

IBRD LOAN NUMBER 9573-UA

Guarantee Agreement

**FIFTH ADDITIONAL FINANCING FOR THE PUBLIC EXPENDITURES FOR
ADMINISTRATIVE CAPACITY ENDURANCE IN UKRAINE PROJECT**

between

**GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND, ACTING THROUGH
THE SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND
DEVELOPMENT AFFAIRS**

and

**INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT**

Dated August 4, 2023

GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT, dated as of August 4, 2023 (as amended, supplemented or otherwise modified from time to time, this “Guarantee Agreement”), entered into between the GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, acting through the Secretary of State for Foreign, Commonwealth and Development Affairs (the “Guarantor”) and the INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the “Bank”) in connection with the Loan Agreement dated June 21, 2023 entered into between the Bank and UKRAINE (the “Borrower”) with respect to the Fifth Additional Financing for the Public Expenditures for Administrative Capacity Endurance in Ukraine Project (as amended or otherwise modified from time to time, the “Loan Agreement”). The Guarantor and the Bank hereby agree as follows:

WHEREAS:

- (A) the Borrower has requested that the Bank extend a loan (the “Loan”) in the total amount described in the Loan Agreement, on the terms set forth therein;
- (B) the Bank would be unwilling to extend a Loan up to such total requested amount without guarantees or other credit support to reduce its total exposure to the Borrower; and
- (C) the Guarantor is entering into this Guarantee Agreement to provide a guarantee to the Bank for all loan payments payable by the Borrower pursuant to the Loan Agreement, all subject to the terms and conditions described below, in order to facilitate and support the Loan to the Borrower.

NOW, THEREFORE, The Guarantor and the Bank hereby agree as follows:

ARTICLE I – GENERAL CONDITIONS; DEFINITIONS

Section 1.01. Definitions. Unless the context requires otherwise, capitalized terms used in this Guarantee Agreement have the meanings set forth below or, if not defined herein, shall have the meanings ascribed to them in the General Conditions (as defined in the Appendix to the Loan Agreement):

“Bank” has the meaning given in the preamble.

“Borrower” has the meaning given in the preamble.

“Business Day” means a day (other than a Saturday or Sunday) when banks and governmental offices are generally open for business in Washington, DC and London, UK.

“Demand Notice” means a written notice requesting a payment by the Guarantor under Section 2.01, signed by an authorized representative of the Bank, which shall set forth in reasonable detail a calculation of the Guarantee Amount in accordance with Article II and shall provide the relevant wire transfer details for the Bank or other payment instructions.

“Guarantee Agreement” has the meaning given in the preamble.

“Guarantee Amount” has the meaning given in Section 2.01(b).

“Guarantor” has the meaning given in the preamble.

“Loan” has the meaning given in the preamble.

“Loan Agreement” has the meaning given in the preamble.

“Maximum Guaranteed Amount” means the Maximum Guaranteed Principal plus the interest due and payable at any time on the Loan made under the Loan Agreement.

“Maximum Guaranteed Principal” means United States Dollars 500,000,000 (US \$ 500,000,000).

“Party” means each of the Guarantor and the Bank.

“Scheduled Payments” means the repayment of principal and interest (including any interest on overdue amounts but excluding any penalty interest) by the Borrower on the applicable payment dates set forth in the Loan Agreement and “Scheduled Payment” means any of such repayments as stated.

Section 1.02. Incorporation. The provisions of Section 1.04 (References; Headings), Article VIII (Enforceability; Arbitration), Article IX (Effectiveness; Termination), and Article X (Miscellaneous Provisions) of the General Conditions, together with all related definitions, are hereby incorporated by reference and shall apply to this Guarantee Agreement, *mutatis mutandis*, as though specifically set forth herein, with the understanding that the Guarantor constitutes a “Guarantor” and a “Loan Party” for purposes of such provisions.

ARTICLE II – GUARANTEE; PAYMENTS

Section 2.01. Guarantee. On and subject to the terms and conditions of this Guarantee Agreement, the Guarantor guarantees and undertakes that, if

- (a) the Borrower fails to make any Scheduled Payment under the Loan Agreement on or by the date provided for pursuant thereto, and

- (b) such failure continues for six (6) months after the due date therefor and the Bank declares a non-accrual event with respect to the non-payment of any such amount (the “Guarantee Amount”),

then the Guarantor shall, within thirty (30) days of receiving a Demand Notice from the Bank, make a payment to the Bank in an amount equal to the Guarantee Amount; provided that, (y) in no event shall the aggregate liability of the Guarantor to make guarantee payments under this Guarantee Agreement exceed the Maximum Guaranteed Amount, and (z) for the avoidance of doubt, the Guarantor’s guarantee obligations are limited to Scheduled Payments, and therefore, in the event of an acceleration by the Bank of the principal payments due under the Loan Agreement in accordance with the terms thereof, the Guarantor’s guarantee obligations shall not be accelerated, but shall continue to be based on any Scheduled Payments to the extent amounts remain outstanding and unpaid by the Borrower.

Section 2.02. Demand Notices.

- (a) The Bank shall use its best efforts to send prompt written notice to the Guarantor of (i) any failure by the Borrower to make a Scheduled Payment under the Loan Agreement that continues for ninety (90) days after the due date therefor, and (ii) any non-accrual event with respect to the Loan Agreement, provided that in each case the failure to provide any such notice shall not affect any of the Guarantor’s obligations under this Guarantee Agreement.
- (b) Any Demand Notice delivered on or prior to 5 p.m. London time on any Business Day shall be considered delivered on that Business Day. Any Demand Notice delivered after 5 p.m. London time or on a day that is not a Business Day shall be considered delivered on the following Business Day.

Section 2.03. Payments. All payments made by the Guarantor to the Bank shall be United States Dollars (US\$) cash payments in immediately available funds, delivered before 11 a.m. Washington, DC time on the due date therefor, to the account of the Bank specified in the applicable Demand Notice. All payments shall be made without (and free and clear of any deduction for) any set-off or counterclaim.

ARTICLE III – SUBROGATION AND RECOVERIES

Section 3.01. Subrogation. If and to the extent that the Guarantor makes any payment under Section 2.01:

- (a) the Guarantor shall be subrogated immediately to the contractual right of repayment of the Bank under the Loan Agreement, to the extent of such payment of Guarantee Amounts; provided that the Guarantor shall not be

subrogated to any other rights the Bank may have under the Loan Agreement, including with respect to amounts owed by the Borrower that are not covered by the Guarantor;

- (b) the Bank hereby assigns to the Guarantor any right to receive repayment from the Borrower under the Loan Agreement to the extent any amounts have been paid by the Guarantor under this Guarantee Agreement, and the Bank shall notify the Guarantor and the Borrower of such amounts and assignment; and
- (c) the Bank shall not prevent or interfere with the Guarantor exercising in its own name any rights or remedies available to it, in order to recover from the Borrower any amounts that the Guarantor has paid from time to time under this Guarantee Agreement.

Section 3.02. Recoveries. The Bank shall have no obligation to pursue recovery of any Guarantee Amounts that the Guarantor has paid under this Guarantee Agreement from the Borrower on behalf of the Guarantor. Furthermore, in the event of any non-payment by the Borrower and non-accrual event that creates an obligation for the Guarantor to make a payment of a Guarantee Amount under Section 2.01, the Bank shall have no obligation to exercise any particular remedies against the Borrower, apply any cross-default, cross-suspension, penalty, or sanctions policies, or otherwise take any action under the Loan Agreement in order to facilitate a recovery by the Guarantor of any such Guarantee Amounts from the Borrower.

Section 3.03. Reinstatement. Notwithstanding the foregoing, at the time of making any payment under Section 2.01 or at any time thereafter, the Guarantor may notify the Bank in writing that it elects not to pursue recoveries from the Borrower, in which case the provisions of Section 3.01 above shall not apply. For the avoidance of doubt, any prior assignment under Section 3.01(b) above shall be null and void, and all rights of the Bank to receive repayment and recover from the Borrower under the Loan Agreement shall be reinstated, and such payment under Section 2.01 shall be retained by the Bank for its financial capacity, when and to the full extent that the Bank receives repayment from the Borrower following its normal processes and procedures on recoveries. Any election by the Guarantor under this paragraph shall be irrevocable unless the Guarantor and the Bank otherwise agree in writing.

ARTICLE IV – REPRESENTATIONS AND COVENANTS

Section 4.01. Representations. The Guarantor represents and warrants, as of the date of this Guarantee Agreement:

- (a) it has the power, authority and legal right to (i) execute and deliver this Guarantee Agreement and (ii) comply with the provisions of this Guarantee Agreement;

- (b) the obligations expressed to be assumed by it in this Guarantee Agreement constitute legal, valid and binding obligations, enforceable against it in accordance with the terms of this Guarantee Agreement; and
- (c) all authorizations and consents required in connection with the execution and delivery of this Guarantee Agreement and the performance of its obligations hereunder (including any parliamentary approvals, internal authorizations and consents) have been obtained and are in full force and effect, and such execution, delivery and performance do not and will not (i) require any further authorization under present laws, or (ii) violate any provision of its constitutive documents or any law or any order, judgment, injunction, decree, resolution, determination or award of any court or arbitrator or any judicial, administrative or governmental authority or organization, in each case presently in effect having applicability over it.

Section 4.02. Legal Opinion. Promptly upon the execution of this Guarantee Agreement, the Guarantor shall furnish to the Bank an opinion of legal counsel acceptable to the Bank that this Guarantee Agreement has been duly authorized, executed and delivered on behalf of the Guarantor and is legally valid, binding, and enforceable upon the Guarantor in accordance with the terms hereof.

ARTICLE V – ASSIGNMENT; WAIVERS; MISCELLANEOUS

Section 5.01. No Assignment. Neither Party shall assign any of its rights or obligations under this Guarantee Agreement, in whole or in part, to any other person or entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any such assignment without the prior written consent of the other Party shall be null and void. For the avoidance of doubt, any guarantee provided under this Guarantee Agreement which is transferred without the written consent of the other Party shall be null and void.

Section 5.02. Waiver and Amendment. Nothing in this Guarantee Agreement shall restrict or prevent the Bank from (a) cancelling, suspending or terminating the Loan Agreement or any related document, (b) amending, varying, modifying, novating, restating, supplementing or replacing or agreeing to or acquiescing in any amendment, variation, modification, novation, restatement, supplement or replacement of the Loan Agreement, (c) giving any consent or waiver pursuant to, or in connection with the Loan Agreement, or (d) taking any other action in respect of the Loan Agreement, provided that, without the written consent of the Guarantor, which shall not be unreasonably withheld, none of the foregoing actions shall increase or accelerate the obligations of the Guarantor under Section 2.01.

Section 5.03. Remedies Cumulative. The rights and remedies of the Bank under this Guarantee Agreement: (a) are cumulative and in addition to and not exclusive of their respective rights under general law; and (b) may be waived only in writing and specifically.

Delay in the exercise or non-exercise of any such right or remedy is not a waiver of that right or remedy.

Section 5.04. Waiver of Defenses. Except as expressly provided in this Guarantee Agreement, the Guarantor's obligations under this Guarantee Agreement are irrevocable, unconditional and absolute regardless of the unenforceability, invalidity, illegality or voidability of the Loan Agreement, and neither the rights, powers or remedies conferred on the Bank by this Guarantee Agreement or by law nor the liability of the Guarantor under this Guarantee Agreement shall be discharged, impaired or otherwise affected by any act, omission, circumstance, matter or thing which, but for this provision, might operate to release or prejudice any of the Guarantor's obligations under this Guarantee Agreement or discharge, impair or diminish or otherwise affect such rights, remedies or obligations in whole or in part, or by any other circumstances which might constitute a legal or equitable discharge or a defense of a surety or guarantor.

Section 5.05. No Waiver of Immunities. Nothing in this Guarantee Agreement shall operate as or be construed to constitute a waiver, renunciation or any other modification of any privilege or immunity of the Bank under its Articles of Agreement or other constitutional document, or under any applicable law.

Section 5.06. Determinations by the Bank. Where this Guarantee Agreement refers to or requires any determination or calculation of any amount or fact to be made by the Bank, the Bank's determinations or calculations shall, in the absence of manifest error, be conclusive and binding for all purposes of this Guarantee Agreement.

ARTICLE VI – REPRESENTATIVE; ADDRESSES

Section 6.01. The Guarantor's Address is:

Foreign, Commonwealth and Development Office
King Charles Street
London
SW1A 2AH
United Kingdom

Attn: Melinda Simmons
His Majesty's Ambassador to Ukraine
E-mail: ukinukraine@fcdo.gov.uk

Section 6.02. The Bank's Address is:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, DC 20433
United States of America
Facsimile: (202) 477-6391


Attn: Arup Banerji
Regional Country Director, Eastern Europe
E-mail: abanerji@worldbank.org and dvillar@worldbank.org

AGREED as of the day and year first above written.

**GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND,
ACTING THROUGH THE SECRETARY OF
STATE FOR FOREIGN, COMMONWEALTH AND
DEVELOPMENT AFFAIRS**

By: Melinda Simmons
Name: Melinda Simmons
Title: Dame

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT**

By: 
Name: Arup Banerji
Title: Regional Country Director
Eastern Europe