

AFD AGREEMENT N° CKE 1130 01 C

CREDIT FACILITY AGREEMENT

dated as of 23rd January 2019

between

AGENCE FRANÇAISE DE DEVELOPPEMENT

The Lender

and

THE GOVERNMENT OF THE REPUBLIC OF KENYA

The Borrower

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CREDIT FACILITY AGREEMENT

BETWEEN:

THE GOVERNMENT OF THE REPUBLIC OF KENYA, represented by Mr. Henry ROTICH, in his capacity as Cabinet Secretary of the National Treasury and Planning, Treasury Building, Harambee Avenue, P.O. Box 30007, 00100 Nairobi, Kenya, who is duly authorised to sign this Agreement,

(hereinafter the "Borrower");

AND

AGENCE FRANCAISE DE DEVELOPPEMENT, a French public entity governed by French law, with registered office at 5, Rue Roland Barthes, 75598 Paris Cedex 12, France, registered with the Trade and Companies Register of Paris under number 775 665 599, represented by Mr. Ghislain de VALON, in his capacity as Director of AFD Nairobi Agency, duly authorised to sign this Agreement,

(hereinafter "AFD" or the "Lender");

(hereinafter jointly referred to as the "Parties" and each a "Party");

WHEREAS:

- (A) The Borrower intends to support the implementation of the Public financial management reform strategy, through the GESDEK Program (the "**Program**"), as described further in Schedule 2 (*Program Description*).
- (B) The Borrower has requested that the Lender makes a facility available for the purposes of participating in the financing of the Program.
- (C) Pursuant to a resolution n°C20170805 of the *Comité des Etats Etrangers* dated December 20th 2017, the Lender has agreed to make the Facility available to the Borrower pursuant to the terms and conditions of this Agreement.

THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalised words and expressions used in this Agreement (including those appearing in the recitals above and in the Schedules) shall have the meaning given to them in Schedule 1A (*Definitions*), except as otherwise provided in this Agreement.

1.2 Interpretation

Words and expressions used in this Agreement shall be construed pursuant to the provisions of Schedule 1B (*Construction*), unless the contrary intention appears.

2. FACILITY, PURPOSE AND CONDITIONS OF UTILISATION

2.1 Facility

Subject to the terms of the Financing Documents, the Lender makes available to the Borrower a Facility in a maximum aggregate amount of thirty million Euros (EUR 30,000,000).

2.2 Purpose

The purpose of the Facility is to finance the Borrower budget intended to implement the Program as described in Schedule 2 (*Program Description*), in accordance with the Financing Plan described in Schedule 3A (*Indicative Financing Plan*) and the Disbursement Matrix described in Schedule 3B (*Disbursement Matrix*).

2.3 Absence of liability

The Lender shall not be held responsible for the use of any amount borrowed which is not in accordance with the provisions of this Agreement.

2.4 Conditions precedent

- (a) No later than the Signing Date, the Borrower shall provide to the Lender all of the documents set out in Part I of Schedule 4 (*Conditions Precedent*).
- (b) A Drawdown Request may not be delivered to the Lender unless:
 - (i) in the case of the first Drawdown, the Lender has received all of documents listed in Schedule 4 (*Conditions Precedent*) and has notified the Borrower that such documents are satisfactory in form and substance;
 - (ii) in the case of any subsequent Drawdown, the Lender has received all of the documents set out in Schedule 4 (*Conditions Precedent*) and has notified the Borrower that such documents are satisfactory in form and substance; and
 - (iii) on the date of the Drawdown Request and on the proposed Drawdown Date for the relevant Drawdown, no Payment Systems Disruption Event has occurred and the conditions set out in this Agreement have been fulfilled, including:

- (1) no Event of Default is continuing or would result from the proposed Drawdown;
- (2) no Co-Financier has suspended its payments in relation to the Program;
- (3) the Drawdown Request has been made in accordance with the terms of Clause 3.2 (*Drawdown request*);
- (4) each representation given by the Borrower in relation to Clause 10 (*Representations and warranties*) is true.

3. DRAWDOWN OF FUNDS

3.1 Number of Drawdowns

The Facility will be made available to the Borrower during the Availability Period, in several Drawdowns, provided that the number of Drawdowns shall not exceed seventy (70).

3.2 Drawdown request

Provided that the conditions set out in Clause 2.4(b)(ii) (*Conditions precedent*) are satisfied, the Borrower may draw on the Facility by delivery to the Lender of a duly completed Drawdown Request. Each Drawdown Request shall be delivered by the Borrower to the office of the AFD Director at the address specified in Clause 16.1 (*In writing and addresses*).

Each Drawdown Request is irrevocable and will be regarded as having been duly completed if:

- (a) the Drawdown Request is substantially in the form set out in Schedule 5A (*Form of Drawdown Request*);
- (b) the Drawdown Request is received by the Lender at the latest fifteen (15) Business Days prior to the Deadline for Drawdown;
- (c) the proposed Drawdown Date is a Business Day falling within the Availability Period;
- (d) the amount of the Drawdown complies with Clause 3.1 (*Number of Drawdowns*); and
- (e) all of the documents set out in Schedule 4 (*Conditions Precedent*) for the purposes of the Drawdown are attached to the Drawdown Request, comply with the abovementioned Schedule and with the requirements of Clause 3.4 (*Payment mechanics*), and are in form and substance satisfactory to the Lender.

3.3 Payment completion

Subject to Clause 14.7 (*Payment Systems Disruption*), if each of the conditions set out in Clause 2.4(b) (*Conditions precedent*) of this Agreement has been met, the Lender shall make the requested Drawdown available to the Final Beneficiary not later than the Drawdown Date.



The Lender shall provide the Borrower with a letter of Drawdown confirmation substantially in the form set out in Schedule 5B (*Form of confirmation of drawdown and rate*).

3.4 Payment mechanics

The proceeds of the Drawdowns shall be paid to the Designated account (the "**Designated Account**") which details will be duly notified by the Borrower to the Lender.

The Designated Account will be opened at the Central Bank of Kenya for the sole purpose of (i) receipt of the proceeds of a Drawdown and (ii) transfer of these proceeds to the National Exchequer Account, opened at the Central Bank of Kenya.

4. **INTEREST**

4.1 Interest Rate

4.1.1 Fixed Interest Rate

The Interest Rate applicable to each Drawdown shall be the Fixed Reference Rate increased or decreased by any fluctuation of the Index Rate for the period from the Signing Date until the relevant Rate Setting Date.

The Borrower may specify in each Drawdown Request a maximum amount for the fixed Interest Rate. If the fixed Interest Rate as calculated on the Rate Setting Date exceeds the maximum amount for the fixed Interest Rate specified in the relevant Drawdown Request, such Drawdown Request shall be cancelled and the amount specified in the cancelled Drawdown Request shall be credited to the Available Credit.

4.1.2 Minimum Interest Rate

The Interest Rate determined in accordance with Clause 4.1.1 (*Fixed Interest Rate*) shall not be less than zero per cent (0%) per annum, notwithstanding any decline in the Interest Rate.

4.2 Calculation and payment of interest

The Borrower shall pay accrued interest on Drawdown(s) on each Payment Date.

The amount of interest payable by the Borrower on a relevant Payment Date and for a relevant Interest Period shall be equal to the sum of any interest owed by the Borrower on the amount of the Outstanding Principal in respect of each Drawdown. Interest owed by the Borrower in respect of each Drawdown shall be calculated on the basis of:

- (i) the Outstanding Principal owed by the Borrower in respect of the relevant Drawdown as at the immediately preceding Payment Date or, in the case of the first Interest Period, on the corresponding Drawdown Date;
- (ii) the exact number of days which have accrued during the relevant Interest Period on the basis of a three hundred and sixty (360) day year; and
- (iii) the applicable Interest Rate determined in accordance with the provisions of Clause 4.1 (*Interest Rate*).

4.3 Late payment and default interest

(a) Late payment and default interest on all amounts due and unpaid (except for interest)

If the Borrower fails to pay any amount payable by it to the Lender under the Agreement (whether a payment of principal, a Prepayment Indemnity, any fees or incidental expenses of any kind except for any unpaid overdue interest) on its due date, interest shall accrue on the overdue amount, to the extent permitted by law, from the due date up to the date of actual payment (both before and after an arbitral award, if any) at the Interest Rate applicable to the current Interest Period (default interest) increased by three point five per cent (3.5%) (late-payment interest). No formal prior notice from the Lender shall be necessary.

(b) Late payment and default interest on unpaid overdue interest

Interest which has not been paid on its due date shall bear interest, provided they have remained unpaid for one year and to the extent permitted by law, at the Interest Rate applicable to the ongoing Interest Period (default interest), increased by three point five per cent (3.5%) (late-payment interest), to the extent that such Interest has been due and payable for at least one (1) year. No formal prior notice from the Lender shall be necessary.

The Borrower shall pay any outstanding interest under this Clause 4.3 (*Late payment and default interest*) immediately on demand by the Lender or on each Payment Date following the due date for the outstanding payment.

(c) Receipt of any payment of late payment interest or default interest by the Lender shall neither imply the grant of any payment extension to the Borrower, nor operate as a waiver of any of the Lender's rights hereunder.

4.4 Communication of Interest Rates

The Lender shall promptly notify the Borrower of the determination of each Interest Rate in accordance with this Agreement.

4.5 Effective Global Rate (*Taux Effectif Global*)

In order to comply with the French Consumer Code and L.313-4 of the French Monetary and Financial Code, the Lender informs the Borrower, and the Borrower accepts, that the effective global rate (*taux effectif global*) applicable to the Facility may be valued at an annual rate of one point seventy seven per cent (1.77%) on the basis of a three hundred and sixty-five (365) day year and an Interest Period of six (6) months, subject to the following:

- (a) the above rates are given for information purposes only;
- (b) the above rates are calculated on the basis that:
 - (i) drawdown of the Facility is in full on the Signing Date;
 - (ii) no Drawdown made available to the Borrower will bear interest on the floating rate; and
 - (iii) the fixed rate for the duration of the facility should be equal to one point fifty four per cent (1.54%);

- (c) the above rates take into account the commissions and costs payable by the Borrower under this Agreement, assuming that such commissions and costs will remain fixed and will apply until the expiry of the term of this Agreement.

5. MARKET DISRUPTION

Not applicable.

6. COMMITMENT FEES

From the Signing Date onwards, the Borrower shall pay to the Lender a commitment fee of zero point five per cent (0.5%) per annum.

The commitment fee shall be computed at the rate specified above on the amount of the Available Credit pro-rated for the actual number of days elapsed increased by the amount of any Drawdowns to be made available by the Lender in accordance with any pending Drawdown Requests.

The first commitment fee shall be calculated for the period from (i) the Signing Date (excluded) up to (ii) the immediately following Payment Date (included). Subsequent commitment fees shall be calculated for periods commencing on the day immediately following a Payment Date (included) and ending on the next Payment Date (included).

The accrued commitment fee shall be payable (i) on each Payment Date within the Availability Period; (ii) on the Payment Date following the last day of the Drawdown Period; and (iii) in the event the Available Credit is cancelled in full, on the Payment Date following the effective date of such cancellation.

7. REPAYMENT

Following expiry of the Grace Period, the Borrower shall repay the Lender the principal amount of the Facility in forty (40) equal semi-annual instalments, due and payable on each Payment Date.

The first instalment shall be due and payable on 31 May 2024, and the last instalment shall be due and payable on 30 November 2043.

At the end of the Drawdown Period, the Lender shall deliver to the Borrower an amortisation schedule in respect of the Facility taking into account, if applicable, any potential cancellation of the Facility pursuant to Clauses 8.3 (Cancellation by the Borrower) and/or 8.4 (*Cancellation by the Lender*).

8. PREPAYMENT AND CANCELLATION

8.1 Voluntary prepayment

No prepayment of the whole or any part of the Facility is allowed during the Grace Period.

As from the day after the last day of the Grace Period, the Borrower may prepay the whole or any part of the Facility, subject to the following conditions:

- (a) the Borrower shall notify the Lender of its intention to prepay by not less than thirty (30) Business Days' written and irrevocable notice prior to the contemplated prepayment date;

- (b) the amount to be prepaid shall be equal to one or several instalment(s) in principal;
- (c) the contemplated prepayment date shall be a Payment Date;
- (d) all prepayments shall be made together with the payment of accrued interest, any fees, indemnities and related costs in connection with the prepaid amount as provided under this Agreement; and
- (e) there is no outstanding amount.

On the Payment Date on which the prepayment is made, the Borrower shall pay the full amount of the Prepayment Indemnities due and payable pursuant to Clause 9.3 (*Prepayment Indemnity*).

8.2 Mandatory prepayment

The Borrower shall prepay the whole or part of the Facility within a period of thirty (30) calendar days, upon receipt of a written notice from the Lender informing the Borrower of any of the following events:

- (a) Illegality: it becomes unlawful for the Lender pursuant to its applicable law to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Facility;
- (b) Default: the Lender declares an Event of Default in accordance with Clause 13 (*Events of Defaults*);
- (c) Prepayment to a Co-Financier: the Borrower prepays whole or part of any amounts owed to a Co-Financier before the Technical Completion Date, in which case the Lender shall be entitled to request that the Borrower prepays, as the case may be, the Facility or an amount of the outstanding Facility in proportion with the amount prepaid to the Co-Financier.

In the case of each of the events specified in paragraphs (a) and (b) above, the Lender reserves the right, after having notified the Borrower in writing, to exercise its rights as a creditor in the manner specified in paragraph (b) of Clause 13.2 (*Acceleration*).

8.3 Cancellation by the Borrower

Prior to the Deadline for Drawdown, the Borrower may cancel the whole or any part of the Available Credit by giving the Lender a three (3) Business Days' prior notice.

Upon receipt of such notice of cancellation, the Lender shall cancel the amount notified by the Borrower, provided that the expenses, as specified in the Financing Plan, are covered in a manner satisfactory to the Lender, except in the event that the Program is abandoned by the Borrower.

8.4 Cancellation by the Lender

The Available Credit shall be immediately cancelled upon delivery of a notice to the Borrower which shall be immediately effective, if:

- (a) the Available Credit is not equal to zero on the Deadline for Drawdown;
- (b) the first Drawdown has not occurred at the latest on 19th August 2019;

- (c) an Event of Default has occurred and is continuing; or
- (d) an event referred to in Clause 8.2 (*Mandatory prepayment*) has occurred;

except where, in the case of paragraphs (a) and (b) of this Clause 8.4 (*Cancellation by the Lender*), the Lender has proposed to postpone the Deadline for Drawdown or the deadline for the first Drawdown on the basis of new financial conditions which will apply to any Drawdowns under the Available Credit and the Borrower has agreed on the proposition.

8.5 Restrictions

- (a) Any notice of prepayment or cancellation given by a Party pursuant to this Clause 8 (*Prepayment and Cancellation*) shall be irrevocable, and, unless otherwise provided in this Agreement, any such notice shall specify the date or dates on which the relevant prepayment or cancellation is to be made and the amount of that prepayment or cancellation.
- (b) The Borrower shall not prepay or cancel all or any part of the Facility except at the times and in the manner expressly provided for in this Agreement.
- (c) Any prepayment under this Agreement shall be made together with payment of (i) accrued interest on the prepaid amount, (ii) outstanding fees, and (iii) the Prepayment Indemnity referred to in Clause 9.3 (*Prepayment Indemnity*).
- (d) Any prepayment amount will be applied against the remaining instalments in inverse order of maturity.
- (e) The Borrower may not re-borrow the whole or any part of the Facility which has been prepaid or cancelled.

9. ADDITIONAL PAYMENT OBLIGATIONS

9.1 Costs and expenses

- 9.1.1 If an amendment to the Agreement is required, the costs (filing, registration, legal fees) reasonably incurred in responding to, evaluating, negotiating or complying with that requirement shall be borne by the Party who originates the amendment.
- 9.1.2 The Borrower shall, if applicable, reimburse to the Lender for all duly documented costs and expenses (including legal fees) incurred by the Lender, due to advance of funds, in connection with the enforcement or preservation of any of its rights under the Agreement, in case of breach of an obligation from the Borrower under this agreement.
- 9.1.3 The Borrower shall pay directly or, if applicable, reimburse the Lender in case of an advance made by the Lender, the amount of all costs and expenses in connection with the transfer of funds to, or for the account of, the Borrower from Paris to any other place agreed with the Lender, as well as any transfer fees and expenses in connection with the payment of all sums due under the Facility
- 9.1.4 The Borrower shall pay to the Lender, upon Lender's request (Lender's Notice), all Additional Costs incurred by the Lender as a result of: (i) the coming into force of any new law or regulation, or any amendment to, or any change in the interpretation or application of any existing law or regulation; or (ii) compliance with any law or regulation made after the Signing Date. The Lender's Notice will include all

information related to the coming into force of any new law or regulation, or any amendment.

In this Clause, "Additional Costs" means:

- (i) any cost arising after the Signing Date out of one of the event referred to in the first paragraph of this Clause and not taken into account by the Lender to compute the financial conditions of the Facility; or
- (ii) any reduction of any amount due and payable under any Agreement, which is incurred or suffered by the Lender as a result of (i) making the Facility available to the Borrower or (ii) entering into or performing its obligations under the Agreement

which is incurred or suffered by the Lender as a result of (i) making the Facility available to the Borrower or (ii) entering into or performing its obligations under the Agreement.

Following the Lender's Notice, the Borrower and the Lender shall enter into a consultation period of thirty (30) Business Days in order to evaluate the amount of the relevant Additional Costs and to find the decision on payment of such costs suitable for both Parties. If so requested by the Borrower, the Lender shall provide the Borrower with explanatory documents related to the Additional Costs object of the Lender's Notice. Unless agreed otherwise by both parties during the consultation period, the Borrower shall pay to the Lender the Additional Costs within seventy (70) business days of the Lender's Notice.

9.2 Cancellation Indemnity

If the Facility is cancelled in full or in part in accordance with the terms of Clauses 8.3 (*Cancellation by the Borrower*) and/or 8.4 (*Cancellation by the Lender*) paragraphs (a), (b) and (c), the Borrower shall pay a cancellation indemnity computed at two point five per cent (2.5%) on the cancelled amount of the Facility.

Each cancellation indemnity shall be due and payable on the Payment Date immediately following a cancellation of all or part of the Facility.

9.3 Prepayment Indemnity

On account of any breakage cost (or other similar losses) incurred by the Lender as a result of the prepayment of all or part of the Facility pursuant to Clause 8.1 (*Voluntary Prepayment*) or Clause 8.2 (*Mandatory Prepayment*), the Borrower shall indemnify the Lender by paying to the Lender an amount calculated on the aggregate of the Drawdowns by applying the following rules to each of the Drawdowns:

- in the event the interest rate applicable to a Drawdown increased by two point fifty-five per cent (2.55%) (hereafter the "Increased Rate"), is less than or equal to the Reinvestment Rate, no indemnity shall be due;
- in the event the Increased Rate exceeds the Reinvestment Rate, the Borrower shall pay to the Lender an indemnity equal to the discounted difference, which should come to the Lender's prejudice between the amount of the interest borne by the Drawdown at the Increased Rate if no prepayment had been made and the amount of the interest obtained by placing an amount equal to the prepaid amount with the same amortization schedule.

The discount rate used shall be equal to the Reinvestment Rate. The date used to calculate the present value shall be the date of the prepayment.



9.4 Taxes and duties

9.4.1 Registration costs

The Borrower shall pay directly, or, if applicable, reimburse the Lender in case of an advance made by the Lender, the costs of all stamp duty, registration and other similar taxes payable in respect of the Agreement and any potential amendment thereto.

9.4.2 Withholding Tax

The Borrower undertakes that all payments made by the Borrower to the Lender under this Agreement shall be exempt from Withholding Taxes and any other government charges that may be payable on such payments. The Borrower undertakes to pay and reimburse the full amount of any sum due under this Agreement.

For avoidance of doubt, where applicable, payments made to Contractors under this Agreement shall be subject to Kenyan Withholding Tax.

9.5 Currency indemnity

If any sum due by the Borrower under the Agreement, or any order, judgment or award given or made in relation to such a sum, has to be converted from the currency in which that sum is payable into another currency, for the purpose of:

- (i) making or filing a claim or proof against the Borrower; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall indemnify the Lender against and, within thirty (30) days of the Lender's request and as permitted by law, pay to the Lender, the amount of any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between: (A) the exchange rate used to convert the relevant sum from the first currency to the second currency; and (B) the exchange rate or rate(s) available to the Lender at the time of its receipt of that sum. This obligation to indemnify the Lender is independent of any other obligation of the Borrower under the Agreement.

The Borrower waives any right it may have in any jurisdiction to pay any amount due under the Agreement in a currency or currency unit other than that in which it is expressed to be payable.

9.6 Due dates

Any indemnity or reimbursement payable by the Borrower to the Lender under this Clause 9 (*Additional Payment Obligations*) is due and payable on the Payment Date immediately following the circumstances which have given rise to the relevant indemnity or reimbursement.

Notwithstanding the above, any indemnity to be paid in connection with a prepayment pursuant to Clause 9.3 (*Prepayment Indemnity*) is due and payable on the date of the relevant prepayment.

10. **REPRESENTATIONS AND WARRANTIES**

All the representations and warranties set out in this Clause 10 (*Representations and warranties*) are made by the Borrower for the benefit of the Lender on the Signing Date. All the representations and warranties in this Clause 10 (*Representations and warranties*) are also



deemed to be made by the Borrower on the date on which all of the conditions precedent listed in Part II of Schedule 4 (*Conditions Precedent*) are satisfied, on the date of each Drawdown Request, on each Drawdown Date and on each Payment Date, except that the repeating representations contained in Clause 10.9 (*No misleading information*) are deemed to be made by the Borrower in relation to the information provided by the Borrower since the date on which the representation was last made.

10.1 Power and authority

The Borrower has the power to enter into, perform and deliver the Financing Documents and to perform all contemplated obligations. The Borrower has taken all necessary action to authorise its entry into, performance and delivery of the Financing Documents and the transactions contemplated by those Financing Documents.

10.2 Validity and admissibility in evidence

All Authorisations required:

- (a) to enable the Borrower to lawfully enter into, and exercise its rights and comply with its obligations under the Financing Documents; and
- (b) to make the Financing Documents admissible in evidence in the courts of the jurisdiction of the Borrower or in arbitration proceedings as defined under Clause 17 (*Governing Law, Enforcement and Choice of Domicile*),

have been obtained and are in full force and effect, and no circumstances exist which could result in the revocation, non-renewal or modification, in whole or in part, of any such Authorisations.

10.3 Binding obligations

The obligations expressed to be assumed by the Borrower under the Financing Documents comply with all laws and regulations applicable to the Borrower in its jurisdiction and are legal, valid, binding and enforceable obligations which are effective in accordance with their written terms.

10.4 No filing or stamp taxes

Under the Kenyan laws, it is not necessary that the Financing Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar taxes or fees be paid on or in relation to the Financing Documents or the transactions contemplated therein.

10.5 Transfer of funds

All amounts due by the Borrower to the Lender under this Agreement whether as principal or interest, late payment interest, Prepayment Indemnity, incidental costs and expenses or any other sum are freely convertible and transferable to France or any other country.

This representation shall remain in full force and effect until full repayment of all sums due to the Lender. In the event that the repayment dates of the Facility are extended by the Lender, no further confirmation of this representation shall be necessary.

The Borrower shall obtain Euros necessary for compliance with this representation in due course.

10.6 No conflict with other obligations

The entry into and performance by the Borrower of, and the transactions contemplated by, the Financing Documents do not conflict with any domestic or foreign law or regulation applicable to it, its constitutional documents (or any similar documents) or any agreement or instrument binding upon the Borrower or affecting any of its assets.

10.7 Governing law and enforcement

- (a) The choice of French law as the governing law of this Agreement will be recognised and enforced by the courts and arbitration tribunals in the jurisdiction of the Borrower.
- (b) Any judgment obtained in relation to this Agreement in a French court or any award by an arbitration tribunal will be recognised and enforced in Kenya.

10.8 No default

There is no Event of Default or no Event of Default is reasonably likely to occur.

No breach of the Borrower is continuing in relation to any other agreement binding upon it, or affecting any of its assets, which has, or is reasonably likely to have, a Material Adverse Effect.

10.9 No misleading information

All information and documents supplied by the Borrower to the Lender were true, accurate and up-to-date as at the date they were provided or, if appropriate, as at the date at which they are stated to be given and have not been varied, revoked, cancelled or renewed on revised terms, and are not misleading in any material respect as a result of an omission, the occurrence of new circumstances or the disclosure or non-disclosure of any information.

10.10 Pari passu ranking

The Borrower's payment obligations under the Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors.

10.11 Origin of funds, Acts of Corruption, Fraud and Anti-Competitive Practices

The Borrower represents and warrants that:

- (i) all the funds invested in the Program are from the State budget;
- (ii) the Program (in particular, the negotiation, award and performance of any contracts financed with the Facility) has not given rise to any Act of Corruption, Fraud or Anti-Competitive Practice.

10.12 No Material Adverse Effect

The Borrower represents and warrants that no event or circumstance which is likely to have a Material Adverse Effect has occurred or is likely to occur.

10.13 Borrowing limits

Borrowing under the Credit Facility will not cause any borrowing limit binding on the Borrower to be exceeded, including any limit imposed by the Parliament of Kenya.



11. UNDERTAKINGS

The undertakings in this Clause 11 (*Undertakings*) take effect on the Signing Date and remain in full force and effect for as long as any amount is outstanding under the Financing Documents.

11.1 Compliance with Laws, Regulations and Obligations

The Borrower shall comply and ensure that the Final Beneficiary complies:

- (a) in all respects with all laws and regulations to which it and/or the Program is subject, particularly in relation to all applicable environmental protection, safety and labour laws; and
- (b) with all of its obligations under the Financing Documents.

11.2 Authorisations

The Borrower shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any applicable law or regulation to enable it to perform its obligations under the Financing Documents and to ensure the legality, validity, enforceability and admissibility in evidence of any Financing Document.

11.3 Implementation and preservation of the Program

The Borrower shall:

- (i) implement the Program in accordance with the generally accepted safety principles and in accordance with technical standards in force;
- (ii) maintain the Program assets in accordance with all applicable laws and regulations and in good operating and maintenance conditions, and use such assets in compliance with their purpose and all applicable laws and regulations.

11.4 Environmental and social responsibility

In order to promote sustainable development, the Parties agree that it is necessary to promote compliance with internationally recognised environmental and labour standards, including fundamental conventions of the International Labour Organization (“ILO”) and the international environmental laws and regulations applicable in the Borrower’s jurisdiction.

11.5 Pari passu ranking

The Borrower undertakes (i) to ensure that its payment obligations under this Agreement rank at all times at least *pari passu* with its other present and future unsecured and unsubordinated payment obligations; (ii) not to grant prior ranking or guarantees to any other lenders except if the same ranking or guarantees are granted by the Borrower in favour of the Lender, if so requested by the Lender.

11.6 Designated Account

The Borrower shall open and maintain a Designated Account in accordance with the terms and conditions of this Agreement.

11.7 Additional financing

The Borrower shall not amend or alter the Financing Plan and the Disbursement Matrix without obtaining the Lender's prior written consent and shall finance any additional costs not anticipated in the Financing Plan on terms which ensure that the Facility will be repaid.

11.8 Inspections

The Borrower hereby authorizes the Lender and its representatives to carry out inspections the purpose of which will be to assess the implementation and operations of the Program [and the disbursement matrix] as well as the impact and the achievement of the objectives of the Program.

Prior to inspections, the Lender shall provide the Borrower with any necessary information on the purpose and the modalities of these inspections. The Borrower shall co-operate and provide all reasonable assistance and information to the Lender and its representatives when carrying out such inspections, the timing and format of which shall be determined by the Lender following consultation with the Borrower.

The Borrower shall reimburse to the Lender the reasonable and duly justified costs of inspection, as long as the mission is not made by the staff's Lender but by an external provider specifically appointed to this end. Such mission shouldn't occur more than one time a year.

The Borrower shall retain and make available for inspection by the Lender, all documents relating to the Eligible Expenses for a period of ten (10) years from the date of the last Drawdown under the Facility.

11.9 Program evaluation

The Borrower acknowledges that the Lender may carry out, or procure that a third party carries out on its behalf, an evaluation of the Program. This evaluation will be used to produce a performance report containing information on the Program, such as: total amount and duration of the Facility, objectives of the Program, expected and actual performance of the Program, assessment of its relevance, efficiency, impact and viability/sustainability. The Borrower agrees on the publication of this performance report, in particular, on the Lender's Website.

11.10 Program Implementation

The Borrower shall:

- (i) ensure that any person, group or entity participating in the implementation of the Program is not listed on any Financial Sanctions List (including in particular the fight against terrorist financing); and
- (ii) not finance any supplies or sectors which are subject to an Embargo by the United Nations, the European Union or France.

11.11 Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices

The Borrower undertakes:

- (i) to ensure that the funds, other than those of State origin, used for the implementation of the a Program will not be of an Illicit Origin;



- (ii) To ensure that the Program shall not give rise to any Act of Corruption, Fraud or Anti-Competitive Practice;
- (iii) as soon as it becomes aware of, or suspects, any Act of Corruption, Fraud or Anti-Competitive Practice, to inform the Lender without any delay;
- (iv) in the event referred to in paragraph (iii) above or at the Lender's request if the Lender suspects that the acts or practices referred to in paragraph (iii) have occurred, take all necessary actions to remedy the situation in a manner satisfactory to the Lender and within the time period determined by the Lender; and
- (v) to notify the Lender without delay if it has knowledge of any information which leads it to suspect any Illicit Origin of any funds invested in the Program.

11.12 Specific Undertakings

The Borrower undertakes to:

- (i) recruit, at the latest on June 30th 2018, and for the duration of the program one or more Independent Verification Agent(s), under the terms of reference acceptable to the Lender to verify the evidence supporting the achievement of the Disbursement Matrix.
- (ii) implement, for the duration of the program, the Program Action Plan to ensure that (i) adequate and timely funds are available to finance program implementation; (ii) there are satisfactory arrangements to monitor, evaluate, and validate program results; and exercise control and stewardship of program funds; (iii) adequate independent audit and verification arrangements are in place; (iv) a program risk register is established to prevent fraud and corruption.

11.13 Interest bearing the Designated Account and the National Exchequer Account

The Borrower hereby acknowledges, if applicable, that, during the implementation of the Facility, the interests generated on any account, including the Designated Account and the National Exchequer Account, are subject to the provisions of this Agreement.

12. INFORMATION UNDERTAKINGS

The undertakings in this clause 12 (*Information Undertakings*) take effect on the Signing Date and remain in full force and effect for as long as any amount is outstanding under this Agreement.

12.1 Financial Information

The Borrower shall supply to the Lender any information that the Lender may reasonably require in relation to the Borrower's foreign and domestic debt as well as the status of any guaranteed loans.

12.2 Program Implementation

The Borrower shall supply to the Lender, promptly upon the Lender's request, any information or supporting document regarding the Program implementation.

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12.3 Progress Report

- (a) Until the Technical Completion Date, the Borrower shall supply to the Lender a technical and financial Annual Progress Report in relation to the implementation of the Program in the form set out in the Program Operational Manual.
- (b) Within six (6) months after the Technical Completion Date, the Borrower shall supply to the Lender a Program mid-term review report summarizing the technical and budget implementation of the Program, as provided for in the Program Operational Manual.

12.4 Co-Financing

The Borrower shall promptly inform the Lender of any cancellation (in whole or in part) or any prepayment by a Co-Financier.

12.5 Information relating to the transfer from the Designated Account to the National Exchequer Account

The Borrower undertakes to promptly inform the Lender of each transfer of funds from the Designated Account to the National Exchequer Account, as defined under Clause 3.4 (*Payment mechanics*).

12.6 Information - miscellaneous

The Borrower shall supply to the Lender:

- (a) promptly upon becoming aware of them, details of any event or circumstance which is or may be an Event of Default or which has or may have a Material Adverse Effect, the nature of such an event and all the actions taken or to be taken to remedy it (if any);
- (b) promptly, details of any decision or event which might affect the organisation, completion or operation of the Program;
- (c) promptly but in any event within twenty (20) Business Days after becoming aware of them, details of any notification of default, termination, dispute or material claim made against it under a Financing Document or affecting the Program, together with details of any action taken or proposed to be taken by the Borrower to remedy it;
- (d) promptly, any further information regarding its financial condition, assets and operations or any documents or other communications given or received by it under any Financing Document that the Lender may reasonably request.

13. **EVENTS OF DEFAULTS**

13.1 Events of Default

Each of the events or circumstances set out in this Clause 13.1 (*Events of Default*) is an Event of Default.

- (a) **Payment Default**

The Borrower does not pay on the due date any amount payable by it under this Agreement in the manner required under this Agreement. However, without prejudice to Clause 4.3 (*Late payment and default interest*), no Event of Default



will occur under this paragraph (a) if such payment is made in full by the Borrower within twenty (20) Business Days of the due date.

(b) Undertakings and Obligations

The Borrower does not comply with any term of the Financing Documents, including, without limitation, any of the undertakings it has given pursuant to Clause 11 (*Undertakings*) and Clause 12 (*Information Undertakings*).

Save for the undertakings given pursuant to Clause 11.4 (*Environmental and Social Liability*), Clauses 11.10 (*Program Implementation*) and 11.11 (*Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices*) in respect of which no grace period is permitted, no Event of Default will occur under this paragraph (c) if the non-compliance is capable of remedy and is remedied within five (5) Business Days of the earlier of (A) the date of the Lender's notice of failure to the Borrower; and (B) the Borrower becoming aware of the breach, or within the time limit determined by the Lender in the case referred to in subparagraph (iv) of Clause 11.11 (*Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices*).

(c) Misrepresentation

A representation or warranty made by the Borrower in the Financing Documents, including under Clause 10 (*Representations and warranties*), or in any document delivered by or on behalf of the Borrower under or in relation to the Financing Documents, is incorrect or misleading when made or deemed to be made.

(d) Cross Default

(i) Subject to paragraph (ii), any Financial Indebtedness of the Borrower is not paid on its due date or, if applicable, within any grace period granted pursuant to the relevant documentation.

(ii) A creditor has cancelled or suspended its commitment towards the Borrower pursuant to any Financial Indebtedness, or has declared the Financial Indebtedness due and payable prior to its specified maturity, or requested prepayment in full of the Financial Indebtedness, in each case, as a result of an event of default or any provision having a similar effect (howsoever described) pursuant to the relevant documentation.

(iii) No Event of Default will occur under this Clause (d) if the relevant amount of Financial Indebtedness or the commitment of the Financial Indebtedness falling within paragraph (i) and (ii) above is less than five million Euros (EUR 5.000,000) or its equivalent in any other currencies.

(e) Unlawfulness

It is or becomes unlawful for the Borrower to perform any of its obligations under the Financing Documents.

(f) Material adverse change

Any event (including a change in the political situation of the country of the Borrower) or any measure which is likely, according to the Lender's opinion, to have a Material Adverse Effect occurs or is likely to occur.

(g) Withdrawal or suspension of the Program

Any of the following occurs:

(i) the implementation of the Program is suspended or postponed for a period exceeding six (6) months; or

(ii) the Borrower withdraw from, or cease to participate in, the Program.

(h) Authorisations

Any Authorisation required for the Borrower in order to perform or comply with its obligations under the Financing Documents or required in the ordinary course of the Program is not obtained within the required timeframe or is cancelled or becomes invalid or otherwise ceases to be in full force and effect.

(i) Judgments, rulings or decisions having a Material Adverse Effect

Any judgment or arbitral award or any judicial or administrative decision affecting the Borrower has or is reasonably likely, according to the opinion of the Lender, to have a Material Adverse Effect, occurs or is likely to occur.

(j) Suspension of free convertibility and free transfer

Free convertibility and free transfer of any of the amounts due by the Borrower under this Agreement, or any other facility provided by the Lender to the Borrower or any other borrower of the jurisdiction of the Borrower, is challenged.

13.2 Acceleration

On and at any time after the occurrence of an Event of Default, the Lender may, without providing any formal demand or commencing any judicial or extra-judicial proceedings, by written notice to the Borrower:

(a) cancel the Available Credit; and/or

(b) declare that all or part of the Facility, together with any accrued or outstanding interest and all other amounts outstanding under this Agreement, are immediately due and payable.

Without prejudice to the above, in the event that an Event of Default occurs as set out in Clause 13.1 (*Events of Default*), the Lender reserves the right to, upon written notice to the Borrower, (i) suspend or postpone any Drawdowns under the Facility; and/or (ii) suspend the finalisation of any agreements relating to other possible financial offers which have been notified by the Lender to the Borrower; and/or (iii) suspend or postpone any drawdown under any loan agreement entered into between the Borrower and the Lender.

If any drawdowns are postponed or suspended by a Co-Financier under an agreement between such Co-Financier and the Borrower, the Lender reserves the right to postpone or suspend any Drawdowns under the Facility.

13.3 Notification of an Event of Default

In accordance with Clause 12.6 (*Information – miscellaneous*), the Borrower shall promptly notify the Lender upon becoming aware of any event which is or is likely to be an Event of Default and inform the Lender of all the measures contemplated by the Borrower to remedy it.

14. ADMINISTRATION OF THE FACILITY

14.1 Payments

All payments received by the Lender under this Agreement shall be applied towards the payment of expenses, fees, interest, principal amounts or any other sum due under this Agreement in the following order:

- 1) incidental costs and expenses;
- 2) fees and indemnities;
- 3) late-payment interest and default interest;
- 4) accrued interest;
- 5) principal repayments.

Any payments received from the Borrower shall be applied first in or towards payment of any sums due and payable under the Facility or under other loans extended by the Lender to the Borrower, should it be in the Lender's interest to apply these sums to such other loans, in the order set out above.

14.2 Set-off

Without prior approval of the Borrower, the Lender may, at any time, set-off due and payable obligations owed by the Borrower against any amounts held by the Lender on behalf of the Borrower or any due and payable obligations owed by the Lender to the Borrower. If the obligations are in different currencies, the Lender may convert either obligation at the prevailing currency exchange rate for the purpose of the set-off.

All payments made by the Borrower under the Agreement shall be calculated and made without set-off. The Borrower is prohibited from making any set-off.

14.3 Business Days

If a payment is due on a day which is not a Business Day, the due date for that payment shall be the next Business Day if the next Business Day is in the same calendar month, or the preceding Business Day if the next Business Day is not in the same calendar month.

14.4 Currency of payment

The currency of each amount payable under this Agreement is Euros, except as provided in Clause 14.6 (*Place of payment*).

14.5 Day count convention

Any interest, fee or expense accruing under this Agreement will be calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days in accordance with European interbank market practice.

14.6 Place of payment

- (a) Any funds to be transferred by the Lender to the Borrower under the Facility will be paid to the Designated account specifically designated for such purpose by the Borrower, provided that the Lender has given its prior consent on the selected bank.

The Borrower may request that the funds are transferred in: (i) Euros to a bank account denominated in Euros; or (ii) the currency of legal tender in the jurisdiction of the Borrower, in the equivalent amount of the Drawdown at a market exchange rate on the day of the Drawdown and to a bank account denominated in that currency provided such currency is convertible and transferable; or (iii) any other convertible and transferable currency, in an equivalent amount of the Drawdown on the day of the Drawdown and to a bank account denominated in such currency.

- (b) Any payment to be made by the Borrower to the Lender shall be paid on the due date by no later than 11:00 am (Paris time) to the following bank account:

RIB Code: 30001 00064 00000040211 75

IBAN Code: FR76 3000 1000 6400 0000 4021 175

Banque de France SWIFT code (BIC): BDFEFRPPCCT

opened by the Lender at the Banque de France (head office/main branch) in Paris or any other account notified by the Lender to the Borrower.

- (c) The Borrower shall request from the bank responsible for transferring any amounts to the Lender that it provides the following information in any wire transfer messages in a comprehensive manner and in the order set out below:

- Principal: name, address, bank account number
- Principal's bank: name and address
- Reference: name of the Borrower, name of the Program, reference number of the Agreement

- (d) Applicable exchange rates will be the exchange rates obtained by the Lender through a Reference Financial Institution on the date of the Drawdown.

- (e) All payments made by the Borrower shall comply with this Clause 14.6 (*Place of payment*) in order for the relevant payment obligation to be deemed discharged in full.

14.7 Payment Systems Disruption

If the Lender determines (in its discretion) that a Payment Systems Disruption Event has occurred or the Borrower notifies the Lender that a Payment Systems Disruption Event has occurred, the Lender:

- (a) may, and shall if requested by the Borrower, enter into discussions with the Borrower with a view to agreeing any changes to the operation and administration of the Facility as the Lender may deem necessary in the circumstances;
- (b) shall not be obliged to enter into discussions with the Borrower in relation to any of the changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, it has no obligation to agree to such changes; and
- (c) shall not be liable for any cost, loss or liability arising as a result of its taking, or failing to take, any actions pursuant to this Clause 14.7 (*Payment Systems Disruption*).



15. MISCELLANEOUS

15.1 Language

The language of this Agreement is English. If this Agreement is translated into another language, the English version shall prevail in the event of any conflicting interpretation or in the event of a dispute between the Parties.

All notices given or documents provided under, or in connection with, this Agreement shall be in English.

The Lender may request that a notice or document provided under, or in connection with, this Agreement which is not in English is accompanied by a certified English translation, in which case, the English translation shall prevail unless the document is a statutory document of a company, legal text or other official document.

15.2 Certifications and determinations

In any litigation or arbitration arising out of or in connection with any Financing Document, entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

Any certification or determination by the Lender of a rate or amount under this Agreement will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

15.3 Partial invalidity

If, at any time, a term of this Agreement is or becomes illegal, invalid or unenforceable, neither the validity, legality or enforceability of the remaining provisions of this Agreement will in any way be affected or impaired.

15.4 No Waiver

Failure to exercise, or a delay in exercising, on the part of the Lender of any right under the Agreement shall not operate as a waiver of that right.

Partial exercise of any right shall not prevent any further exercise of such right or the exercise of any other right or remedy under the applicable law.

The rights and remedies of the Lender under this Agreement are cumulative and not exclusive of any rights and remedies under the applicable law.

15.5 Assignment

The Borrower may not assign or transfer, in any manner whatsoever, all or any of its rights and obligations under this Agreement without the prior written consent of the Lender.

The Borrower hereby consents to the assignment or transfer of all or any of its rights and obligations under this Agreement by the Lender to (i) any subsidiary or entity of the same group as the Lender or (ii) any Co-Financier of the Program or (iii) any other credit institution or financial institution or any other entity provided that it has been incorporated, domiciled or established within the European Union, of its rights and/or obligations under this Agreement, and conclude any sub-participation agreement relating thereto. The assignment or the transfer shall be notified by the Lender to the

16.2 Delivery

Any notice, request or communication made or any document sent by a Party to the other Party in connection with this Agreement will only be effective:

- (a) if by fax, when received in a legible form; and
- (b) if by letter sent through the post office, when delivered to the correct address,

and, where a particular person or a department is specified as part of the address details provided under Clause 16.1 (*In writing and addresses*), if such notice, request or communication has been addressed to that person or department.

16.3 Electronic communications

- (a) Any communication made by one person to another under or in connection with this Agreement may be made by electronic mail or other electronic means if the Parties:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) (notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Parties will be effective only when actually received in a readable form.

17. GOVERNING LAW, ENFORCEMENT AND CHOICE OF DOMICILE

17.1 Governing Law

This Agreement is governed by French law.

17.2 Arbitration

Any dispute arising out of or in connection with this Agreement shall be referred to and finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce applicable on the date of commencement of arbitration proceedings, by one or more arbitrators to be appointed in accordance with such Rules.

The seat of arbitration shall be Paris and the language of arbitration shall be English.

This arbitration clause shall remain in full force and effect if this Agreement is declared void or is terminated or cancelled and following expiry of this Agreement. The Parties' contractual obligations under this Agreement are not suspended if a Party initiates legal proceedings against the other Party.

The Parties expressly agree that, by signing this Agreement, the Borrower irrevocably waives all rights of immunity in respect of jurisdiction or execution on which it could otherwise rely.

17.3 Service of process

Without prejudice to any applicable law, for the purposes of serving judicial and extrajudicial documents in connection with any action or proceedings referred to above, the Borrower irrevocably chooses its registered office as at the date of this Agreement at the address set out in Clause 16 (*Notices*) for service of process, and the Lender chooses the address "AFD - PARIS HEAD OFFICE" set out in Clause 16 (*Notices*) for service of process.

18. **DURATION**

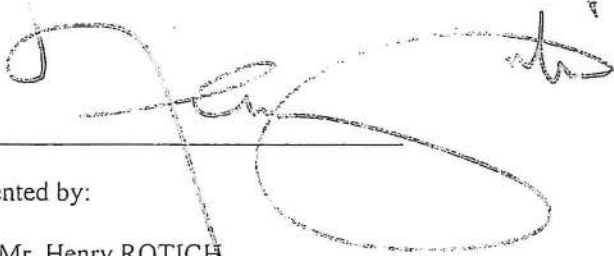
This Agreement comes into force on the Signing Date and remains in full force and effect for as long as any amount is outstanding under the Agreement.

Notwithstanding the above, the obligations under Clause 15.10 (*Confidentiality - Disclosure of information*) shall survive and remain in full force and effect for a period of five (5) years after the last Payment Date.

Executed in two (2) originals, in Nairobi, on 23rd January 2019.

BORROWER

THE GOVERNMENT OF THE REPUBLIC OF KENYA



Represented by:

Name: Mr. Henry ROTICH

Capacity: Cabinet Secretary, The National Treasury and Planning

LENDER

AGENCE FRANÇAISE DE DÉVELOPPEMENT



Represented by:

Name: Mr. Ghislain de VALON

Capacity: Director of AFD Nairobi Agency



Co-signatory, Her Excellency Mrs Aline KUSTER-MENAGER, Ambassador of France

SCHEDULE 1A - DEFINITIONS

Act of Corruption	<p>means any of the following:</p> <p>(a) the act of promising, offering or giving, directly or indirectly, to a Public Official or to any person who directs or works, in any capacity, for a private sector entity, an undue advantage of any nature, for the relevant person himself or herself or for another person or entity, in order that this person acts or refrains from acting in breach of his or her legal, contractual or professional obligations and, having for effect to influence his or her own actions or those of another person or entity; or</p> <p>(b) the act of a Public Official or any person who directs or works, in any capacity, for a private sector entity, soliciting or accepting, directly or indirectly, an undue advantage of any nature, for the relevant person himself or herself or for another person or entity, in order that this person acts or refrains from acting in breach of his or her legal, contractual or professional obligations and, having for effect to influence his or her own actions or those of another person or entity.</p>
Agreement	<p>means this credit facility agreement, including its recitals, Schedules and, if applicable, any amendments made in writing thereto.</p>
Anti-Competitive Practices	<p>means:</p> <p>(a) any concerted or implicit action having as its object and/or as its effects to impede, restrict or distort fair competition in a market, including without limitation when it tends to: (i) limit market access or the free exercise of competition by other companies; (ii) prevent price setting by the free play of markets by artificially favouring the increase or decrease of such prices; (iii) limit or control any production, markets, investment or technical progress; or (iv) share out markets or sources of supply;</p> <p>(b) any abuse by a company or group of companies of a dominant position within a domestic market or in a substantial part thereof; or</p> <p>(c) any bid or predatory pricing having as its object and/or its effect to eliminate from a market, or to prevent a company or one of its products from accessing the market.</p>
Annual Progress Report	<p>has the meaning given to that term in Clause 12.3 (a).</p>
Authorisation(s)	<p>means any authorisation, consent, approval, resolution, permit, licence, exemption, filing, notarisation or registration, or any exemptions in respect thereof, obtained from or provided by an Authority, whether granted by means of an act, or deemed granted if no answer is received within a defined time limit, as well as any approval and consent given by the Borrower's creditors.</p>

Authority(ies)	means any government or statutory entity, department or commission exercising a public prerogative, or any administration, court, agency or State or any governmental, administrative, tax or judicial entity.
Availability Period	means the period from and including the Signing Date up to the Deadline for Drawdown.
Available Credit	means, at any given time, the maximum principal amount specified in Clause 2.1 (<i>Facility</i>) less: <ul style="list-style-type: none"> (i) the aggregate amount of any Drawdowns drawn by the Borrower; (ii) the amount of any Drawdown to be made pursuant to any pending Drawdown Request; and (iii) any portion of the Facility which has been cancelled pursuant to Clauses 8.3 (<i>Cancellation by the Borrower</i>) and/or 8.4 (<i>Cancellation by the Lender</i>).
Average Residual Term	means the average, expressed as a number of calendar days, of terms remaining for each instalment, weighted by the corresponding amounts of flux in principal.
Business Day	means a day (other than Saturday or Sunday) on which banks are open for the entire day for general business in Paris, and which is a TARGET Day in the event that a Drawdown has to be done on such day.
Certified	means for any copy, photocopy or other duplicate of an original document, the certification by any duly authorised person, as to the conformity of the copy, photocopy or duplicate with the original document.
Co-Financier	means the following co-financier of the Program: The World Bank
Co-Financing	means The World Bank financing from the "Program for Results to strengthen governance for enabling service delivery and public investment in Kenya" (GESDEK) to finance the Program (see Schedule 2 - <i>Program Description</i>) for an estimated amount of one hundred and fifty million dollars (150 M USD).
Contractor(s)	means third party contractor(s) in charge of implementing all or part of the Project.
Deadline for Drawdown	means 30th June 2022, date after which no further Drawdown may occur.
Designated Account	has the meaning given to that term in Clause 3.4 (<i>Payment</i>)

	<i>mechanics</i>).
Disbursement Matrix	means the table attached as Schedule 3 B listing the indicators agreed upon between the Parties to monitor the implementation of the Program and to determine the amount of the Drawdown to be made available by the Lender to the Borrower annually under the Facility.
Drawdown	means a drawdown of all or part of the Facility made, or to be made, available by the Lender to the Borrower pursuant to the terms and conditions set out in Clause 3 (<i>Drawdown of Funds</i>) or the principal amount outstanding of such Drawdown which remains due and payable at a given time.
Drawdown Date	means the date on which a Drawdown is made available by the Lender.
Drawdown Period	means the period starting on the first Drawdown Date up to and including the first of the following date: (i) the date on which the Available Credit is equal to zero ; (ii) the Deadline for Drawdown.
Drawdown Request	means a request substantially in the form set out in Schedule 5A (<i>Form of Drawdown Request</i>).
Embargo	means any sanction of a commercial nature aiming at prohibiting any import and/or export (supply, sale or transfer) of one or several goods, products or services going to and/or coming from a country for a given period as published and amended from time to time by the United Nations, the European Union or France.
Euro(s) or EUR	means the single currency of the member states of the European Economic and Monetary Union, including France, and having legal tender in such Member States.
Event of Default	means any event or circumstance set out in Clause 13.1 (<i>Events of Default</i>).
Facility	means the credit facility made available by the Lender to the Borrower in accordance with this Agreement up to the maximum principal amount set out in Clause 2.1 (<i>Facility</i>).
Financial Indebtedness	means any financial indebtedness for and in respect of: (a) any monies borrowed on a short, medium or long-term basis; (b) any amounts raised pursuant to the issue of bonds, notes, debentures, loan stock or any similar instruments; (c) any funds raised under any other transaction (including any

	<p>forward sale or purchase agreement) having the commercial effect of a borrowing;</p> <p>(d) any potential payment obligation that results from a guarantee, bond, or any other instrument.</p>
Financial Sanctions List	<p>means the list(s) of persons, groups or entities which are subject to financial sanctions by the United Nations, the European Union and/or France.</p> <p>For information purposes only and for the convenience of the Borrower, who may rely on, the following references or website addresses:</p> <p>For the lists maintained by the United Nations, the following website may be consulted:</p> <p>https://www.un.org/sc/suborg/fr/sanctions/un-sc-consolidated-list</p> <p>For the lists maintained by the European Union, the following website may be consulted:</p> <p>https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions_fr</p> <p>For the lists maintained by France, the following website may be consulted:</p> <p>http://www.tresor.economie.gouv.fr/4248_Dispositif-National-de-Gel-Terroriste</p>
Financing Documents	means this Agreement and the Program Operational Manual.
Financing Plan	means the financing plan of the Program set out in Schedule 3A (<i>Indicative Financing Plan</i>).
Fixed Reference Rate	means one point fifty four percent (1.54%) per annum.
Fraud	means any unfair practice (acts or omissions) deliberately intended to mislead others, to intentionally conceal elements there from, or to betray or vitiate his/her consent, to circumvent any legal or regulatory requirements and/or to violate internal rules and procedures of the Borrower or a third party in order to obtain an illegitimate benefit.
Fraud against the Financial Interests of the European Community	means any intentional act or omission intended to damage the European Union budget and involving (i) the use or presentation of false, inaccurate or incomplete statements or documents, which has as effect the misappropriation or wrongful retention of funds or any illegal reduction in resources of the general budget of the European Union; (ii) the non-disclosure of information with the same effect; and (iii) misappropriation of such funds for purposes other than those for which such funds were originally granted.
Grace Period	means the period from the Signing Date up to and including the date falling sixty (60) months after such date, during which no principal

	repayment under the Facility is due and payable.
Illicit Origin	means funds obtained through: <ul style="list-style-type: none"> (a) the commission of any predicate offence as designated in the FATF 40 recommendations Glossary under "<i>Designated categories of offences</i>" (http://www.fatf-gafi.org/media/fatf/documents/recommendations/Recommendations_GAFL.pdf); (b) any Act of Corruption; or (c) any Fraud against the Financial Interests of the European Community, if or when applicable.
Independent verification agents	means independent agents, recruited by the borrower for the duration of the Program, under the terms of reference acceptable to the Lender to verify the evidence supporting the achievement of the Disbursement Matrix.
Index Rate	means the TEC 10 daily index, the ten-year constant maturity rate displayed on a daily basis on the relevant quotation page of the Reference Financial Institution or any other index which may replace the TEC 10 daily index. On the Signing Date, the Index Rate is zero point sixty three per cent (0.63%) per annum.
Interest Period(s)	means each period from a Payment Date (exclusive) up to the next Payment Date (inclusive). For each Drawdown under the Facility, the first interest period shall start on the Drawdown Date (exclusive) and end on the next successive Payment Date (inclusive).
Interest Rate	means the interest rate expressed as a percentage and determined in accordance with Clause 4.1 (<i>Interest Rate</i>).
Material Adverse Effect	means a material and adverse effect on: <ul style="list-style-type: none"> (a) the Program, insofar as it would jeopardise the implementation and operation of the Program in accordance with the Financing Documents; (b) the business, assets, financial condition of the Borrower or its ability to perform its obligations under the Financing Documents; (c) the validity or enforceability of the Financing Documents ; or (d) any right or remedy of the Lender under the Financing Documents.
National Exchequer Account	has the meaning given to that term in Clause 3.4 (<i>Payment mechanics</i>).

Outstanding Principal	means, in respect of any Drawdown, the outstanding principal amount due in respect of such Drawdown, corresponding to the amount of the Drawdown paid by the Lender to the Borrower less the aggregate of instalments of principal repaid by the Borrower to the Lender in respect of such Drawdown.
Payment Dates	means 31 May and 30 November of each year.
Payment Systems Disruption Event	<p>means either or both of:</p> <p>(a) a material disruption to the payment or communication systems or to the financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by [this Agreement] or [the Financing Documents] to be carried out), provided that the disruption is not caused by, and is beyond the control of, any of the Parties; or</p> <p>(b) the occurrence of any other event which results in a disruption (of a technical or system-related nature) to the treasury or payment operations of a Party preventing that, or any other Party:</p> <p style="padding-left: 40px;">(i) from performing its payment obligations under the Financing Documents; or</p> <p style="padding-left: 40px;">(ii) from communicating with the other Parties in accordance with the terms of the Financing Documents,</p> <p>and which (in either case) is not caused by, and is beyond the control of, either Party.</p>
Program	means the Program as described in Schedule 2 (<i>Program Description</i>).
Program Operational Manual	<p>Means the manual providing strategies, rules, procedures and guidance for the implementation of the Program, which the PFMR Secretariat holds. In particular, this manual sets out to:</p> <ul style="list-style-type: none"> • Enable stakeholders understand the scope, content, organization and activities of the Program. • Describe the verification protocol to evaluate the achievement of the Disbursement matrix. • Provide templates to harmonize reporting, monitoring and evaluation procedures. • Address the Program risks through the implementation of the Program Action Plan.
Program Action Plan	means the action plan, described in the Program Operational Manual, to address the Program risks by subset of activities: Planning and Budgeting; Internal Control; External Audit; Procurement; Governance and Anti-Corruption, Safeguards

	Treasury Management and Funds Flow.
Program Authorisations	means the Authorisations necessary in order for (i) the Borrower to implement the Program and execute all Financing Documents to which it is a party, and to exercise its rights and perform its obligations under the Financing Documents to which it is a party; and (ii) the Financing Documents to which the Borrower is a party, to be admissible as evidence before courts in the jurisdiction of the Borrower or before a competent arbitral tribunal.
Public Official	means any holder of legislative, executive, administrative or judicial office whether appointed or elected, serving on permanent basis or otherwise, paid or unpaid, regardless of rank, or any other person defined as a public official under the domestic law of the Borrower's jurisdiction of incorporation, and any other person exercising a public function, including for a public agency or organisation, or providing a public service.
Rate Setting Date	means in relation to any Interest Period for which an Interest Rate is to be determined: (i) the first Wednesday (or, if that date is not a Business Day, the immediately following Business Day) following the date of receipt by the Lender of the Drawdown Request, provided that the Drawdown Request is received by the Lender at least two (2) full Business Days prior to said Wednesday; (ii) the second Wednesday (or, if that date is not a Business Day, the immediately following Business Day) following the date of receipt by the Lender of the Drawdown Request, if the Drawdown Request was not received by the Lender at least two (2) full Business Days prior to the first Wednesday specified in paragraph (a) above.
Reference Financial Institution	means a financial institution chosen as a suitable reference financial institution by the Lender and which regularly publishes quotations of financial instruments on one of the international financial information networks according to the practices recognised by the banking industry.
Reinvestment Rate	means the yield rate of fixed-rate French Treasury Bonds (OAT) whose maturity date is the closest to the Average Residual Term, calculated at the date of prepayment of all or part of the Facility. Such rate shall be the rate recorded as from 11:00 am (Paris time) seven (7) Business Days before the prepayment date, recorded on the quotation pages of the Reference Financial Institution.
Schedule(s)	means any schedule or schedules to this Agreement.
Signing Date	means the date of execution of this Agreement by all the Parties.
TARGET Day	means a day on which the Trans European Automated Real Time Gross Settlement Express Transfer 2 (TARGET2) system, or any

	successor thereto, is open for payment settlement in Euros.
Tax(es)	means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with a failure to pay or any delay in the payment of any such amounts).
Technical Completion Date	means the date for the technical completion of the Facility which is expected to 31 th December 2021.
Website	means the website of AFD (http://www.afd.fr/) or any other such replacement website.
Withholding Tax	means any deduction or retention in respect of a Tax on any payment made under or in connection with the Financing Documents.

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SCHEDULE 1B - CONSTRUCTION

- (a) "assets" includes present and future properties, revenues and rights of every description;
- (b) any reference to the "Borrower", a "Party" or a "Lender" includes its successors in title, permitted assigns and permitted transferees;
- (c) any reference to a Financing Document or other document is a reference to this Agreement or to such other document as amended, restated or supplemented and includes, if applicable, any document which replaces it through novation, in accordance with the Financing Documents;
- (d) a "guarantee" includes any *cautionnement*, *aval* and any *garantie* which is independent from the debt to which it relates;
- (e) "indebtedness" means any obligation of any person whatsoever (whether incurred as principal or as surety) for the payment or repayment of money, whether present, future, actual or contingent;
- (f) a "person" includes any person, company, corporation, partnership, trust, government, state or state agency or any association, or group of two or more of the foregoing (whether or not having separate legal personality);
- (g) a "regulation" includes any legislation, regulation, rule, decree, official directive, instruction, request, advice, recommendation, decision or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, supervisory authority, regulatory authority, independent administrative authority, agency, department or any division of any other authority or organisation (including any regulation issued by an industrial or commercial public entity) having an effect on this Agreement [OR any of the Financing Documents] or on the rights and obligations of a Party;
- (h) a provision of law is a reference to that provision as amended;
- (i) unless otherwise provided, a time of day is a reference to Paris time;
- (j) The Section, Clause and Schedule headings are for ease of reference only and do not affect the interpretation of this Agreement;
- (k) unless otherwise provided, words and expressions used in any other document relating to this Agreement or in any notice given in connection with this Agreement have the same meaning in that document or notice as in this Agreement;
- (l) an Event of Default is "continuing" if it has not been remedied or if the Lender has not waived any of its rights relating thereto;
- (m) a reference to a Clause or Schedule shall be a reference to a Clause or Schedule of this Agreement; and
- (n) words importing the plural shall include the singular and vice-versa.

SCHEDULE 2 - PROGRAM DESCRIPTION

Support to the public financial management reform in Kenya

Program objectives

The AFD credit Facility supports the implementation of the Kenyan PFM Reform Strategy and pursues the following objectives:

- Improve the public financial management in the fields that have a direct impact on service delivery efficiency.
- Strengthen the budgetary risks management of the Kenyan State in the context of the implementation of the devolution.

Such Facility is financed by AFD through a Sector Budget Support (SBS), funded by a soft loan of 30 MEUR. This Facility operates as a parallel financing of the World Bank "Program for Results to Strengthen Governance for Enabling Service Delivery and Public Investment in Kenya" (GESDEK, 150MUSD). The GESDEK is implemented through 6 areas and 10 disbursement linked indicators (DLI). The AFD Facility complements the financing of the GESDEK by allocating more financial resources to 4 out of the 10 GESDEK indicators. In addition, the GESDEK Program covers a five years period from 2018 to 2022. The AFD Facility covers the first three years of the GESDEK Program (from 2018 to 2020).

The table below presents the areas and the DLIs targeted by AFD:

GESDEK Area targeted by AFD	GESDEK DLI targeted by AFD
Prioritized Public Investments	DLI 1-Prioritized Public Investments
Reliable Funding for Service Delivery	DLI 2.3: Reliability of domestic financing-Average under performance of quarterly net domestic borrowing as a percentage of what is planned in revised in year cash plans.
Efficient and Transparent Procurement	DLI 3-Number of MDAs using the e-Procurement System in compliance with the Act, 2015 and Regulations for the full fiscal year and procurement data disclosed in SPP following OCDS.
Timely & Quality Financial Statements and Audits	DLI 5.2: a) % of MDAs whose financial statement audits have been completed within 3 months after OAG receipt of final financial statements using an improved methodology, undergone quality assurance. b) Months between receipt of final consolidated financial reports by OAG and submission of the audited financial statements to Parliament

The main beneficiaries of the Program are the National Treasury, the Office of the Auditor General and the MDAs (Ministries, Departments and agencies) which have to implement the PFM reform strategy in the area targeted by the Program.

Disbursement arrangements

Through variable tranches, AFD disburses for each selected DLIs, the funds specified in the table below (and detailed in the Disbursement Matrix – Schedule 3B), once the achievement of the DLIs is verified. Confirmation that a DLI is achieved is based on the agreed verification protocols, described in the GESDEK Program Operational Manual (POM).

In addition to the variable tranches, a fixe tranche, not linked with the DLIs, is disbursed the first year, upon request from the NT and lifting of conditions precedents (Schedule 4) in order to enable the implementing structures to launch the activities.

In summary:

- One fixe Tranche in August 2018: After the signature of the Credit Financing Agreement, a first tranche (5M€) not linked with the DLIs, is disbursed upon request from the NT and lifting of Condition precedents (Schedule 4).
- Three variables tranches in 2018, 2019 and 2020: Those tranches are disbursed according to the level of achievement of the four selected DLIs as agreed in the Disbursement Matrix (Schedule 3B).
- An additional tranche in 2021: If case be, the undisbursed funds from the 2018, 2019 and 2020 variable tranches may be disbursed through a fifth tranche in 2021 or may be cancelled by AFD if the targets are not met.

The tentative disbursement plan is the following (does not take into account the optional fifth tranche in 2021):

Tentative disbursement plan	Y1 - 2018	Y2 - 2019	Y3- 2020	Total
Variable Tranches				
DLI 1: Prioritized Public Investments.	2	4	4	10
DLI 2.3: Reliability of financing and external resources.	1	1	2	4
DLI 3: Efficient and Transparent Procurement	1	3	2	6
DLI 5.2 Timely, Efficient, Quality Audit:	1	2	2	5
<i>Total maximum amount of variable Tranches</i>	<i>5</i>	<i>10</i>	<i>10</i>	<i>25</i>
Fixe Tranche				
Fixe tranche (not linked with the DLIs)	5	-	-	5
Total AFD	10	10	10	30

The AFD funds are disbursed to the Designated account (in Euro) and the NT will then channel them to the Exchequer account (in KES).

Monitoring and evaluation arrangements

The PFM secretariat is responsible for the overall coordination of the implementation of the AFD Facility. It coordinates the verification process, facilitates requests for disbursements upon achievement of the DLIs selected by AFD and prepares the progress reports.

The tentative timeline for the AFD Facility verification process follows the one specified in the GESDEK Program operational manual. It can be summarised as follow:

Tentative Period	Details
June	Deadline to achieve the Disbursement indicators, specified in the Disbursement Matrix
July to September	Verification period including the appointment of an Independent verification agent.
September	Submission of the annual progress report
October	Disbursement of the variable tranche
December	Submission of the audit reports

Along with a drawdown request (schedule 5A), the PFM Secretariat submits to AFD, an annual program report. This report is the same report submitted to the World Bank and includes a summary of progress of: i) the achievement of the DLIs, ii) the Program action plan, described in the Program operation manual and set to address Program risks ; iii) capacity building activities. The appendixes include the results team reports, copies of verification and notification letters sent to the World Bank.

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The PFM Secretariat sends also to AFD, on a yearly basis, the audits requested for the implementation of the GESDEK. Those audits will be made up of: (i) institutional Annual Financial Statements for NT supported by appropriate eligible expenditure framework disclosure notes to be audited by the Office of the Auditor General; (ii) institutional Annual Financial Statements for the OAG supported by appropriate disclosure notes highlighting eligible expenditure framework to be audited by independent external audit firm to be appointed by Parliament.

AFD will be involved in the mid-term review of the GESDEK program (expected in April 2020) and the final review (expected in July 2022). Finally, a supervision mission is foreseen, at least once a year, by the Project manager of the AFD Headquarter. This mission aims to assess the progress of the implementation of the AFD Facility.



SCHEDULE 3A – INDICATIVE FINANCING PLAN

The overall financing plan of the Program is the following:

Estimated financing plan (1 EUR = 1,1612 USD)	Amount (EUR M)
AFD Facility – CKE1130	30
World Bank – GESDEK Program	129
Overall total	159



SCHEDULE 3B – DISBURSEMENT MATRIX

DLI	DLI deadline	2018			2019		2020		Baseline June 2017	Target	Determination of Financing Amount to be disbursed
		Maximum amount to be disbursed (M€)									
DLI 1a: PIM Unit established in NT	June 2018	1							Project Identification Circulars in place	PIM Unit established in NT	Pass/Fail
DLI 1b: Approved PIM Manual & user requirements for e-PromIS which addresses key challenges in PIM including prioritization, costing and transparency	June 2018	1							No	Approved PIM Manual and user requirements for e-PromIS	Pass/Fail
DLI 1c: UAT complete for enhanced e-PromIS automating provisions of PIM Manual	June 2019				1,5				No	User acceptance test (UAT) complete for enhanced e-PromIS automating provisions of PIM Manual	Pass/Fail
DLI 1d: Projects with capital allocations above KES 100 million which are in compliance with procedures in the PIM manual.	June 2020				2,5		4		0	In June 2019 = 5 projects In June 2020 = 10 projects	In 2018/19: 0.5 million € per project In 2019/20: 0.4 million € per project
DLI 2.3a: In year borrowing plan consistent with delivering cash for MDAs based on a compilation of the cash plans using the new system	June 2018	1							No	In year borrowing plan consistent with delivering cash for MDAs based on a compilation of the cash plans using the new system	Pass/Fail
DLI 2.3b: Average under performance of quarterly net domestic borrowing as a percentage of what is planned in revised in year cash plans	June 2020				1		2		70%	In June 2019 = under 40% of plan In June 2020 = under 35% of plan	2018/2019: 1 million € minus 0.2 million € for every 1 %-point increment above the target. 2019/2020: 2 million € minus 0.4 million € for every 1 %-point increment above the target.
DLI 3a: Roadmap agreed for upgrading e-procurement system including State Procurement Portal, aligned to requirements of PPDA Act, 2015 & Regulations	June 2018	1							IFMIS procurement module operational and aligned with the Public Procurement and Disposal Act, 2005	Roadmap agreed for upgrading e-procurement system including State Procurement Portal, aligned to requirements of PPADA and attendant Regulations	Pass/Fail
DLI 3b: UAT for upgraded e-procurement and State Procurement Portal Complete	June 2019				3				No	UAT for upgraded e-procurement and State Procurement Portal Complete	Pass/Fail

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DLI	DLI deadline	2018			2019			2020			Baseline June 2017	Target	Determination of Financing Amount to be disbursed
		Maximum amount to be disbursed (M€)			Maximum amount to be disbursed (M€)			Maximum amount to be disbursed (M€)					
DLI 3c: Number of MDAs using the e-Procurement System in compliance with the Act, 2015 and Regulations for the full fiscal year and procurement data disclosed in SPP following OCDS.	June 2020								2	0	June 2020 = 5 MDAs (Comprising of 2 high spending Ministry/State Department and 1 Commission)	June 2020: 0.4 million € for each MDA up to a maximum of 2. 0.4 million € for each additional high spending MDA up to a maximum of 3.	
DLI 5.2a: Approval of audit codes that classify risk clusters to enable efficient targeting of audit resource	June 2018	1								No	Approval of audit codes that classify risk clusters to enable efficient targeting of audit resource	Pass/Fail	
DLI 5.2b: Enhanced Audit methodology and Quality assurance framework approved	June 2019				1					No	Enhanced Audit methodology and Quality assurance framework approved	Pass/Fail	
DLI 5.2c: % of MDAs whose financial statement audits have been completed within 3 months after OAG receipt of final financial statements using an improved methodology, undergone quality assurance.	June 2020								1	0% of MDAs (new methodology not in place)	15% of MDAs	June 2020 - 1 million € minus 0.1 million € for every 1 %-point increment below the target.	
DLI 5.2d: Months between receipt of final consolidated financial reports by OAG and submission of the audited financial statements to Parliament	June 2020								1	10 months	June 2019 = 8 months June 2020 = 6 months	- June 2019: 1 million € on a pass/fail basis. - June 2020: 1 million € minus 0,5 million € per month behind target	
		5			10				10				

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SCHEDULE 4 - CONDITIONS PRECEDENT

The following applies to all documents delivered by the Borrower as a condition precedent:

- if the document which is delivered is not an original but a photocopy, the original Certified photocopy shall be delivered to the Lender;
- the final version of a document which draft was previously sent to, and agreed upon by the Lender, shall not materially differ from the agreed draft;
- documents not previously sent and agreed upon, shall be satisfactory to the Lender.

PART I – CONDITIONS PRECEDENT TO BE SATISFIED ON THE SIGNING DATE

Delivery by the Borrower to the Lender of the following documents:

- a) Any document justifying the capacity of the person authorized to sign the Agreement on behalf of the Borrower.
- b) An original certificate issued by a duly authorised representative of the National Treasury and Planning of the Republic of Kenya:
 - (i) confirming the persons authorized to sign, on behalf of the Borrower, the Drawdown Requests and any certificate in connection with this Agreement and to take all other measures and/or sign all other necessary documents on behalf of the Borrower under this Agreement
 - (ii) providing a specimen of the signature of each person listed above.

PART II - CONDITIONS PRECEDENT TO THE FIRST DRAWDOWN

Delivery by the Borrower to the Lender of:

- a) Evidence of any filing or registration, deposit or publication requirements of this Agreement and payment of any stamp duty, registration fees or similar duties in connection with this Agreement, as applicable.
- b) A letter confirming the adoption by the National Treasury of the Program Operations Manual (POM), which has previously received a non-objection from AFD.
- c) A copy of the GESDEK credit financing agreement between the Republic of Kenya and the World Bank.
- d) A duly executed legal opinion, in form and substance provided in Schedule 7, issued by the Attorney General of the Republic of Kenya.

PART III - CONDITIONS PRECEDENT FOR ALL DRAWDOWNS OTHER THAN THE FIRST DRAWDOWN

- a) Delivery by the Borrower to the Lender of:
 - (i) the Annual Progress Report.
 - (ii) the latest annual audit reports as specified in the Program Operational Manual.
- b) Positive assessment by AFD of the achievement of the disbursement linked indicators, based on the Annual Progress Report and the World Bank assessment on the same Report.

SCHEDULE 5A - FORM OF DRAWDOWN REQUEST

[on the Borrower's letterhead]

To: AGENCE FRANÇAISE DE DÉVELOPPEMENT

On: [date]

Borrower's Name – Credit Facility Agreement n° [●] dated [●]

Drawdown Request n°[●]

Dear Sirs,

1. We refer to the Credit Facility Agreement n° [●] entered into between the Borrower and the Lender dated [●] (the "Agreement") and to the results achievement notification letter dated [●]. Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.

2. This letter is a Drawdown Request.

3. We irrevocably request that the Lender makes a Drawdown available on the following terms:

Amount: EUR [●].

4. The Interest Rate will be determined in accordance with Clause 4 (*Interest*) of the Agreement. The Interest Rate applicable to the requested Drawdown will be provided to us in writing and we accept this Interest Rate (subject to the paragraph below, if applicable).

[If the Interest Rate applicable to the requested Drawdown is greater than [●insert rate in letters] ([●]%), we request that you cancel this Drawdown Request.]

5. We confirm that each condition specified in Clause 2.4 (*Conditions precedent*) is satisfied on the date of this Drawdown Request and that no Event of Default is continuing or is likely to occur. We agree to notify the Lender immediately if any of the conditions referred to above is not satisfied on or before the Drawdown Date.

6. The proceeds of this Drawdown should be credited to the following bank account:

(a) Name [of the Borrower]: [●]

(b) Address [of the Borrower]: [●]

(c) IBAN Account Number: [●]

(d) SWIFT Number: [●]

(e) Bank and bank's address [of the Borrower]: [●]

(f) [if currency other than Euro] [●]
correspondent bank and account
number of the Borrower's bank:

7. This Drawdown Request is irrevocable.

8. We have attached to this Drawdown Request all relevant supporting documents specified in Clause 2.4 (*Conditions precedent*) of the Agreement:

[List of supporting documents]

Yours sincerely,

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Authorised signatory of Borrower

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SCHEDULE 5B - FORM OF CONFIRMATION OF DRAWDOWN AND RATE

[on Agence Française de Développement letterhead]

To: *[the Borrower]*

Date: [●]

Ref: Drawdown Request n° [●] dated [●]

Borrower's Name – Credit Facility Agreement n°[●] dated [●]

Drawdown Confirmation n°[●]

Dear Sirs,

1. We refer to the Credit Facility Agreement n°[●] entered into between the Borrower and the Lender dated [●] (the "Agreement") and to the results achievement notification letter dated [●]. Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
2. By a Drawdown Request Letter dated [●], the Borrower has requested that the Lender makes available a Drawdown in the amount of EUR [●], pursuant to the terms and conditions of the Agreement.
3. The Drawdown which has been made available according to your Drawdown Request is as follows:
 - Amount: [●*amount in words*] ([●])
 - Applicable interest rate: [●*percentage in words*] ([●]%) per annum
 - Effective global rate (per annum): [●*percentage in words*] ([●]%)
 - Drawdown Date: [●]

For fixed-Interest Rate loans only

For information purposes only:

- Rate Setting Date: [●]
- Fixed Reference Rate: [●*percentage in words*] ([●]%) per annum
- Index Rate: [●*percentage in words*] ([●]%)
- Index Rate on the Rate Setting Date: [●].

Yours sincerely,

.....

Authorised signatory of *Agence Française de Développement*



**SCHEDULE 6 - INFORMATION THAT MAY BE PUBLISHED ON THE FRENCH
GOVERNMENT WEBSITE AND THE LENDER'S WEBSITE**

1. Information regarding the Project
 - Number and name in AFD's book;
 - Description;
 - Operating sector ;
 - Place of implementation ;
 - Expected starting date ;
 - Expected Technical Completion Date;
 - Status of implementation updated on a semi-annual basis ;
2. Information regarding the financing of the Program
 - Kind of financing (loan, grant, co-financing, delegated funds) ;
 - Principal amount of the Facility ;
 - Amount of the Facility which has been drawn down (updated as the implementation of the Program goes) ;
3. Other information
 - Transaction information notice and/or sheet presenting the transaction attached to this Schedule.

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SCHEDULE 7 – TEMPLATE OF THE LEGAL OPINION

LEGAL OPINION OF THE ATTORNEY GENERAL OF KENYA

CREDIT FACILITY AGREEMENT FOR THE PFM PROJECT CKE1130

Date: [●].

To the attention of the AGENCE FRANCAISE DE DEVELOPPEMENT AS LENDER UNDER THE CREDIT FACILITY AGREEMENT.

As Attorney General and Principal Legal Advisor to the Government of the Republic of Kenya, you have asked me for an opinion in connection with a credit facility agreement (the "Credit Facility Agreement") dated [●] signed between the Republic of Kenya (the "Borrower") and Agence Française de Développement (the "Lender") for an amount of Thirty million Euros (EUR 30,000,000) for the PFM Project. Terms defined in the Credit Facility Agreement shall have the same meanings when used in this opinion.

In giving this opinion, I have examined:

- (a) an executed copy of the Credit Facility Agreement;
- (b) the Public Finance Management Act No 18 of 2012;
- (c) the Constitution of Kenya;
- (d) any document evidencing (i) the approvals necessary for the validity, binding effect and the enforcement of the Credit Facility Agreement and (ii) that the Borrower has full power to sign the Credit Facility Agreement.

I am of the opinion that:

- (a) The Borrower has the power and authority to enter into and perform its obligations under the Credit Facility Agreement and has taken all necessary action to authorize the borrowing under the Credit Facility Agreement and the execution, delivery and performance of the Credit Facility Agreement.
- (b) The Credit Facility Agreement has been executed and delivered by a duly authorized official of the Borrower, and constitutes legal, valid and binding obligations of the Borrower enforceable against the Borrower in the Republic of Kenya.
- (c) The Borrower has the power and authority to borrow thereunder. The maximum amount of the indebtedness of the Borrower as decided by the National Assembly has not been exceeded nor will the credit borrowed under the credit facility Agreement cause it to be exceeded.
- (d) The execution and delivery by the Borrower of the Credit Facility Agreement and the performance of the respective obligations contemplated therein, in accordance with the terms and conditions thereof do not:
 - (i) contravene any existing provision of law, statute, decree, rule or regulation to which the Borrower is subject, or any judgment, decree, franchise, order, permit, consent or authorization applicable to the Borrower; or



- (ii) conflict, or result in any breach of, any covenant or provision of, or constitute a default under, or result in the imposition of any lien, security interest, charge or encumbrance upon any of the property or assets of the Borrower pursuant to the terms of any undertaking under any mortgage, deed of trust, agreement or other instrument to which the Borrower is a party or by which the Borrower or any of its assets may be bound.
- (e) All consents, approvals, permits, licenses, of every competent authority required to authorize, or required in connection with the execution and delivery of the Credit Facility Agreement and the performance of the respective terms thereof, have been obtained.
- (f) It is not necessary in order to ensure the legality, validity, enforceability or admissibility in evidence of the Credit Facility Agreement for it to be filed, recorded or enrolled with any court or any authority in the Republic of Kenya or for any stamp, tax or other duty to be paid.
- (g) The Credit Facility Agreement is in proper legal form under the laws of the Republic of Kenya for the validity and enforcement thereof against the Borrower under such laws. No provision of the Credit Facility Agreement contravenes any law, regulation, decree or order in Kenya and more generally the rules of public policy of Kenya.
- (h) The Borrower has validly elected to have French law govern the Credit Facility Agreement.
- (i) In any proceedings taken in Kenya for the enforceability of the Credit Facility Agreement, the obligations expressed to be assumed by the Borrower under the Credit Facility Agreement would be recognised by a Kenyan court as its legal, valid, binding and enforceable obligations and would be enforceable in a Kenyan court.
- (j) A final arbitral award made in respect of a dispute arising under the Credit Facility Agreement would be enforceable in Kenya under the Arbitration Act 1995, which provides for the recognition and enforcement by the High Court of Kenya of arbitral awards in accordance to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations General Assembly in New York on the 10th June 1958 and acceded to by Kenya on the 10th February 1989 with a reciprocity reservation. Enforcement is subject to compliance with the registration procedures set out in the Arbitration Act 1995 and may be refused in the limited circumstances specified in section 37 of the Arbitration Act 1995.

This opinion is addressed to AFD and may be relied upon by AFD and its legal advisers.

Yours faithfully,

ATTORNEY GENERAL