

AGREEMENT STATE - FMO 2023

between

THE STATE OF THE NETHERLANDS
as the State

and

NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V.
as FMO

1 July 2023

Contents

1	INTERPRETATION	2
2	FMO POLICY	2
3	GENERAL RISK RESERVE ACCOUNT	3
4	THE MAINTENANCE OBLIGATION OF THE STATE	4
5	GUARANTEE - THE FINANCIAL SECURITY OBLIGATION OF THE STATE.....	5
6	VERIFICATION PROCEDURE	6
7	DEBT CEILING AND PREMIUM	6
8	INFORMATION REQUIREMENTS	7
9	MISCELLANEOUS PROVISIONS	9
10	FINAL PROVISIONS.....	10
11	APPLICABLE LAW AND COMPETENT COURT	12
	ANNEX 1. DEFINITION OF TERMS.....	15
	ANNEX 2. CRITERIA MEMORANDUM	17
1	Introduction	17
2	Policy principles.....	17
3	International Corporate Social Responsibility (ICSR).....	18
4	Bribery, Corruption, Money Laundering and Counter-Terrorism.....	19
5	Country selection.....	19
6	Sector selection	20
7	Other criteria	20
8	Final provision	20
	ANNEX 3. VERIFICATION PROCEDURE	21

AGREEMENT STATE-FMO 2023

THIS AGREEMENT (the **Agreement**) is dated 1 July 2023 and made between:

THE STATE OF THE NETHERLANDS, having its seat in The Hague, for the purposes of this Agreement represented by the Minister of Finance and the Minister for Foreign Trade and Development Cooperation (the **State**); and

NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V., a public limited company incorporated under Dutch law, having its registered office in The Hague registered with the Chamber of Commerce under number 27078545 (**FMO**),

hereinafter jointly referred to as the **Parties** and each of them a **Party**.

WHEREAS

- A. FMO plays an important role for the State in Dutch government policy on development cooperation through its funding and investments, both via its own balance sheet and by programmes and partnerships conducted by FMO. It is therefore the State's intention to demonstrate to FMO's partners and counterparties that it will ensure FMO's continuity in accordance with the Agreement.
- B. FMO must have adequate financial instruments at its disposal to fulfil its mandate (as set out in the Articles of Association, the Criteria Memorandum and this Agreement).
- C. FMO needs stable access to capital market funding to enable it to carry out its mandate in accordance with the Articles of Association, the Criteria Memorandum and this Agreement, and to make as much development impact as possible. In order to facilitate this stable access, the Parties aim to ensure that FMO can be assigned the same credit ratings and regulatory classifications (including risk weighting and HQLA) as the State by creating a similar risk profile through a Maintenance Obligation (contained in Article 4 of this Agreement) and an explicit guarantee from the State to FMO (contained in Article 5 of this Agreement).
- D. In the years 1991 up to and including 2005, the State made budgetary funds available to FMO in the amount of EUR 657,981,000, which is included as the Development Fund in its balance sheet as a component of FMO's equity;
- E. The State (through the Ministry of Finance, where the State's shareholding is allocated) intends to retain its majority participation in FMO's share capital for as long as the State is of the opinion that without that majority shareholding, FMO's operation in the context of Dutch government policy on development cooperation would be substantially impaired.
- F. FMO is currently supervised by the De Nederlandsche Bank N.V. by virtue of the banking licence granted to FMO under the relevant articles of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*).

- G. In the past, the State and FMO entered into an agreement regarding the State's support and facilitation of FMO's own funding, dated 16 November 1998 and amended on 9 October 2009. In connection with the above recitals, Parties wish to set out the terms and provisions currently in force regarding the State's support and facilitation of FMO's own funding in this Agreement, replacing the agreement of 16 November 1998 (and amended as of 9 October 2009).

HEREBY AGREE AS FOLLOWS:

1 INTERPRETATION

1.1 Definitions

Capitalised terms and expressions used in this Agreement have the meanings given to them in Annex 1 (*Definitions*).

1.2 Interpretation

1.2.1 Unless the context indicates otherwise, words indicating the singular also include the plural and vice versa.

1.2.2 Words such "including" and "include" are used to indicate that the issues or matters stated are a non-exhaustive list of all the issues or matters referred to.

1.2.3 The headings in this Agreement only have been included for clarity and reference and do not serve for the interpretation of this Agreement.

1.2.4 If this Agreement is translated into a language other than Dutch and a conflict arises between the original Dutch text of this Agreement and the translation of this Agreement, the Dutch text will prevail.

1.3 Annexes

All Annexes referred to in this Agreement form an integral and inseparable part of this Agreement.

2 FMO POLICY

2.1 Objective

2.1.1 FMO's objective is to contribute to the advancement of productive enterprises in developing countries to the benefit of their economic and social development by carrying out activities in line with the intentions of the governments of the relevant countries and with Dutch government policy on development cooperation.

2.1.2 In order to enable FMO to carry out its business in accordance with its objective as set out in Article 2.1.1,

the State shall provide FMO with funds as provided below in Article 4 (*The Maintenance Obligation of the State*) and Article 5 (*Guarantee - The Financial Security Obligation of the State*).

2.2 Criteria Memorandum

- 2.2.1 FMO undertakes towards the State to test the funding it proposes to provide against the criteria (the **Criteria**) established and set out in the criteria memorandum (the **Criteria Memorandum**). FMO shall make all reasonable efforts to ensure that all funding it provides complies with the Criteria Note at the time of the investment decision.
- 2.2.2 If FMO makes a funding decision, the funding will be deemed to have satisfied the Criteria.

3 GENERAL RISK RESERVE ACCOUNT

3.1.1 Each year, FMO shall allocate from the net income shown in FMO's annual accounts prepared for the relevant year – which, according to standards considered to be acceptable in society and in accordance with IFRS as adopted by the EU have been approved in respect of the relevant year and adopted by the competent corporate body – an amount in accordance with Articles 3.1.2 or 3.1.3. In determining the amount to be allocated, the competent corporate body shall use the following calculation as a guideline:

- a. FMO's net result for the financial year to which these annual accounts relate, as shown by the annual accounts to be adopted;

multiplied by

- b. the fraction of which
- i. the numerator is the sum of (i) the Development Fund and (ii) the Contractual Reserve as shown in FMO's most recently adopted annual accounts;

and

 - ii. the denominator is FMO's equity, as shown in FMO's most recently adopted annual accounts.

3.1.2 If the net result for the relevant financial year is positive, FMO shall add the amount determined by the competent corporate body in accordance with Article 3.1.1 to the Contractual Reserve.

3.1.3 If the net result for the relevant financial year is negative, FMO shall first charge the loss, in the amount determined by the competent corporate body in accordance with Article 3.1.1, to the Contractual Reserve. FMO shall charge the remaining negative net result to the Other Reserves.

3.1.4 The sum of Share Premium Reserve B and the Contractual Reserve is a fund named General Risk Reserve

Fund (**RAR Fund**).

4 THE MAINTENANCE OBLIGATION OF THE STATE

- 4.1.1 In accordance with this Agreement, the State shall maintain FMO as a financial undertaking as referred to in Article 1:1 of the Dutch Financial Supervision Act. Maintenance will be understood to mean that, at FMO's written request, the State undertakes to make the financial resources described in Article 4.1.2 available to FMO if it is reasonably foreseeable that FMO will be assessed Failing or Likely to Fail by the Supervisor (the **Maintenance Obligation**).
- 4.1.2 The financial resources provided by the State under Article 4.1.1 to FMO upon written request will be at least sufficient for FMO to meet the Prudential Requirements.
- 4.1.3 If FMO makes a request under the Maintenance Obligation, the State shall consult with FMO on the manner in which the support will be provided and the reasonable conditions applicable to the support before the support is made available. The support to be provided by the State to FMO will under no circumstances be for no consideration. The State and FMO shall not let these consultations in any way prevent the support from being provided in a timely manner. Timely, as referred to in this Article 4, will be understood to mean that in all cases the financial resources will be made available to FMO before FMO is assessed Failing or Likely to Fail by the Supervisor.
- 4.1.4 If (i) the State has not suspended its obligations under this Article 4 pursuant to Article 9.1, (ii) FMO has submitted a request pursuant to Article 4.1.1 and (iii) the State has discussed with FMO the manner of support and any reasonable conditions applicable thereto pursuant to Article 4.1.3, the resulting payment obligation of the State to FMO will be a direct, unconditional and irrevocable obligation.
- 4.1.5 In the event that FMO ceases to be supervised as a financial undertaking as referred to in Article 1:1 of the Dutch Financial Supervision Act, Article 4.1.1 will lapse and Article 4.1.5 et seq. will apply. Losses on FMO's operations will first be charged to the RAR Fund. To the extent that such losses have not been covered by compensation and/or insurance benefits received, the State will be obliged to supplement the losses insofar as:
- a. The amount of these losses exceeds the amount of the RAR Fund at the end of the month in which these losses were incurred; and
 - b. The inadequacy of the cover for general value adjustments under the RAR Fund is due to abnormal operating risks, such as unforeseen political difficulties or transfer problems with particular countries or the collapse of the world economy or a regional economy.
- 4.1.6 The Parties shall consult with each other on the determination of the amount of the losses referred to in Article 4.1.5. This Article 4.1.6 will in no way interfere with the timely provision of the support to be granted, as referred to in Article 4.1.5.

4.1.7 If the circumstances described in Article 4.1.5 occur and FMO requests the State to fulfil its obligation referred to in Article 4.1.5, such request will give rise to a claim of FMO towards the State recognised by the State on the first business day of the first month following the day on which the request is made. The request must be made in writing.

5 GUARANTEE - THE FINANCIAL SECURITY OBLIGATION OF THE STATE

5.1.1 If FMO so requests in accordance with Article 5.1.2, the State shall prevent FMO from failing to meet the following exhaustively listed obligations of FMO in a timely manner (the **Obligations**):

- a. debt, loans and funds raised on the capital market;
- b. short-term money-market borrowings with a maturity of up to two years;
- c. swap agreements with exchange of principal sum and interest payments;
- d. swap agreements without exchange of principal sum with interest payments;
- e. foreign exchange forward contracts and Forward Rate Agreements (FRAs);
- f. option and future contracts;
- g. securities financing transactions;
- h. other financial instruments that FMO includes in its range of instruments to conduct adequate balance sheet management;
- i. combinations of the products referred to above under 5.1.1a to 5.1.1h inclusive;
- j. guarantees and other committed funds provided by FMO to third parties in the fulfilment of its mandate; and
- k. maintaining an adequate organization comprising operational costs, including employee costs, expenditure on buildings, administrative costs and similar expenditure.

5.1.2 If FMO anticipates that it cannot meet any payment obligation due under the Obligations described in Article 5.1.1 from its own financial resources, FMO may submit a properly substantiated written request to the State to make available to FMO an amount equal to (the portion of) such payment obligation due under the Obligations for the purpose of enabling FMO to meet such payment obligation due under the Obligations (the **Financial Security Obligation**).

5.1.3 The State shall transfer the amount to be provided to FMO under the Financial Security Obligation and as included in the written request in accordance with Article 5.1.2 to a bank account to be specified by FMO on a date to be agreed that will enable FMO to meet the Obligations in a timely manner.

5.1.4 FMO undertakes towards the State to use the amount that the State provides to FMO in accordance with this Article 5 solely to meet the Obligations that FMO cannot meet from its own financial resources.

5.1.5 If FMO makes a request under the Financial Security Obligation, the State shall, before the support is made available, consult with FMO on the manner in which the support will be provided and the reasonable conditions applicable to the support. In accordance with Article 5.1.3, the State and FMO shall not let these consultations in any way hinder the timely provision of the support.

- 5.1.6 If FMO has submitted a request pursuant to Articles 5.1.1 and 5.1.2 and the State has consulted with FMO on the manner of support and any reasonable conditions attached thereto pursuant to Article 5.1.5, the resulting payment obligation of the State to FMO will be a direct, unconditional and irrevocable obligation.

6 VERIFICATION PROCEDURE

- 6.1.1 Following payment under the Maintenance Obligation and/or the Financial Security Obligation by the State in accordance with Article 4 or Article 5, respectively, the State may have the amount of support granted verified (*ex post*) in accordance with the verification procedure set out in Annex 3 (*VERIFICATION PROCEDURE*).

7 DEBT CEILING AND PREMIUM

7.1 Debt Ceiling

- 7.1.1 The maximum aggregate amount of outstanding Debts that FMO may incur from time to time (the **Debt Ceiling**) will be calculated as follows:

- a. the basic amount, comprising all outstanding Debts and FMO's guarantees and other committed resources referred to under Article 5.1.1(j) on 31 December of the year preceding the year in which the Debt Ceiling is determined;

multiplied by

- b. a factor, denominated as a percentage and to be set by the State and FMO by mutual agreement, which provides for the applicable annual growth forecast of FMO over a period of 11 (eleven) years counting from the year preceding the year in which the Debt Ceiling is determined;

multiplied by

- c. an appropriate factor (denominated as a percentage) that serves as a provision for offsetting any currency fluctuations (foreign exchange buffer).

- 7.1.2 The Parties hereby agree that the maximum aggregate amount of FMO's outstanding Debts from time to time will never exceed the amount of the Debt Ceiling.

- 7.1.3 The Debt Ceiling will be determined periodically in accordance with this Article 7.1 with the aim of providing FMO with sufficient capacity under this Agreement to incur Debts for the subsequent 10 (ten) years.

- 7.1.4 The State and FMO shall recalculate the Debt Ceiling every five (5) years, with the first recalculation taking place in 2028. The Ministry of Finance shall initiate and subsequently carry out this recalculation in cooperation with the Ministry of Foreign Affairs and FMO. Part of the recalculation shall be to ensure that

FMO has capacity for growth under the new Debt Ceiling for the next 10 (ten) years, based on (i) realistic growth forecasts, (ii) FMO's long-term strategy, (iii) the expected economic growth of FMO's client countries and (iv) the development objectives of the Ministry of Foreign Affairs. In doing so, the State shall maintain a positive basic attitude. During the review of the periodic recalculation of the Debt Ceiling, FMO shall submit a substantiated proposal for the amendment of the Debt Ceiling to the State.

7.1.5 FMO shall publish on its website the applicable adopted Debt Ceiling as soon as possible after its adoption by the Parties.

7.1.6 The Debt Ceiling will be calculated in joint consultation in the currency most appropriate to FMO's balance sheet management.

7.2 Premium

7.2.1 FMO shall pay an annual premium to the State in advance, as compensation for the State's risk under the Maintenance Obligation and the Financial Security Obligation (the **Premium Amount**).

7.2.2 The Premium Amount will be paid by FMO to the State in euros. The level of the Premium Amount will be calculated and determined in accordance with the method for calculating the Premium Amount as further determined by the Parties. The State and FMO shall update the Premium Amount or have the Premium Amount updated based on the existing method each time after a lapse of 5 (five) years, on the understanding that the first update will take place in 2028. The Ministry of Finance shall initiate and subsequently carry out this update in cooperation with the Ministry of Foreign Affairs and FMO.

7.2.3 FMO shall pay the Premium Amount to the State annually, in the first quarter, by transferring the Premium Amount to a bank account to be specified by the State.

8 INFORMATION REQUIREMENTS

8.1.1 In connection with the State's obligations under this Agreement, FMO shall provide the Ministries of Finance and Foreign Affairs in a timely manner with sufficient information regarding FMO to enable the State to adequately monitor FMO's policies. The specific information and reporting related to this will be mutually agreed between the State and FMO. The list of reports to be provided may be amended with consent of the Parties in the regular policy dialogue described in Article 9.4.

8.1.2 FMO shall provide the Minister of Finance as soon as possible with any requested information that the Minister of Finance deems reasonably necessary to manage his obligations under this Agreement and to properly exercise the role of financial security provider to FMO.

8.1.3 Furthermore, FMO shall consult the State if it intends to adopt a long-term strategy (or any changes thereto). The procedure regarding this will be as follows:

a. At least 1 (one) month before the FMO long-term strategy document prepared by the Management

Board or a proposal to amend the parts thereof referred to in Article 10(7)(a) to (c) inclusive of the Articles of Association is submitted for approval to the Supervisory Board, the Management Board shall send the long-term strategy document or the aforementioned proposed amendments to the State for consultation.

- b. Whether and in which way comments made by the State as a result of the consultation referred to in this Article 8.1.3 lead to changes in what is submitted to the Supervisory Board for approval will be at the Management Board's sole discretion. Simultaneously with the relevant request for approval, the Management Board shall communicate to the Supervisory Board the State's comments that seek to amend the content to be submitted to the Supervisory Board for approval but that have not resulted in an amendment of that content; and
- c. An approved and adopted long-term strategy document by the relevant competent FMO bodies or approved and adopted amendments in accordance with Article 8.1.3a, respectively, will be sent to the State as soon as reasonably possible after their adoption.

8.1.4 The State will be informed of the proposed decision of the Supervisory Board regarding the remuneration of a Management Board member to be appointed in a timely manner such that the State is able give its non-binding opinion on the matter before the decision-making thereto.

8.1.5 In its annual report, FMO shall include at least the following:

- a. a qualitative and quantitative overview of added development value based on FMO's development goals;
- b. an overview of countries in which FMO invests;
- c. an overview of FMO's income by region and FMO's income category;
- d. an overview showing the breakdown of FMO's portfolio by sector;
- e. an analysis of FMO's contribution to private funding mobilisation;
- f. a reflection on FMO's additionality; and
- g. a reflection on the implementation of the sustainability policy, including FMO's climate-related efforts and ambitions.

8.1.6 The State is permitted to engage its own auditors and other consultants to review the reports and information provided under this Agreement and to provide such consultants with the reports, information and data necessary to form their opinion.

8.1.7 If the State has justifiable reasons to question the accuracy of the financial reports sent to the State in accordance with this Article 8, the State may arrange for an investigation to be carried out by the Dutch Governmental Audit Department (*Auditdienst Rijk*) or an external auditor into the financial relationship between FMO and the State and the audit of the financial reports sent by FMO to the State. For the purpose of this audit, FMO must grant access to its offices to the persons of the Governmental Audit Department or an external auditor appointed by the State to that end, to allow inspection of its financial records and also to cooperate in any other way as requested.

- 8.1.8 As soon as reasonably possible, FMO shall inform the State of any circumstances which, in FMO's opinion, will or may:
- a. result in an actual or anticipated material adverse change in the financial position, prospects, assets or operations of FMO and its subsidiaries; and/or
 - b. adversely affect FMO's ability to meet its obligations under this Agreement or any material contract to which it is a party.
- 8.1.9 If, in accordance with Article 9(1)(h) of the Articles of Association, the Management Board requests the Supervisory Board's approval of a Management Board resolution to declare FMO bankrupt or to apply for a suspension of payments, the State will be notified simultaneously with that request.

9 MISCELLANEOUS PROVISIONS

9.1 Suspension of obligations

- 9.1.1 If the State has reasonable cause to suppose that FMO's financial situation is deteriorating to such an extent that FMO may reasonably be expected to invoke Article 4 (*The Maintenance Obligation of the State*) and/or Article 5 (*Guarantee - The Financial Security Obligation of the State*) of this Agreement, the Minister of Finance may issue reasonable instructions to FMO concerning the general direction of the financial and economic policy to be pursued by FMO.
- 9.1.2 If FMO fails to comply with these instructions, the State will be entitled to suspend its obligations under Article 4 (*The Maintenance Obligation of the State*) of this Agreement, whereas Article 5 (*Guarantee - the Financial Security Obligation of the State*) will remain in force.

9.2 Evaluation of the Agreement

The State and FMO shall evaluate this Agreement or cause it to be evaluated after the end of each period of 5 (five) years, on the understanding that the first review will take place in 2028. The State and FMO shall consider any proposals to amend parts of this Agreement resulting from such evaluations without having an obligation to consent to such proposals.

9.3 Maturing of claims of the State

- 9.3.1 Claims of the State on FMO under this Agreement shall automatically become due and payable immediately in the following cases:
- a. in the event of bankruptcy of FMO or if FMO has presented to a court a petition for a moratorium of payments;

b. in the event of this Agreement being rescinded by judgement of a court of law.

9.3.2 Such amounts shall also become due and payable immediately if FMO fails to comply with one or more provisions of this Agreement after having been served notice of default by letter and failing to rectify the omission within 30 (thirty) days of the date of such notice of default.

9.4 Policy consultation

The State and FMO will enable policy consultation by or on behalf of the Minister of Finance and the Minister for Foreign Trade and Development Cooperation on the one hand and FMO on the other at least 2 (two) times per calendar year, in which consultations the policy pursued and to be pursued by FMO will be discussed and the Criteria may if necessary be revised by the State and FMO.

10 FINAL PROVISIONS

10.1 Operation of the Agreement

10.1.1 This Agreement has been entered into for an indefinite period but may be terminated by either Party as of 1 January of any year, for the first time as of 1 January 2024 and subject to a notice period of 12 (twelve) years.

10.1.2 In the event of termination of this Agreement as referred to in Article 10.1.1, FMO undertakes to continue to apply the budgetary resources recognised by FMO on its balance sheet under the designation Development Fund and the accrued RAR Fund, as well as the Share Premium Reserve A, in accordance with FMO's objectives applicable at the time of termination, even after the expiry of the notice period referred to in Article 10.1.1, unless the State approves another use. FMO also undertakes to continue to accrue the RAR Fund in accordance with the provisions of Article 3.1.1 until the State and FMO agree otherwise.

10.2 No third-party clause

Only the Parties (or their permitted legal successors) may invoke the terms of this Agreement. This Agreement explicitly contains no third-party clause. Third parties may not become a party to this Agreement.

10.3 Invalid provisions

If any provision of this Agreement is invalid, voidable or unenforceable, the remainder of the provisions of this Agreement will remain in force insofar as, in view of the scope and the purpose of this Agreement, that remainder is not inextricably connected with the invalid, voidable or unenforceable provision. The Parties shall do their utmost to reach agreement about a new provision that deviates as little as possible from the invalid, voidable or unenforceable provision in view of the scope and the purpose of the Agreement.

10.4 Further actions

In the event that, at any time after the date of this Agreement, any further action is necessary or desirable for the purpose of implementing this Agreement, each Party shall, at its own expense, sign all documents and do all things reasonably required of it.

10.5 Amendment

Amendments to this Agreement have no legal force unless entered into in writing and signed by the Parties.

10.6 Entire agreement

This Agreement comprises the entire agreement between the Parties with respect to the subject matter and therefore supersedes all oral, written or other previous agreements and understandings between the Parties with respect to the subject matter.

10.7 Costs

Unless otherwise provided in this Agreement, each Party shall bear its own costs in connection with the preparation, negotiation and signing of this Agreement.

10.8 No tacit waiver, no forfeiture of rights

10.8.1 Waiver of any right under this Agreement may be made only by a written notice to that effect.

10.8.2 The failure of a Party to exercise any right accruing to it under or in connection with this Agreement (which includes the granting by a Party of an extension to another Party to fulfil its obligations under or in connection with this Agreement) will not give rise to any forfeiture of rights.

10.9 Notification

Articles 5.4 and 5.5 of the Articles of Association on convocation and notice to shareholders apply mutatis mutandis to notifications to the Parties under this Agreement.

10.10 Transfer or Encumbrance

FMO may not assign this Agreement (*assignment of contract*) or transfer or encumber any of its rights under this Agreement by a right of pledge, mortgage or usufruct, or by any other encumbrance or attachment, without the State's prior written consent.

10.11 Notices

10.11.1 Any request, notice or other communication given pursuant to this Agreement must be in writing. The terms

“written” or “in writing” will also be understood to mean by electronic means.

10.11.2 Each Party's address and contact details (and, where applicable, the department or officer that communications should be addressed to) for all communications to be made under or in connection with this Agreement will be:

a. for the State:

Department: Ministry of Finance
Attn.: Deputy director of the Financing directorate, head of State-owned participations department
Address: Korte Voorhout 7, 2511 CW The Hague
With a copy to: Director of the Financing directorate

and

Department: Ministry of Foreign Affairs
Attn.: Deputy director for Sustainable Economic Development
Address: Rijnstraat 8, 2515 XP The Hague
With a copy to: Director of Sustainable Economic Development

b. for FMO:

Department: Management Board
Address: Anna van Saksenlaan 71, 2593 HW The Hague
With a copy to: Secretary's office Management Board

10.11.3 the replacement (e-mail) address (or department or officer) that the Party communicates to the other Party on a term of at least five Business Days.

11 APPLICABLE LAW AND COMPETENT COURT

11.1.1 This Agreement and its contractual obligations are governed by Dutch law.

11.1.2 All disputes that may arise from or in connection with this Agreement (including any dispute concerning the existence, validity or termination of this Agreement) or from further agreements resulting from this Agreement will be settled in accordance with the arbitration rules of the Netherlands Arbitration Institute (the **NAI**).

a. The arbitration proceedings and all documents will be submitted to and by the arbitrators in Dutch.

b. The arbitration tribunal will comprise 3 (three) arbitrators. The State and FMO will each appoint 1 (one) arbitrator. The NAI will appoint the third arbitrator, who will also be the president of the

arbitration tribunal, and who will be a lawyer and will have a Dutch university law degree or will have been admitted to the Netherlands Bar Association (*Nederlandse orde van advocaten*).

- c. The place of arbitration will be Amsterdam, the Netherlands.
- d. The arbitration tribunal will decide according to the rules of law.
- e. The NAI will not be allowed to publish the decision of the arbitration tribunal.
- f. The Parties will be free to seek interim relief from a competent court in summary proceedings (*interim relief judge*), instead of or in addition to arbitration.

Signed in triplicate on the date specified in the Agreement,

De Staat der Nederlanden
De minister van Financiën

De minister voor Buitenlandse Handel en
Ontwikkelingssamenwerking

S.A.M. Kaag

E.N.A.J. Schreinemacher

**Nederlandse Financierings-Maatschappij voor
Ontwikkelingslanden N.V.**

M.J. Jongeneel
CEO

F.P.C.G. Vossen
CRO

ANNEX 1. DEFINITION OF TERMS

Capitalised terms and expressions used in this Agreement have the following meaning.

Annex	an annex to this Agreement
Articles of Association	the articles of association of FMO, as they apply from time to time
Business Day	a day on which, in general, banks are open in the Netherlands
Contractual Reserve	contractual reserve on FMO's balance sheet, accrued from FMO's (historical) annual operating results
Criteria	has the meaning given to them in Article 2.2, as in force at any time
Criteria Memorandum	has the meaning given to it in Article 2.2, as in force at any time
Debt Ceiling	has the meaning given to it in Article 7.1.1
Debts	FMO's Obligations listed in Articles 5.1.1a and 5.1.1b
Development Fund	the budgetary resources amounting to EUR 657,981,000 which the State made available to FMO from the budget for foreign trade and development cooperation between 1991 and 2005 and which constitute a separate part of FMO's equity
Failing or Likely To Fail	has the meaning given to it in Article 18(1)(a) of Regulation (EU) 806/2014, or if that criterion is no longer used by the Supervisor, the criterion that has superseded it and is of similar tenor.
Final Amount	has the meaning given to it in Annex 3 (Verification Procedure)
Financial Security Obligation	has the meaning given to it in Article 5.1.2
FMO	Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V.
HQLA	High-quality liquid assets, as described in the Basel Committee on Banking Supervision standards
IFRS	International Financial Reporting Standards
Independent Expert	has the meaning given to it in Annex 3 (Verification Procedure)
Maintenance Obligation	has the meaning given to it in Article 4.1.1
Management Board	the management board of FMO
NAI	the Netherlands Arbitration Institute
Obligations	has the meaning given to them in Article 5.1.1
Other Reserves	the sum of the other reserves on FMO's balance sheet that are not part of the Contractual Reserve, the Share Premium Reserve and the IFRS Reserves
Parties	has the meaning given to them in the preamble of this Agreement

Premium Amount	has the meaning given to them in Article 7.2.1
Prudential Requirements	the financial supervisory requirements with which FMO is required to comply from time to time, as contained in the Supervisor's 'SREP Decision Letter' current at that time, or if the terms 'Prudential requirements' or 'SREP Decision Letter' are no longer used by the Supervisor, the terms that have superseded them and are of a similar purpose
RAR Fund	general risk reserve account, a fund made up of various FMO balance sheet items and equal to the sum of Premium Reserve B and the Contractual Reserve
Share Premium Reserve	the reserve designated as 'share premium reserve' on FMO's balance sheet, including Share Premium Reserve A and Share Premium Reserve B
Share Premium Reserve A	the reserve referred to as 'share premium reserve' on FMO's balance sheet, consisting of Share Premium Reserve A amounting to EUR 8,061,000
Share Premium Reserve B	the reserve referred to as 'share premium reserve' on FMO's balance sheet, consisting of Share Premium Reserve B in the amount of EUR 21,211,000
State	the State of the Netherlands, represented by the Minister of Finance and the Minister for Foreign Trade and Development Cooperation
Supervisor	De Nederlandsche Bank N.V., or if the European Central Bank has assumed the parts of the supervisory responsibility over FMO relevant to this Agreement as mentioned in recital F of this Agreement, the European Central Bank
Supervisory Board	the supervisory board of FMO
Verification Procedure	has the meaning given to it in Annex 3 (Verification Procedure)

ANNEX 2. CRITERIA MEMORANDUM

1 INTRODUCTION

The starting point for FMO's financing policy is the statutory objective that is therefore quoted here:

“The aim of the company is to contribute to the development of business in developing countries in the interest of the economic and social progress of these countries, this in accordance with the intention of the governments of the respective countries and with Dutch government policy with regard to development cooperation.”

FMO, the Ministry of Finance and the Ministry of Foreign Affairs propose a number of policy principles and criteria that, after approval by the Supervisory Board, serve as a guideline in the identification, choice and implementation of FMO's services. These policy principles and criteria respond to the current policy with regard to the Dutch development cooperation. Adjustment of these criteria to changing circumstances takes place among others on the basis of periodic (semi-annual) policy meetings between the ministries of Finance and Foreign Affairs and FMO. These policy principles and criteria are included below under points 2 to 8.

2 POLICY PRINCIPLES

The operational policy is based on the following principles:

- a. Development value: FMO's raison d'être is the presence of market failure as a result of which commercial financing is not or not sufficiently available or offered on workable conditions in the market. FMO is committed to mitigating this market failure and to contributing to a solution to this failure.

FMO optimizes its contribution to the development of business in developing countries, thereby maximizing its contribution to the Sustainable Development Goals (SDGs) and the goals of the Climate Convention.¹ FMO optimizes this contribution under the condition of a sufficient financial return in line with the agreements on this with the Ministry of Finance ('standard return').

FMO will indicate in its long-term strategy how it distinguishes itself in a positive way from other development finance institutions through being ambitious and forward looking in investment areas and disciplines. FMO's distinctive performance can be found in the field of development value, international corporate social responsibility, value creation for customers, risk appetite, mobilization or sector choice.

- b. Mobilization: FMO is committed to attracting as much additional private sector funding as possible in order to maximize its development value. FMO also deploys its expertise to enhance its development value with public funds.
- c. Additionality: FMO prevents crowding out private parties. FMO offers financial services to the extent that the commercial market does not or does not sufficiently provide them, or which are only offered by the commercial market on terms that do not fit in a solid business model.² In addition, FMO may in

¹ At the date of signature, “the Climate Agreement” refers to the “Paris Agreement” of December 12, 2015, which concerns an operationalization of the UN Framework Convention on Climate Change. In the future, this passage may relate to subsequent multilateral climate treaties.

² For the elaboration of the considerations surrounding additionality, see the document “Multilateral Development Banks' harmonized framework for additionality in private sector operations”, Sections 4 and 5 in particular.

exceptional cases demonstrate its additionality through its contributions to higher environmental, social and governance (“ESG”) standards that are not required in the market, thereby achieving a transformation effect.

Concessional resources (such as the funds that FMO manages on behalf of the Ministry of Foreign Affairs) are only used to create additional development value and are not used to gain an advantage over other financiers. Through its additionality, FMO contributes to sustainable (local) market development without competing with commercial financing.

- d. Supervision: FMO is a supervised financial institution and complies with international standards and national legislation in the field of banking supervision.
- e. Good governance: FMO applies the principles of good governance within all areas business operations

In giving substance to these principles, FMO will adhere to the relevant international standards/ best practices.

3 INTERNATIONAL CORPORATE SOCIAL RESPONSIBILITY (ICSR).

FMO contributes to the global impact agenda. FMO's vision on impact is in line with the policy principles as described in section 2.

With regard to its services and products, FMO endorses and acts in line with internationally accepted conventions, principles and standards for impact and risk management regarding environment, society and governance (“ESG”).³ This is included in FMO's sustainability policy and FMO's responsible investment statement.⁴ FMO's operational ESG standards are the IFC Performance standards; FMO's (ESG) risk management policy is in line with the OECD guidelines for multinational corporations and the UN Guiding Principles on Business and Human Rights. FMO expects from, and works with, its clients to identify, assess and mitigate ESG risks and its negative impacts.

In general, this comes down to:

- Exclusion from financing specific activities as described in the list of exclusions;
- Assessment of the financing portfolio and underlying financing for the contribution to FMO's impact ambitions and objectives regarding compliance with international accepted ESG standards;
- Assessment of the financing against Dutch and European anti-abuse legislation, with the view to avoiding tax avoidance/evasion among (potential) customers;
- Assessment of funding against relevant standards in the field of informed consultation and participation, broad community support and free, prior and informed consent.⁵ Inclusion of clauses in the financing contracts that determine impact and ESG goals and reporting requirements and that make it possible, after weighing of risks, to terminate a financing relationship if these goals are not met; and
- Monitoring compliance with the above points during the term of the financing.

FMO periodically assesses whether a revision of FMO's sustainability policy is necessary. With each substantial policy review and development of new policy, the ministries of Foreign Affairs and Finance are

³ Environmental, Social and Governance

⁴ See FMO's Sustainability Policy Universe for a list of all internationally accepted conventions, principles and standards that FMO subscribes to. FMO's exclusion list is also included in FMO's sustainability policy.

⁵ Informed Consultation and Participation (as stated in the IFC performance standards), Broad Community Support (as stated in the IFC performance standards) and Free, Prior and Informed Consent (as stated in the OECD Due diligence guideline for corporate social responsibility).

consulted. Whether and to what extent comments made by the State lead to changes is at the discretion of the management of FMO with further details explained to the State why certain comments did not lead to amendments. In addition, FMO informs the Ministries of Foreign Affairs and Finance the moment that FMO is aware of (suspected) serious violations of the sustainability policy by a customer. FMO also informs the ministries of Finance and Foreign Affairs on incidents, including the action the organization will take thereon. With regard to the ministry of Foreign Affairs, FMO reports in line with the reporting obligation imposed by the ministry to all partner organizations with regard to discrimination, sexual and non-sexual harassment, abuse, exploitation and use of violence.

4 BRIBERY, CORRUPTION, MONEY LAUNDERING AND COUNTER-TERRORISM

FMO complies with international regulations⁶ and Dutch legislation to prevent corruption, bribery, money laundering and counter-terrorism. To prevent bribery and corruption, FMO's employees, customers, and other counterparties should - in line with Dutch legislation and regulations - comply with FMO's policy on "Anti-Bribery & Corruption". In accordance with legislation and regulations, FMO is committed to prevent anti- money laundering, financing terrorist activities and violations of sanctions.

5 COUNTRY SELECTION

Developing countries are defined for this purpose as the countries that are included by the World Bank in at least one of the "World Development Reports" from the past four years in the categories "low-income economies", "lower-middle income economies" and "upper-middle income economies" or that actually belong to these at the time of the financing approval, as well as countries or territories that have been or will be explicitly designated by the Dutch government for this purpose.

If one of the countries as defined above cannot withstand the test of criticism, from the point of view of the Dutch government, the Ministry of Foreign Affairs will inform FMO of this in writing and FMO will refrain from doing business in that country.⁷ FMO will phase out existing investments as far as possible.

In addition, FMO uses the following principles:

- a. no new financing that conflict with the sanction regimes relevant to FMO, including those of the United Nations or the European Union. FMO consults where necessary the Ministry of Foreign Affairs, among others because of political sensitivities and the interpretation of sanction regimes;
- b. During the year, FMO asks where necessary for advice for investments in countries that are in war/armed conflict with another country, due to political sensitivities. Further consideration can be given to this at the Quarterly meeting between the Ministry of Foreign Affairs, the Ministry Finance and FMO;
- c. Striving to realize approximately 70% of the total value of loans in the so-called "low-income economies" and "lower middle-income economies". For this percentage, the World Bank's 'List of Economies' from four years ago will be used. FMO aims to realize 35% of the committed portfolio in the fifty-five poorest countries according to a list set by the Ministry of Foreign Affairs and FMO;

⁶ OECD Guidelines for Multinational Enterprises, OECD Guidelines for Anti-Corruption and Integrity at SOEs and OECD Guidelines for Corporate Governance of SOEs.

⁷ It should be noted that existing investments in these countries cannot be withdrawn without further ado.
AGREEMENT STATE - FMO 2023

- d. Deploying extra human resources and developing and implementing specific programs and/or instruments for countries or country groups for which the Dutch government, from time to time, asks FMO to pay extra attention, in accordance with the policy framework. The agreements in this regard are laid down in so-called ‘side letters’ between the State and FMO.

6 SECTOR SELECTION

Activities that are considered for financing need to contribute to FMO's development value, including, but not limited to, activities in the agribusiness, energy and financial sector. FMO shows ambition in sectors where it can add most development value. Excluded are activities/institutions (i) that conflict with legal provisions, government regulations/measures or good morals in the Netherlands and/or the country concerned, (ii) that are in conflict with internationally legal provisions, (iii) that are on the FMO exclusion list and (iv) that are excluded in FMO's sustainability policy (e.g. excluded activities related to fossil fuels).

7 OTHER CRITERIA

- a. FMO's clients or counterparties are natural persons, companies and/or legal entities that are part of the business community or that operate commercially. Owners and managers are of impeccable corporate moral standing, taking into account the standards and practices in the country concerned;
- b. the continuity of the client/counterparty must be guaranteed by an expected positive financial and economic return;
- c. the client/counterparty must be carried by entrepreneurs with good financial position, who can themselves take a substantial financial risk. They must be managed by capable, preferably local, managers. A thorough analysis of all possible risks must show that these risks are manageable and therefore acceptable, and also take into account the quality of local supervision;
- d. FMO is committed to its financing activities in the countries where it supports employment, contribute to reducing inequalities between and within countries by promoting social and economic inclusiveness, and by focusing on helping to achieve the goals of the international Climate treaty; and
- e. FMO commits to the development and implementation of innovations (new products, services, business models and ways of working) that contribute to the development value.

8 FINAL PROVISION

Internal policy documents, guidelines and criteria exist for the policy principles and criteria procedures, which are adjusted from time to time to reflect changes in FMO's field of activity and services.

ANNEX 3. VERIFICATION PROCEDURE

- 1.1.1 Following payment under the Maintenance Obligation and/or the Financial Security Obligation by the State in accordance with Article 4 or Article 5, respectively, the State may arrange for the amount of support granted to be verified (*ex post*) by an expert, for which the following procedure (the **Verification Procedure**) applies:
- a. The request for a Verification Procedure must be made within 2 (two) years after the time of payment referred to in the preamble;
 - b. The Parties jointly appoint, by mutual agreement, a reputable firm of registered accountants in the Netherlands with an international reputation as an independent expert (the **Independent Expert**) for a binding opinion on the determination of the actual amount to be paid under the Maintenance Obligation and/or the Financial Security Obligation by the State in accordance with Article 4 or Article 5 respectively (the **Final Amount**);
 - c. If the Parties do not agree on the appointment of an Independent Expert within 2 (two) weeks, each of the Parties has the right to request the chair of the Royal Netherlands Institute of Chartered Accountants (*Nederlandse Beroepsorganisatie van Accountants*) to designate a reputable firm of registered accountants in the Netherlands with an international reputation as an Independent Expert. The Parties will subsequently appoint the party designated by the chair of the Netherlands Institute of Chartered Accountants as an Independent Expert within 2 (two) Business Days;
 - d. The verification by the Independent Expert will relate only to the substantiation of the amount of support granted and the decision-making procedure that led to the submission of a request for support as referred to in Article 4 or Article 5, respectively, based on the information and knowledge that was or should reasonably have been available to the Parties at the time;
 - e. Next, the Independent Expert will hear both Parties, and both Parties will fully cooperate with the Independent Expert's investigation, including by providing all financial and other information requested by the Independent Expert;
 - f. Based on the results of their investigation and the starting point expressed in paragraph 1.1.(d.), the Independent Expert will determine the amount and scope of the Final Amount, which will apply to the Parties as a binding opinion;
 - g. The aim is for the Independent Expert to adopt the results of their investigation and binding opinion as soon as possible, but no later than 2 (two) months of their appointment; and
 - i. The cost of the Independent Expert will be borne by FMO if the Final Amount determined is less than the amount paid to FMO by the State under the Maintenance Obligation and/or the Financial Security Obligation. In all the other cases, the cost of the Independent Expert will be borne by the State.

- 1.1.2 If the Final Amount as determined by the Independent Expert in accordance with paragraph 1.1.1 of this Annex 3, is less than the amount that the State has made available to FMO under the Maintenance Obligation in accordance with Article 4 or under the Financial Security Obligation in accordance with Article 5, respectively, the State will enter into discussions with FMO regarding what the State may expect as a result. This cannot cause the prudential qualification of the support under the Maintenance Obligation in accordance with Article 4 and under the Financial Security Obligation in accordance with Article 5 to change.