

**AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF
BELGIUM AND THE GOVERNMENT OF THE REPUBLIC OF GHANA
RELATING TO THE GRANTING OF FINANCIAL ASSISTANCE BY THE
GOVERNMENT OF THE KINGDOM OF BELGIUM TO THE GOVERNMENT OF
THE REPUBLIC OF GHANA**

The Government of the Kingdom of Belgium, hereinafter referred to as “the Belgian Government” and the Government of the Republic of Ghana, hereinafter referred to as the “Government of Ghana”;

Considering that the Royal Decree of 30th May 1997 authorises in Belgium the Minister of Finance and the Minister who has foreign trade relations in his attributions to grant loans to foreign States;

Considering that Section 5(c) of the Public Financial Management Act, 2016 (Act 921) authorises the Minister of Finance to execute loan agreements on behalf of the Government of Ghana.

Deeming it desirable to favour the friendly relations and the trade expansion between Belgium and Ghana;

Have agreed as follows:

ARTICLE 1

Provision of funds

1. The Belgian Government shall grant to the Government of Ghana a financial assistance in the form of a 0 % interest loan amounting to maximum 8.000.000 euro (eight million euro).
2. This Financial Assistance will be combined with a commercial credit amounting to maximum 3.594.000 euro (three million five hundred and ninety four thousand euro) to be granted by a Belgian bank in order to complement the financing of a contract amount of maximum 11.594.000 euro (eleven million five hundred and ninety four thousand euro).
3. The Belgian Government shall open, at the National Bank of Belgium, a non-interest bearing account in euro in the name of the Government of Ghana, for all payments to be made.
4. Money will be paid into this account at one or more times as the implementation of the project financed with the financial assistance progresses, to a total amount of 8.000.000 euro (eight million euro).

ARTICLE 2

Repayment

1. The Government of Ghana shall repay to the Belgian Government the loan granted under the terms of this Agreement. Each payment onto the account in the name of the

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Government of Ghana with the National Bank of Belgium shall be repaid in twenty annual equal instalments.

2. These repayments will be effected on the 31st of December of each year, and for the first time on the 31st December of the twenty-first year following the date of the first instalment referred to in Article 1(4) of this Agreement.
3. The repayments will be effected in favour of IBAN BE43 6792 0040 2101 of the Federal Public Service Finance of Belgium, with bpost (BIC: PCHQBEBB), with "State to state loans – Ghana - buses " as communication.

ARTICLE 3

Assignment of the loan

1. The financial assistance provided under this Agreement shall be used entirely and exclusively by the Government of Ghana for the payment of capital investment goods and services related to the supply and delivery of 55 buses for public transport.
2. The supply of goods and services must comply with the specifications used for the international invitation to bid, which will be issued by the Government of Ghana, in accordance with its rules governing public procurement. These specifications must comply with the Organization for Economic Co-operation and Development (OECD) directives relating to the code of conduct for multinational enterprises.
3. The technical procedures for implementing the provisions of this article are specified in annex 1 of this Agreement.

ARTICLE 4

Duration of the Agreement

This Agreement shall have a duration of 5 years from the date of its entry into force. The share of the financial assistance which will not have been disbursed within five years following the entry into force of the Agreement will be considered as cancelled. However, if the project is in its implementation phase, and if there are still outstanding invoices after the availability period of five years, these invoices can be paid within the three years after the availability period on written request of the National Treasury of the Government of Ghana. After the extended availability period of eight years payments can only be made after an amendment of the present agreement through an exchange of letters between the Government of Ghana and the Government of Belgium.

ARTICLE 5

Charges and Tax exemption

The Belgian financial assistance of 8,000,000 euro granted under this Agreement shall in no circumstances be used for the payment of any taxes, customs duties, entry taxes and other fiscal and administrative charges (including VAT) on supplies and equipment, works and services. If taxes or charges are payable according to the Ghanaian legislation, they will be borne by the Ghanaian Party's project budget.

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ARTICLE 6

Financial intervention of the agents

The National Bank of Belgium and the Ministry of Finance of Ghana, acting as agents of their respective Governments, shall by joint Agreement take the financial technical measures required for the implementation of the provisions of this Agreement.


ARTICLE 7

Responsibilities of the other Parties

1. Ghana designates the Ministry of Transport of Ghana as the executing entity of the project. The Metro Mass Transit (MMT) will be the body responsible for the proper implementation of the project on behalf of the Ministry of Transport of Ghana. The MMT and the Ministry of Transport should be jointly accountable and jointly facilitate any mission that the Belgian party wishes to send to the field under this agreement.
2. The Government of Ghana designates the Ministry of Finance as the body responsible for the financial follow-up of the implementation of the project, entrusted to approve the expenses to be charged under the Belgian State loan.
3. The Belgian Party designates the International and European Financial Affairs administration of the Treasury of the Federal Public Service (FPS) Finance as the administrative and financial entity responsible for its contribution to the project.
4. The Belgian Party designates Enabel, a Belgian public-law company with social purposes, as the agency responsible for controlling and supervising the good preparation and execution of the international invitation to bid in accordance with Ghana's rules governing public procurement. Enabel will also be responsible for the general monitoring of the project as well as for the final evaluation of the project as to its conformity with the specifications of the contracts.
5. Each Party undertakes to take timely the institutional, administrative and budgetary measures necessary to comply with the obligations entered into in this Agreement and in annex 1 of this Agreement.

ARTICLE 8

Waiver of the right to seize

The Contracting Parties commit themselves expressly to renounce all acts of seizure or freeze of the reciprocal credits that constitute the object of the present agreement, during a delay of fifteen years starting at the date of signature of the present agreement. 

ARTICLE 9



Resolution of disputes

The Belgian Government and the Government of Ghana will make every necessary effort in order to settle amicably any dispute arising between them and relating to the interpretation or the implementation of the present Agreement. If the negotiations fail to reach a satisfactory agreement between the Belgian Government and the Government of Ghana and if, therefore, a violation of the present Agreement is recorded, the Parties may then terminate the present Agreement provided they both honour the commitments already made.

ARTICLE 10

Anti-corruption clause

No offer, payment, consideration, or benefit of any kind, which constitutes or could be construed as an illegal or corrupt practice, shall be made, either directly or indirectly, as an inducement or reward for the award or execution of this contract. Any such practice will be grounds for terminating this contract or taking any other corrective action as appropriate.

ARTICLE 11


Entry into force

The provisions of this Agreement shall enter into force on the date of its signature, provided that the formalities required by the national legislation of each Contracting Party for the implementation of this Agreement have been completed. Otherwise, the Agreement shall enter into force on a date to be fixed by an exchange of letters confirming the completion of the formalities required by the national legislation of each Contracting Party for the implementation of this Agreement.

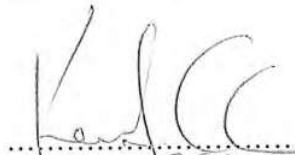
In witness whereof the undersigned, duly authorised thereto, have appended their signatures to this Agreement.

Done in Accra, on 27 APRIL 2021
In two originals in the English language, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE KINGDOM OF BELGIUM


.....
Ambassador of Belgium

FOR THE GOVERNMENT OF
THE REPUBLIC OF GHANA


.....
MINISTER FOR FINANCE

Annex 1

1. Obligations of the Parties as mentioned in Article 7 of the Agreement

The obligations and the participation of the Republic of Ghana, as described in this annex as well as in the text of the Agreement, are essential for the implementation of the objectives of the project. The Republic of Ghana shall take the institutional, administrative and budgetary measures required to guarantee the proper implementation of the project and its activities and to guarantee the sustainability of its results.

To this end the Ministry of Finances of the Republic of Ghana shall:

- Concerning the implementation of the project:
 - take the institutional or administrative measures required to enable the implementation of the project and the conduct of its activities;
 - facilitate access to any documentation required for the conduct of the activities;
 - facilitate, at the level of all services concerned, the steps required for the proper implementation of the project;
 - ensure that the competent services of the supervising Ministry fully exercise their responsibilities within the framework of the project;
 - see that the conditions required for the proper implementation of the project are fulfilled;
 - authorise Enabel and the Embassy of Belgium having jurisdiction in Ghana to visit the project during and after the implementation of the project.

- Concerning the financing of the project:
 - take the necessary measures to ensure that Enabel is fully involved in the preparation of the international invitation to bid which will be issued by the MMT of Ghana, and more particularly in defining the criteria that will be used for the award of the contract;
 - take the administrative and budgetary measures required to enable the implementation of the project and the proper conduct of its activities;
 - release regularly the yearly working budgets planned for the various structures supported by the project.

- Concerning the personnel assigned to the project:
 - take all necessary steps to ensure that the Ghanaian personnel assigned to the fulfilment of the project is, as far as possible, detailed to its duties in a permanent and exclusive manner;
 - take all necessary steps to guarantee the quality and professional qualifications required from the Ghanaian personnel employed within the framework of this project.

- Concerning the follow-up of the project:
 - take the institutional, administrative and budgetary measures required for the smooth running and maintaining in an operative state of the equipment, including the remuneration of the personnel assigned to the project, as well as the necessary operating and maintenance subsidies;

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- maintain the equipment purchased with Belgian financing to the benefit of the services tasked with the pursuit of the activities of the project;
- authorise the Embassy of Belgium having jurisdiction in Ghana to assess the project to conform with the above-mentioned measures.

The obligations of the Belgian Party, as described in this annex as well as in the text of the Agreement, are essential for the implementation of the objectives of the project. The Belgian Party shall take the institutional, administrative and budgetary measures required to comply with its obligations within the framework of this Agreement.

To this end, the Belgian Party shall designate Enabel:

- to follow-up of the preparation and the issuance of the invitation to bid. Enabel will also be tasked to represent the Belgian Party during the opening of the bids, to supervise the analysis of the bids and the ranking of contractors;
- to control and follow-up the implementation of the project and to assess the project as to its conformity with the specifications of the contracts.

2. Appointment and obligations of the Parties in charge of the implementation of the project

- The MMT shall work together with the Ministry of Transport for the preparation and the implementation of the project. The MMT shall prepare an international invitation to bid and issue it in accordance with the regulations of the Republic of Ghana about public contracts. This invitation to bid shall first be submitted for approval to Enabel which will have laid down jointly with the MMT the award criteria for the contract. The MMT shall appoint a project supervisor, who will supervise and exercise direct and permanent control on the implementation of the project in accordance with the supply contract for goods and services that will be concluded as a result of the tendering procedure. The MMT shall sign the bills "certified correct" and/or "for services rendered".
- The Ministry of Finance shall approve the expenses chargeable under the Belgian State loan. To this end, it shall add «agreed and accepted » on the bills submitted by the MMT for signature and send them for payment through the diplomatic channels to the Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation, which shall forward them to the International and European Financial Affairs Administration of the Treasury of the Federal Public Service Finance. The International and European Financial Affairs Administration shall forward the bills for payment to the National Bank of Belgium.
- The Belgian Party shall task Enabel with the monitoring of the preparation and the issuance of the invitation to bid. Enabel will also be tasked to represent the Belgian Party during the opening of the bids, to supervise the analysis of the bids and the ranking of contractors, to control and follow-up the implementation of the project and finally, to assess the project as to its conformity with the contract specifications.
- Enabel will be tasked to approve the bills before they are transmitted to the National Bank of Belgium by the International and European Financial Affairs Administration. 





3. Award of contracts

- For the award of the contract for the supply and delivery of buses for public transport and related services, the MMT shall organise an international invitation to bid following the eligibility criteria applied by the EU in the framework of the revised version of the ACP-EC partnership Agreement, the Cotonou Agreement, signed in Ouagadougou in 2010 (annex 4, articles 20 and 22).
- Enabel has been designated by the Belgian Party to control the smooth running of the tendering procedure. To this end, Enabel must be consulted on the award criteria, in particular the technical criteria, that will be used and receive a full copy of the tender documents.
- Within fifteen (15) calendar days of receipt, the International and European Financial Affairs Administration of the Treasury of the Federal Public Service Finance of Belgium shall approve the tender documents.
- The MMT and Enabel shall take part in the opening of tenders. The MMT shall examine and analyse the tenders and establish a shortlist of tenderers in the order of preference under the control and supervision of Enabel.
- Within thirty (30) calendar days of receipt, the International and European Financial Affairs Administration of the Treasury of the Federal Public Service Finance of Belgium shall approve the choice of the tenderer selected and the draft contract.

4. Purpose of the loan

The amount in EUR allocated to Ghana under Article 1 of the Agreement (hereinafter referred to as "amount in EUR") shall be used entirely and exclusively to pay persons and firms, supplies of capital goods or services related to the supply and delivery of buses for public transport in Ghana. The supplies must comply with the tender document used for the invitation to bid. The payments shall relate to supplies for which the import licence, when such document is needed, has been issued after the date of signature of the Agreement referred to above.

5. Check of payments due

As the authority in charge of supervising and controlling the implementation of the project, the MMT shall sign the bills "certified correct" and/or "for services rendered".

As the Party in charge of approving the expenses chargeable under the Belgian State loan, the Ministry of Finance of Ghana shall add "agreed and accepted" on the bills submitted by the MMT for signature.

After approval for payment, such documents shall be sent, through the diplomatic channels, to the Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation, which shall forward them to the International and European Financial Affairs Administration of the Treasury of the Federal Public Service Finance.



As the Party in charge of the supervision of the project, Enabel shall give its agreement to pay before the documents are transmitted for payment to the National Bank of Belgium by the International and European Financial Affairs Administration.

Such contracts, bills and other documents shall include following information:

- a) the date of delivery of the import licence, when this document is needed;
- b) the nature of the services provided, including the delivery and the installation of the equipment in conformity with the terms of the contract;
- c) the nature of the goods supplied and their reference in the contract;
- d) the origin of the goods.

The documents for transport and insurance of the goods shall also be provided.

The Federal Public Service Finance of Belgium shall be entitled to ask the MMT any additional information in order to check if the payments due under the contracts, bills and other above-mentioned documents comply with the objectives of the Agreement.

6. Financial intervention of agents

In accordance with Article 6 of the Agreement, the technical measures required for the financial implementation of its provisions shall be taken, on the initiative of the National Bank of Belgium, through mutual agreement between the latter and the Ministry of Finance of Ghana.

As soon as such technical measures have been taken, the Ministry of Finance of Ghana can send to the National Bank of Belgium one or more irrevocable payment orders allowing for the amount in EUR to be used for the payments provided for in the above-mentioned contracts.

The execution of such payment orders shall be subject to the formal approval of the Federal Public Service Finance.

7. Potential realisation of the bank guarantee

Should the amount in EUR be used, in full or in part, within the framework of a commercial and financial contract, as advance payment, subject to a bank guarantee, the Government of Ghana shall ensure that the commercial contract stipulates that the realisation, for any reason whatsoever, of said bank guarantee be made as a payment in favour of IBAN BE43 6792 0040 2101 of the Federal Public Service Finance of Belgium, with bpost (BIC: PCHQBEBB), with following communication "Ghana- refund of guarantee".

COPIE CERTIFIÉE CONFORME À L'ORIGINAL
MET HET ORIGINEL BEMERKEND VERLAAND AFSCRIFT
30 JUN 2021
Bruxelles,
Brussel,
Le Chef du Service des Traités
du Ministère des Affaires Étrangères de Belgique
Het Hoofd van de Dienst Verdragen
van het Ministerie van Buitenlandse Zaken van België
[Handwritten Signature]

