap Ratio not lower than minus 30% within each Maturity Band;
- (e) maintain an Open Credit Exposure Ratio:
 - (i) equal to or less than 80% from 31st December 2009 until the 31st December 2010;
 - (ii) equal to or less than 60% from 1st January 2011 until the 31st December 2011;

- (iii) equal to or less than 40% from 1st January 2012 until the 31st December 2012;
- (iv) equal to or less than 20% from 1st January 2013 and at all times thereafter;
- (f) maintain its aggregate Open Foreign Currency Exposure of up to 30 % of its Equity; and
- (g) maintain maximum concentration ratios as follows:
 - (i) aggregate Related Party Exposure of up to 20% of Capital;
 - (ii) Single Party Exposure of up to 25% of Capital; and
 - (iii) aggregate Large Party Exposure lower than 150% of Capital.

All financial ratios will be calculated annually in accordance with IFRS and the Basle Capital Accord, as amended from time to time, and quarterly in accordance with the Group Reporting Standards.

If, after the date of this Agreement, new NBU regulations or new Ukrainian laws change the requirements set for Ukrainian banks, so that the Borrower will be prevented from complying with Section 5.03, the financial covenants will be renegotiated between the two parties to the extent required to comply with the new regulations.

Section 5.04. Furnishing of Information

- (a) Unless EBRD otherwise agrees, the Borrower shall furnish to EBRD (in all cases in a form and substance satisfactory to EBRD):
 - (i) as soon as available but, in any event, within one hundred and eighty (180) days after the end of each Financial Year:
 - (A) two copies of the audited annual Financial Statements for such Financial Year prepared in accordance with IFRS, together with a management report of the Auditors thereon prepared in accordance with International Standards on Auditing (with all relevant notes normally provided as a part of any such report);
 - (B) a report, in form and scope satisfactory to EBRD, on the implementation by the Borrower of EBRD Performance Requirements 2 and 9 and on environmental and social issues arising in relation to the Loan during such Financial Year;
 - (ii) as soon as available, but, in any event, within sixty (60) days after the end of each quarter of each Financial Year, two copies of the relevant Financial Statements for the preceding quarter;
 - (iii) as soon as available, but, in any event, within thirty (30) days after the end of each quarter of each Financial Year, a report from the Borrower containing the following information:

(A)

- (i) the ratio of Capital to Risk Weighted Assets;
- (ii) the ratio of Tier 1 Capital under the Basle Capital Accord to Risk Weighted Assets;
- (iii) the Cumulative Liquidity Gap Ratio;
- (iv) the Open Credit Exposure Ratio;
- (v) the percentage of the aggregate Open Foreign Currency Exposure to its Equity;
- (vi) the aggregate Related Party Exposure to Capital;
- (vii) the Single Party Exposure to Capital; and
- (ix) the aggregate Large Party Exposure to Capital,

together with a confirmation from the Borrower that it is in compliance with all the provisions of Section 5.03 of this Agreement (including, for the avoidance of doubt, the prudential requirements of the NBU) or, as the case may be, detailing any non-compliance, in each case, as at the end of the relevant quarter of each Financial Year;

- (B) such additional information as EBRD may require (without limitation including details of any funding the Borrower has received from the Parent Company, details of the Borrower's loan portfolio quality and provisioning and details of the Borrower's foreign exchange position and maturity analysis.

- (iv) immediate notice of all correspondence between the Borrower and the NBU regarding the NBU Permit and the Loan's status under Regulation 368;
- (v) information on fraud and corruption immediately upon becoming aware of the same;
- (vi) copies of all the insurance policies required to be taken out pursuant to Section 5.01(m) within 30 days after the date hereof, as well as copies of any new insurance policies or insurance certificates taken out as a renewal or replacement of the same; and
- (vii) such other information as EBRD may from time to time reasonably request;

- (b) The Borrower shall immediately notify EBRD of:

- (i) any Event of Increased Risk such notification shall contain details of the event or circumstances and of any steps being taken by the Borrower to remedy the same;
 - (ii) any proposed material change in the business or operations of the Borrower (by way of example, a significant change in the Borrower's lending practice shall be considered "material" for the purposes of this Section 5.04(b)(ii));
 - (iii) any event (including any pending or threatened litigation, arbitration or administrative proceeding) which can reasonably be expected to have a Material Adverse Effect.
- (c) Immediately upon the occurrence of any incident or accident relating to the Borrower which has or is likely to have a significant adverse effect on the environment, or on public or occupational health or safety, the Borrower shall inform EBRD and promptly thereafter give EBRD notice thereof specifying the nature of such incident or accident and any steps the Borrower is taking to remedy the same. Without limiting the generality of the foregoing:
 - (i) an incident or accident relates to the Borrower if it occurs on any site used by the Borrower or if it is caused by facilities, equipment, vehicles or vessels used for or relating to the Borrower (whether or not being used on any site of the Borrower and whether or not being used by authorised or unauthorised persons); and
 - (ii) an incident or accident is considered to have a significant adverse effect on the environment or on public or occupational health or safety if:
 - (A) any applicable law requires notification of such incident or accident to any Governmental Authority;
 - (B) such incident or accident involves fatality of any person (whether or not such person is employed by the Borrower);
 - (C) more than one person (whether or not such persons are employed by the Borrower) has received serious injury requiring hospitalisation; or
 - (D) such incident or accident has become, or is likely to become, public knowledge whether through media coverage or otherwise.
- (e) The Borrower shall permit representatives of EBRD to visit the premises where the business of the Borrower is conducted and to have access to its books of account and records.
- (f) The Borrower shall provide EBRD with immediate notice if funding of its:
 - (i) senior short term debt (comprising of both loans and deposits);

- (ii) long term debt (comprising of both loans and deposits); or
- (iii) subordinated debt,

by UniCredit Group falls below at least 50% of the Borrower's total liabilities, excluding Total Deposits, provided that such UniCredit Group funding may be replaced by third party funding on terms and conditions acceptable to EBRD and subject to EBRD's prior written consent.

Section 5.05. Servicing fee

- (a) Pursuant to the Mandate Letter the Borrower shall, whether or not any Disbursement is made, pay to EBRD, on demand, the servicing fee which shall include all documented out-of-pocket expenses, including travel expenses and the fees and expenses of outside counsel, accountants and consultants, incurred by EBRD in connection with the Loan and the preparation, review, negotiation, execution, registration, notarisation. The Borrower shall make such payments to EBRD within 30 days of receipt of the relevant invoices or, in the case of expenses for which invoices have been issued prior to the Disbursement, no later than 3 Business Days prior to the Disbursement Date. EBRD shall provide the Borrower with any documents (or copies of any such documents) evidencing the expenses to which the above-mentioned invoice relates prior to or at the time the invoice is issued. If, according to Ukrainian law and particularly the delivery acceptance act (*act vikonannih robit*), any such payments requires an acknowledgement to be signed by EBRD confirming that the payments due have been made and the respective services have been supplied by EBRD, then EBRD shall sign such an acknowledgement within 20 Business Days following receipt of such payment. For the avoidance of doubt, EBRD has no obligation to sign such an acknowledgment if the Borrower has not made the payment that was due.
- (b) The Borrower shall further pay to EBRD, on demand, any costs and expenses by EBRD in connection with administration, amendment, waiver and enforcement of this Agreement and any other documents related to this Agreement and the preservation of EBRD's rights hereunder and thereunder including, for the avoidance of doubt, the determination of whether there has occurred an Event of Increased Risk.
- (c) The Borrower shall pay all Taxes payable on, or in connection with, the execution, issue, delivery, registration or notarisation of this Agreement or any other document related to this Agreement. Upon notice from EBRD, the Borrower shall pay to EBRD, or reimburse EBRD for, an amount equal to any such Taxes levied on or paid by EBRD.

ARTICLE VI - EVENTS OF INCREASED RISK

Section 6.01. Events of Increased Risk

Each of the following events and occurrences shall constitute an Event of Increased Risk under this Agreement (whether or not caused by any reason outside the control of the Borrower):

- (a) The Borrower fails to pay when due any principal of, or interest on, the Loan as required by this Agreement, except where both of the following conditions apply:
 - (i) the failure to pay is due to an administrative or technical error of an account bank, other than an error caused by the negligence or wilful misconduct of the Borrower; and
 - (ii) within three Business Days after the due date full payment of the same is made in accordance with this Agreement.
- (b) The Borrower fails to perform any of its obligations under any Financing Agreement, any other agreement contemplated thereby or any other agreement between the Borrower and EBRD, the failure to perform such obligation is not referred to elsewhere in this Section 6.01 and, if capable of remedy, such failure to perform has continued for a period of 30 days after notice thereof has been given to the Borrower by EBRD.
- (c) Any representation or warranty made, confirmed repeated or deemed repeated by the Borrower in connection with or in any Financing Agreement or any other document contemplated by this Agreement (including the Disbursement application) or any other agreement between the Borrower and EBRD was false, misleading or incorrect in any material respect when made, confirmed, repeated or deemed repeated.
- (d) A decree or order by a court is entered against the Borrower adjudging the Borrower bankrupt or insolvent or ordering the winding up or liquidation of its affairs; or a petition is filed seeking reorganisation, administration, arrangement, adjustment, composition or liquidation of or in respect of the Borrower under any applicable law; or a receiver, administrator, liquidator, assignee, trustee, sequestrator, secured creditor or other similar official is appointed over or in respect of the Borrower or any substantial part of its property or assets; or the Borrower institutes proceedings to be adjudicated bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files a petition or answer or consent seeking reorganisation, administration, relief or liquidation under any applicable law, or consents to the filing of any such petition or to the appointment of a receiver, administrator, liquidator, assignee, trustee, sequestrator, secured creditor or other similar official of the Borrower or of any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due; or any other event occurs which under any applicable law would have an

effect analogous to any of the events listed in this Section; or in the reasonable opinion of EBRD any of the events listed in this Section are expected to take place.

- (e) Any financial contracted indebtedness of the Borrower (other than the Loan) is not paid when due and such situation continues beyond any applicable grace period; or a default of any nature occurs under any agreement pursuant to which there is outstanding any such indebtedness and such default continues beyond any applicable period of grace; or any such indebtedness becomes prematurely due and payable or is placed on demand.
- (f) Any Authorisation which, in EBRD's reasonable opinion, is deemed to be essential for the conduct of the Borrower's business has been modified in any manner which has an adverse effect on the Borrower's operations, has been suspended, withdrawn or cancelled or has not been renewed.
- (g) Any Governmental Authority condemns, nationalises, seizes or otherwise expropriates all or any substantial part of the property or other assets of the Borrower or of its share capital, or assumes custody or control of such property or other assets or of the business or operations of the Borrower or of its share capital, or acquires majority ownership of the Borrower, or takes any action for the dissolution or disestablishment of the Borrower or any action that would prevent the Borrower or its officers from carrying on its business or operations or a substantial part thereof or any such or similar action is, in the opinion of EBRD, imminent;
- (h) The Borrower fails to comply with any regulation of the NBU and the non-compliance is not remedied within 60 days from the date of EBRD's request to do so.
- (i) An Interest Payment Suspension Event occurs.
- (j) Any breach of Section 5.04 (f) of this Agreement.
- (k) The NBU Permit is cancelled for any reason after having been obtained.
- (l) The registration of this Agreement with the NBU is cancelled for any reason.
- (m) Any circumstance or event which, in EBRD's reasonable opinion, is likely to have a Material Adverse Effect.
- (n) The Parent Company ceases to own, directly or indirectly, at least 75.1% of the share capital of the Borrower, except as a result of a disposal which has been previously approved by EBRD in writing.
- (o) Any breach of the requirement to give notice of any foreign exchange transaction as required pursuant to Section 5.02 (o) of this Agreement.

Section 6.02. No Acceleration

Subject as follows, as long as any portion of the Loan qualifies as Tier 2 Capital, the Loan cannot be accelerated. However, if there shall have been entered against the Borrower a decree or order by a court or other competent authority declaring the Borrower insolvent or bankrupt, or any resolution has been passed for the liquidation of the Borrower, or a court or other competent authority has made a decision to commence bankruptcy proceedings against the Borrower, then EBRD may declare the principal of, and all accrued interest on, the Loan (together with any other amounts accrued or payable under this Agreement) to be, and the same shall thereupon become, immediately due and payable by the Borrower (subject to the provisions of Section 3.18 hereof) without any further notice and without any presentment, demand or protest of any kind, all of which are hereby expressly waived by the Borrower. For the avoidance of doubt, in any such bankruptcy, liquidation or similar proceedings of the Borrower, the payment of any amounts payable hereunder shall be subordinated to the payment of all Senior Indebtedness in accordance with Section 3.18 hereof. Furthermore, if (i) the Event of Increased Risk specified in Section 6.01(l) has occurred or (ii) any portion of the Loan any longer qualifies as Tier 2 Capital (including as a result of the NBU not issuing or refusing to issue the NBU Permit within 90 days of the date of this Agreement, or such later date as shall be determined by EBRD in its discretion), then EBRD may at its option, by notice to the Borrower, declare all or any portion of the principal of, and accrued interest on, the Loan and any other amounts accrued or payable under this Agreement to be, and the same shall thereupon in accordance with the notice become (anything in this Agreement to the contrary notwithstanding), either (1) due and payable on demand; or (2) immediately due and payable without any further notice and without any presentment, demand or protest of any kind, all of which are hereby expressly waived by the Borrower and any such amounts shall constitute Senior Indebtedness of the Borrower in priority to any Subordinated Indebtedness.

ARTICLE VII - MISCELLANEOUS

Section 7.01. Term of Agreement

- (a) This Agreement shall continue in force until the date that the obligation of EBRD to make the Disbursement hereunder has terminated in accordance with the terms hereof or, if later, until all moneys payable hereunder have been fully paid in accordance with the provisions hereof; provided that the indemnities and warranties of the Borrower shall survive repayment of the Loan and termination of this Agreement.
- (b) In case of extension of the term of this Agreement, the effectiveness of the NBU Permit shall not be automatically extended.

Section 7.02. Entire Agreement; Amendment and Waiver

- (a) This Agreement and the documents referred to herein constitute the entire obligation of the parties hereto with respect to the subject matter hereof and shall supersede any prior expressions of intent or understandings with respect to this transaction.
- (b) Any amendment to, waiver by EBRD of any of the terms or conditions of, or consent given by EBRD under, this Agreement (including this Section 7.02) shall only be valid if in writing, signed by EBRD and, in the case of an amendment, by the Borrower. If and to the extent required by applicable legislation of Ukraine, any amendment to this Agreement shall be subject to prior approval by the NBU. The Borrower undertakes to make all necessary filings with the NBU for this purpose, and EBRD agrees to cooperate with the Borrower to the extent reasonably practicable to obtain such an approval. In the event that EBRD waives a condition to the Disbursement, the Borrower shall, by receiving the proceeds of the Disbursement, be deemed to have agreed to all of the terms and conditions of such waiver.

Section 7.03. Notices

Any notice, application or other communication to be given or made under this Agreement to EBRD or to the Borrower shall be in writing. Except as otherwise provided in this Agreement, such notice, application or other communication shall be deemed to have been duly given or made when it is delivered by hand, airmail or facsimile transmission to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party designates by notice to the party giving or making such notice, application or other communication.

For the Borrower:

Joint-Stock Commercial Bank for Social Development
UKRSOTSBANK
29 Kovpaka St.
Kyiv
Ukraine
03150

For EBRD:

European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom

Attention: Operation Administration Unit

Fax: +44-20-7338-6100

Section 7.04. English Language

- (a) All documents to be furnished or communications to be given or made under this Agreement shall be in the English language or, if in another language, shall be accompanied by a translation into English certified by the Borrower, which translation shall be the governing version between the Borrower and EBRD.
- (b) This Agreement shall be executed in the English and Ukrainian languages provided that, in the event of a discrepancy or incompatibility between the English and the Ukrainian versions of this Agreement, the English version of this Agreement shall prevail for all purposes.

Section 7.05. Financial Calculations

All financial calculations to be made under, or for the purposes of, this Agreement shall be made in accordance with IFRS and, except as otherwise required to conform to the definitions contained in Article I or any other provisions of this Agreement, shall be made using the then most recently issued quarterly Financial Statements which the Borrower is required to furnish to EBRD from time to time under Section 5.04(a); provided, however, that:

- (i) if the relevant quarterly Financial Statements should be in respect of the fourth quarter of a Financial Year then, at EBRD's option such calculations may instead be made from the audited Financial Statements for the relevant Financial Year; and
- (ii) if there should occur any material adverse change in the financial condition of the Borrower after the end of the period covered by the relevant Financial Statements, then such material adverse change shall also be taken into account in calculating the relevant figures.

Section 7.06. Rights, Remedies and Waivers

- (a) The rights and remedies of EBRD in relation to any misrepresentations or breach of warranty on the part of the Borrower shall not be prejudiced by any investigation by or on behalf of EBRD into the affairs of the Borrower, by the execution or the performance of this Agreement or by any other act or thing which may be done by or on behalf of EBRD in connection with this Agreement and which might, apart from this Section, prejudice such rights or remedies.
- (b) No course of dealing or waiver by EBRD in connection with any condition of Disbursement under this Agreement shall impair any right, power or remedy of

EBRD with respect to any other condition of Disbursement or be construed to be a waiver thereof.

- (c) No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to EBRD upon any Event of Increased Risk or otherwise in connection with this Agreement or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No action of EBRD in respect of any such default, or acquiescence by it therein, shall affect or impair any right, power or remedy of EBRD in respect of any other default.
- (d) The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies, whether provided by applicable law or otherwise.

Section 7.07. Governing Law

This Agreement shall be governed by and construed in accordance with English law.

Section 7.08. Arbitration and Jurisdiction

- (a) Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. There shall be one arbitrator and the appointing authority shall be LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England. The arbitral tribunal shall not be authorised to take or provide, and the Borrower agrees that it shall not seek from any judicial authority, any interim measures of protection or pre-award relief against EBRD, any provisions of the UNCITRAL Arbitration Rules notwithstanding. The arbitral tribunal shall have authority to consider and include in any proceeding, decision or award any further dispute properly brought before it by EBRD (but no other party) insofar as such dispute arises out of this Agreement or any other agreement contemplated hereby, but, subject to the foregoing, no other parties or other disputes shall be included in, or consolidated with, the arbitral proceedings. In any arbitral proceeding, the certificate of EBRD as to any amount due to EBRD under this Agreement shall be *prima facie* evidence of such amount.
- (b) Notwithstanding Section 7.08(a), this Agreement and any other agreements contemplated hereby, and any rights of EBRD arising out of or relating to this Agreement or any other agreement contemplated hereby, may, at the option of EBRD, be enforced by EBRD in the courts of Ukraine or in any other courts

having jurisdiction. For the benefit of EBRD, the Borrower hereby irrevocably submits to the non-exclusive jurisdiction of the courts of England with respect to any dispute, controversy or claim arising out of or relating to this Agreement or any other agreement contemplated hereby, or the breach, termination or invalidity hereof or thereof. The Borrower hereby irrevocably designates, appoints and empowers Law Debenture, 5th Floor, 100 Wood Street, London EC2V 7EX to act as its authorised agent to receive service of process and any other legal summons in England for purposes of any legal action or proceeding brought by EBRD in respect of this Agreement or any other agreement contemplated hereby. The Borrower hereby irrevocably consents to the service of process or any other legal summons out of such courts by mailing copies thereof by registered airmail postage prepaid to its address specified herein. The Borrower covenants and agrees that, so long as it has any obligations under this Agreement, it shall maintain a duly appointed agent to receive service of process and any other legal summons in England for purposes of any legal action or proceeding brought by EBRD in respect of this Agreement or any other agreement contemplated hereby and shall keep EBRD advised of the identity and location of such agent. Nothing herein shall affect the right of EBRD to commence legal actions or proceedings against the Borrower in any manner authorised by the laws of any relevant jurisdiction. The commencement by EBRD of legal actions or proceedings in one or more jurisdictions shall not preclude EBRD from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not. The Borrower irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal action or proceeding and any claim it may now or hereafter have that any such legal action or proceeding has been brought in an inconvenient forum.

Section 7.09. Privileges and Immunities of EBRD

Nothing in this Agreement shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of EBRD accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Notwithstanding the foregoing, EBRD has made an express submission to arbitration under Section 7.08(a) and accordingly, and without prejudice to its other privileges and immunities (including the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5(2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Section 7.08(a).

Section 7.10. Waiver of Sovereign Immunity

The Borrower represents and warrants that this Agreement and the incurring by the Borrower of the Loan are commercial rather than public or governmental acts and that the Borrower is not entitled to claim immunity from legal proceedings with respect to itself or any of its assets on the grounds of sovereignty or otherwise under any law or in

any jurisdiction where an action may be brought for the enforcement of any of the obligations arising under or relating to this Agreement. To the extent that the Borrower or any of its assets has or hereafter may acquire any right to immunity from set-off, legal proceedings, attachment prior to judgement, other attachment or execution of judgement on the grounds of sovereignty or otherwise, the Borrower hereby irrevocably waives such rights to immunity in respect of its obligations arising under or relating to this Agreement.

Section 7.11. Successors and Assigns; Third Party Rights

- (a) This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except that the Borrower may not assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of EBRD.
- (b) EBRD may sell, transfer, assign, novate or otherwise dispose of all or part of its rights or obligations under this Agreement (including, by granting of participations or otherwise) upon the consent of the Borrower provided that such consent shall not be unreasonably withheld or delayed and provided further that no such consent shall be required (i) for granting participations or the sale of any interest in the Loan whereby EBRD would remain the lender of record under this Agreement or (ii) if a an Event of Increased Risk has occurred and is continuing.
- (c) The Borrower undertakes to receive a new NBU Permit in case a new lender becomes a party to this Agreement as the consequence of such sale, transfer, assignment, novation or other disposal.
- (d) Subject to the terms of this Agreement and the provisions of the Contracts (Rights of Third Parties) Act of 1999, a holder of Senior Indebtedness may enforce the benefit conferred on it by Section 3.18(c) hereof in any bankruptcy or liquidation or similar proceedings of the Borrower.
- (e) Except as provided in Section 7.11(a), (b), (c) and (d), none of the terms of this Agreement are intended to be enforceable by any third party.

Section 7.12. Severability

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

Section 7.13. Disclosure

Subject to restrictions regarding confidentiality established by applicable law, EBRD may disclose such documents, information and records regarding the Borrower and this

transaction (including copies of this Agreement and any other agreement contemplated hereby) as EBRD deems appropriate in connection with any dispute involving the Borrower, for the purpose of preserving or enforcing any of EBRD's rights under this Agreement or any other agreement contemplated hereby or collecting any amount owing to EBRD or in connection with any proposed sale, transfer, assignment or other disposal of EBRD's rights under this Agreement.

Section 7.14. Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorised representatives, have caused this Agreement to be signed in their respective names as of the date first above written.

JOINT-STOCK COMMERCIAL BANK FOR SOCIAL DEVELOPMENT UKRSOTSBANK

By: _____

Name: Borys Tymonkin

Title: Chairman of the Management Board

By: _____

Name: Harald Vertneg

Title: Chief Financial Officer



EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

By: _____

Name: Alexander Pavlov

Title: Senior Banker

SCHEDULE 1 - DEFINITIONS AND GUIDELINES FOR PRIVATE SECTOR OPERATIONS (FRAUD AND CORRUPTION)

The purpose of these Guidelines is to clarify the meaning of the terms “Corrupt Practices”, “Fraudulent Practices”, “Coercive Practices,” and “Collusive Practices” in the context of the EBRD’s non-sovereign operations in favour of private sector projects.

1. CORRUPT PRACTICES

“Corrupt Practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party. In implementing this definition, the EBRD will be guided by the following principles:

- (a) The conduct in question must involve the use of improper means (such as bribery or kickbacks) by someone to induce another person to act or to refrain from acting in the exercise of his duties, in order to obtain or retain business, or to obtain an undue advantage. Antitrust, securities and other violations of law that are not of this nature fall outside of the definition of Corrupt Practices but may still be scrutinised under alternative procedures.
- (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 payer'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 EBRD does not condone facilitation payments whether they are criminalised or not. Such payments, which are illegal in most countries, are dealt with in accordance with relevant local laws and international conventions.

2. FRAUDULENT PRACTICES

“Fraudulent Practice” means 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. In implementing this definition, the EBRD will be guided by the following principles:

- (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”.
- (b) Fraudulent Practices are intended to cover actions or omissions that are directed to or against the EBRD. The expression also covers Fraudulent Practices directed to or against an EBRD member country in connection with the award or implementation of a government contract or concession in a project financed by the EBRD. Frauds on, or other illegal behaviour directed against, other third parties are not condoned. Such behaviour may represent an impediment to doing business with EBRD.

3. COERCIVE PRACTICES

“Coercive Practice” means 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. In implementing this definition, the EBRD will be guided by the following principles:

- (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 in such implementation.

4. COLLUSIVE PRACTICES

“Collusive Practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party. In implementing this definition, the EBRD will be guided by the principle that 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. GENERAL

In implementing the foregoing definitions, the EBRD will be guided by the principle that a person should not be liable for actions taken by unrelated third parties unless that person has participated in the prohibited act in question.

EXHIBIT A - FORM OF DISBURSEMENT APPLICATION

[To Be Typed on Letterhead of the Borrower]

[Date]

European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom

Attention: Operation Administration Unit

Subject: Operation No. 40284
Disbursement Application

Dear Sir/Madam:

1. Please refer to the subordinated loan agreement dated 27 July 2009 (the "Subordinated Loan Agreement") between JOINT-STOCK Commercial Bank for Social Development UkrSotsBank (the "Borrower") and European Bank for Reconstruction and Development ("EBRD").
2. Expressions defined in the Subordinated Loan Agreement shall bear the same meanings herein.
3. We hereby request the following Disbursement in accordance with the provisions of the Subordinated Loan Agreement:

Currency required: USD

Amount (in figures and words): _____

Value Date: [As soon as possible, on a date selected by EBRD in its discretion, but not later than]¹ _____²

¹ If the disbursement is required for a specific value date, this bracketed language may be deleted.

² This date must not be earlier than seven Business Days after the date the disbursement application is delivered to EBRD.

Payment Instructions (Borrower's Correspondent Details):

Borrower's Account Name: _____
Borrower's Account Number (IBAN number):³ _____
Correspondent Bank Name:⁴ _____
Correspondent Bank Address: _____

Reference: _____

4. For the purposes of Section 4.01 of the Subordinated Loan Agreement, we hereby represent and warrant that:
- (a) the representations and warranties made by the Borrower in the Subordinated Loan Agreement are true on and as of the date hereof with the same effect as though such representations and warranties had been made on and as of the date hereof;
 - (b) no Event of Increased Risk or Potential Event of Increased Risk has occurred and is continuing or is imminent;
 - (c) the Borrower will not, as a result of such Disbursement, be in violation of its Charter, any provision contained in any agreement or instrument to which the Borrower is a party (including the Subordinated Loan Agreement) or by which the Borrower is bound or any law applicable to the Borrower; and
 - (d) nothing has occurred which might have a Material Adverse Effect.
5. The representations and warranties made in paragraph 4 above shall continue to be true on and as of the date of the Disbursement with the same effect as though such representations and warranties had been made on and as of the date of the Disbursement. If any such representation or warranty is no longer true on or prior to or as of the date of Disbursement, we shall immediately notify EBRD and shall, upon demand by EBRD, repay any amount which has been or is disbursed by EBRD in respect of such Disbursement.

Yours faithfully,

**JOINT-STOCK COMMERCIAL BANK FOR SOCIAL DEVELOPMENT
UKRSOTSBANK**

By: _____
Authorised Representative⁵

³ All non-USD payments should include the full IBAN number (International Bank Account Number).

⁴ Name of correspondent bank in [_____].

⁵ As named in the Certificate of Incumbency and Authority.

EXHIBIT B - FORM OF CERTIFICATE OF INCUMBENCY AND AUTHORITY

[To Be Typed on Letterhead of the Borrower]

[Date]

European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom

Attention: Operation Administration Unit

Subject: Operation No. 40284
Certificate of Incumbency and Authority⁶

Dear Sir/Madam:

With reference to the subordinated loan agreement dated 27 July 2009 (the "Subordinated Loan Agreement") between Joint-Stock Commercial Bank for Social Development UkrSotsBank (the "Borrower") and European Bank for Reconstruction and Development ("EBRD"), I, the undersigned [President] [Chairman of the Board] [Director] of the Borrower, duly authorised by its Board, hereby certify that the following are the names, offices and true specimen signatures of the persons, any one of whom is and will continue to be (until EBRD has received actual written notice from the Borrower that they or any of them no longer continue to be) authorised, on behalf of the Borrower, individually:

- (1) to sign the Subordinated Loan Agreement, the Disbursement application, certifications, letters or other documents to be provided under the Subordinated Loan Agreement and any other agreements to which EBRD and the Borrower may be party in connection therewith; and
- (2) to take any other action required or permitted to be taken by the Borrower under the Subordinated Loan Agreement or any other agreement to which EBRD and the Borrower may be party in connection therewith:

⁶ Designation may be changed by the Borrower at any time by providing a new Certificate of Incumbency and Authority to EBRD.

NAME	OFFICE	SPECIMEN SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I have signed my name on the date first above written.

Yours faithfully,

**JOINT-STOCK COMMERCIAL BANK FOR SOCIAL DEVELOPMENT
UKRSOTSBANK**

By: _____

Name:

Title: [President]

[Chairman of the Board of Directors]

[Director]

EXHIBIT C - FORM OF LETTER TO AUDITORS

[To Be Typed on Letterhead of the Borrower]

[Date]

[Name of Auditors]

[Address]

Dear Sir/Madam:

We hereby authorise and request you to give to European Bank for Reconstruction and Development ("EBRD") all such information as it may reasonably request with regard to the Financial Statements, both audited and unaudited, which we have agreed to furnish to EBRD under the terms of the subordinated loan agreement dated 27 July 2009 (the "Subordinated Loan Agreement") between ourselves and EBRD. For your information, we enclose a copy of the Subordinated Loan Agreement.

We authorise you to send our audited accounts to EBRD to enable us to satisfy the reporting requirements set forth in Section 5.04(a) of the Subordinated Loan Agreement. When submitting such audited accounts to EBRD, you are also requested to send, at the same time, a copy of your full report on such accounts in a form acceptable to EBRD.

For our records, please ensure that you send to us a copy of every letter which you receive from EBRD immediately upon receipt and a copy of each reply made by you immediately upon the issue thereof.

Yours faithfully,

**JOINT-STOCK COMMERCIAL BANK FOR SOCIAL DEVELOPMENT
UKRSOTSBANK**

By: _____
Authorised Representative

Enclosure: Subordinated Loan Agreement

cc: European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom
Attention: Operation Administration Unit
Subject: Operation No. 40284

EXHIBIT D - FORM OF LEGAL OPINION OF BORROWER'S COUNSEL

[To Be Typed on Letterhead of Borrower's Counsel]

[Date of Disbursement]

European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom

Re: Subordinated Loan Agreement dated 27 July 2009

Dear Sir/Madam:

I/We have acted as [special][in-house] counsel in [] for Joint-Stock Commercial Bank for Social Development UkrSotsBank (the "Borrower") in connection with the loan in the amount of [] which the European Bank for Reconstruction and Development ("EBRD") has agreed to extend to the Borrower pursuant to a subordinated loan agreement dated 27 July 2009 (the "Subordinated Loan Agreement") between the Borrower and EBRD.

Expressions defined in the Loan Agreement bear the same meanings herein.

In connection with the foregoing and in my capacity as [special][in-house] counsel in [specify country] for the Borrower, I/we have examined the following documents:

- (a) the Subordinated Loan Agreement;
- (b) the Charter of the Borrower (certified as a true copy by an authorised representative of the Borrower) and [specify document(s) evidencing that the Borrower is duly organised and validly existing];
- (c) the banking license of the Borrower (certified as a true copy by an authorised representative of the Borrower);
- (d) a copy (certified as a true copy by an authorised representative of the Borrower) of the resolutions of the meeting of the Borrower's [shareholders] [board of directors] authorising:
 - (i) the Borrower to enter into the Subordinated Loan Agreement and [cite the other relevant agreements];
 - (ii) a person or persons to sign the Subordinated Loan Agreement on behalf of the Borrower;

(iii) a person or persons to sign the Disbursement application and all other notices permitted or required to be given by the Borrower under the Subordinated Loan Agreement; and

(iv)

(e) a Certificate of Incumbency and Authority of the Borrower dated _____;

(f) *[list all relevant governmental and other necessary licenses, approvals, consents, registrations and filings for the purposes set forth in Sections 4.01(b) and 4.01(d)]*; and

(g) such other records and documents as I/we have deemed necessary or appropriate for the purposes of this opinion.

In such examination, I/we have assumed the due authorisation, execution and delivery by the parties thereto (other than the Borrower) of any documents referred to herein, the genuineness of all signatures and the authenticity of all documents submitted to us/me as originals and the conformity with the originals of all documents submitted to us/me as copies thereof, and I/we have found nothing to indicate the such assumptions are not fully justified.

I am/We are qualified to practice law in [_____]. I/We have made no independent investigation of the laws of England or any jurisdiction other than [_____] as a basis for the opinions hereinafter expressed and do not express or imply any opinion thereon. I/We have assumed that the Subordinated Loan Agreement is valid, legally binding and enforceable in accordance with its terms under the laws of England by which it is expressed to be governed.

Based upon the foregoing and subject to the qualifications set forth below, I am/we are of the opinion that:

1. The Borrower is a [specify: e.g., "corporation" or "limited liability company"] duly organised and validly existing under the laws of [_____] and has full powers to own the properties which it owns and to carry out the business which it carries out. The Borrower's Charter is in full compliance with the laws and regulations of [_____].
2. The Borrower has the corporate power to enter into and perform the Subordinated Loan Agreement. The Subordinated Loan Agreement has been duly authorised and executed by the Borrower and constitutes a valid and legally binding obligation of the Borrower, enforceable in accordance with its terms.
3. The making of the Subordinated Loan Agreement and the compliance with its terms:
 - (i) will not result in violation of the Borrower's Charter or any provision contained in any law applicable to the Borrower;

- (ii) to the best of our knowledge after due inquiry, will not conflict with or result in the breach of any provision of, or require any consent under, or result in the imposition of any Lien under, any agreement or instrument to which the Borrower is a party or by which the Borrower or any of its assets is bound; and
 - (iii) to the best of my/our knowledge after due inquiry, will not constitute a default or an event that, with the giving of notice or the passing of time or both, would constitute a default under any such agreement or instrument.
- 4. Except for licenses, permits and consents which are of a routine or minor nature and which are customarily granted in due course after application, there have been obtained or made all governmental, corporate, creditors', shareholders' and other necessary licenses, approvals, consents, registrations and filings for:
 - (i) the financing by EBRD under the Subordinated Loan Agreement;
 - (ii) the carrying on of the business of the Borrower as it is presently carried on and contemplated to be carried on;
 - (iii) the due execution, delivery and performance by the Borrower of the Subordinated Loan Agreement and any documents in implementation thereof; and
 - (iv) the remittance to EBRD of all monies payable in respect of the Subordinated Loan Agreement.
- 5. In order to ensure the validity, effectiveness, performance or enforceability of the Subordinated Loan Agreement against or by the Borrower, it is not required that the same be notarised or filed, registered or recorded in a public office or elsewhere, or that any other instrument, document or notice relating thereto be executed, delivered, filed, registered, recorded or served.
- 6. The Subordinated Loan Agreement constitutes a direct, unconditional and unsecured general obligation of the Borrower which ranks in priority of payment at least *pari passu* with all other present and future indebtedness of the Borrower other than indebtedness mandatorily preferred by law.
- 7. To the best of my/our knowledge after due inquiry:
 - (i) the Borrower is not in violation of any present statute, regulation, judgement or order applicable to it in [_____];
 - (ii) no statute or regulation has been proposed and no judgement or order is expected which may have any materially adverse effect on the Borrower's business prospects or financial condition;

- (iii) the Borrower is not engaged in, or threatened by, any litigation, arbitration or administrative proceeding the outcome of which may materially and adversely affect its business prospects or financial condition;
 - (iv) the Borrower's assets are not subject to any Lien and the Borrower is not subject to any contract, arrangement or statute, whether conditional or unconditional, pursuant to which any such Lien may be created, other than a Lien permitted under Section 5.02 of the Subordinated Loan Agreement;
 - (v) the Borrower is not in default under any material agreement, obligation or duty to which it is a party or by which it or any of its properties or assets is bound; and
 - (vi) there exists no Event of Increased Risk.
8. No taxes, duties, fees or other charges are payable in [_____] in connection with the execution or delivery of the Subordinated Loan Agreement or the performance or observance of any of its terms [except for _____. All such taxes, duties, fees or other charges have been paid in full by the Borrower.]
9. It is not necessary for EBRD to establish or maintain a place of business or otherwise register or qualify itself in [_____] in order to exercise and enforce its rights under the Subordinated Loan Agreement in [_____].
10. The obligations of the Borrower under the Subordinated Loan Agreement are commercial in nature and are subject to civil and commercial law. The execution, delivery and performance by the Borrower of the Subordinated Loan Agreement constitute private and commercial acts and not governmental or public acts and neither the Borrower nor any of its assets has any right of immunity on the grounds of sovereignty or otherwise from any legal action, suit or proceeding, from set-off or counterclaim, from attachment or from execution or any other legal process in respect of any of its obligations under the Subordinated Loan Agreement.
11. Under the laws of [_____]:
- (i) the choice of the laws of England to govern the Subordinated Loan Agreement is a valid choice of law;
 - (ii) the submission by the Borrower of any dispute, controversy or claim arising out of or relating to the Subordinated Loan Agreement to arbitration is a valid submission to arbitration; and
 - (iii) the irrevocable submission by the Borrower to the jurisdiction of the courts of England is a valid submission to the jurisdiction of such courts.

[Subject to compliance with the 10 June 1958 New York Convention on the Recognition of Enforcement of Foreign Arbitral Awards, an arbitral award obtained against the Borrower in an arbitration proceeding] [A judgement obtained against the Borrower

from the courts of England in an action] based on or in connection with the Loan Agreement will be enforced by the courts in [] without reexamination or relitigation of the matters thereby adjudicated.

The foregoing opinion is subject to the following qualifications:

- (a) The rights of the parties contained in the Subordinated Loan Agreement may be limited by applicable bankruptcy, reorganisation, insolvency or other similar laws of general application relating to or affecting the enforcement of creditors' rights.
- (b) The availability of equitable remedies and rights of acceleration may be limited by equitable principles of general applicability.

[insert other appropriate qualifications acceptable to EBRD]

Yours faithfully,

EXHIBIT E - FORM OF REQUEST TO FIX INTEREST RATE

[To Be Typed on Letterhead of the Borrower]

[date]

European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom

Attention: Operation Administration Unit

Subject: Operation No. 40284

Dear Sir/Madam:

1. We refer to the loan agreement, dated 27 July 2009 (the "**Loan Agreement**"), between Joint-Stock Commercial Bank for Social Development UkrSotsBank (the "**Borrower**") and European Bank for Reconstruction and Development ("**EBRD**").
2. This is an Interest Fixing Request. Terms defined in the Loan Agreement have the same meaning in this Interest Fixing Request unless given a different meaning in this Interest Fixing Request.
3. We hereby request that the interest rate on the Loan be fixed in accordance with the provisions of the Loan Agreement on the Interest Fixing Date proposed below for the Fixed Interest Period specified below.
 - Fixed Interest Period
 - Interest Fixing Date: *[insert date]*¹
4. We represent and warrant that:
 - (a) all Authorisations that are required for the interest rate conversion and payment of interest at a fixed rate have been obtained and are in full force and effect; attached hereto are copies of the relevant documents;
 - (b) the rights of EBRD under the Loan Agreement will not be discharged, limited or impaired by the interest rate conversion or the payment of interest at a fixed rate;

(c) no Event of Increased Risk or Potential Event of Increased Risk has occurred and is continuing.

5. This Interest Fixing Request is irrevocable.

6. This Interest Fixing Request is governed by English law.

Yours faithfully,

**JOINT-STOCK COMMERCIAL BANK FOR SOCIAL DEVELOPMENT
UKRSOTSBANK**

By: _____
Authorised Representative

Seal

EXHIBIT F – FORM OF LETTER TO NBU

[], 2009

The National Bank of Ukraine

9, Instytutska St.
Kyiv 01601, Ukraine

**Deputy Head of the National
Bank of Ukraine
Mr. Krotuk V.L.**

Dear []!

In accordance with the terms of Loan Agreement (Agreement for the Borrowing of Funds on Subordinated Terms”) dated 27 July 2009 between Joint-Stock Commercial Bank for Social Development UkrSotsBank (the “Borrower”) and European Bank for Reconstruction and Development ("EBRD"), we hereby address to you to give to EBRD all such information as it may reasonably request with regard to compliance of the Borrower with applicable banking laws and regulations in Ukraine.

We would be grateful if you immediately send to us for our records a copy of every letter which you receive from EBRD and a copy of each reply sent by you to EBRD.

Yours faithfully,

**JOINT-STOCK COMMERCIAL BANK FOR SOCIAL DEVELOPMENT
UKRSOTSBANK**

By: _____

cc: European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom
Attention: Operation Administration Unit
Subject: Operation No. 40284



В цьому документі прописто,
пронумеровано та скріплено
печаткою / *Handwritten signature*
сторінок