

Sample

E&S covenants

AGREEMENT, dated _____, between:

- (1) _____, a [corporation][company] organized and existing under the laws of _____ (the "Borrower"); and
- (2) BANK NAME, an [international] organization established by Articles of Agreement among its [shareholders] [member countries including [specify official name of country of Borrower's incorporation] ("BANK NAME")].

ARTICLE I

Definitions and Interpretation

Section 1.01. *General Definitions.* Wherever used in this Agreement, unless the context otherwise requires, the following terms have the meanings opposite them:

- "Annual Monitoring Report" the report to be submitted to BANK NAME pursuant to Section 6.03() of this Agreement;
- "Environmental, Health and Safety Guidelines" _____, _____ and _____, [a] cop[y] [ies] of which [has] [have] been delivered to, and receipt of which has been acknowledged by, the Borrower by letter dated _____;
- "Environmental And Social Law" all applicable statutes, laws, ordinances, rules and regulations of the Country, including but not limited to any license, permit or other governmental Authorization imposing liability or setting standards of conduct concerning any environmental, social, labor, health and safety or security risks.
- "Exclusion List" the list of prohibited activities set forth in Annex [__];

ARTICLE III

The Loan

ARTICLE IV

Representations and Warranties

Section 4.01. Representations and Warranties. The Borrower represents and warrants that:

- (i) to the best of its knowledge and belief after due inquiry, it is not in violation of any of the Environmental and Social Laws of COUNTRY or any of the Environmental, Health and Safety Guidelines as provided by the BANK NAME;
- (ii) it has not received nor is aware of any existing or threatened complaint, order, directive, claim, citation or notice from any Authority or any material written communication from any Person with respect to any aspect of its compliance with any matter covered by the Environmental and Social Law or the Environmental, Health and Safety Guidelines;
- (iii) to the best of its knowledge and belief after due inquiry, it is not in violation of any statute or regulation of any Authority;

ARTICLE V

Conditions of Disbursement

Section 5.01. Conditions of First Disbursement. The obligation of BANK NAME to make the first Disbursement is subject to the fulfillment prior to or concurrently with the making of that first Disbursement of the following conditions:

() the Borrower and BANK NAME have agreed on the form of the Annual Monitoring Report¹;

[() insert any specific environmental or social requirements to be satisfied prior to first Disbursement;]

Section 5.02. Conditions of All Disbursements. The obligation of BANK NAME to make any Disbursement, including the first Disbursement, is also subject to the conditions that:

[() insert any specific environmental or social requirements to be satisfied prior to each Disbursement].

¹ Note this is the agreement between the Bank and its client

ARTICLE VI

Particular Covenants

Section 6.01. Affirmative Covenants. Unless BANK NAME otherwise agrees, the Borrower shall:

() upon BANK NAME's request, such request to be made with reasonable prior notice to the Borrower (except no such reasonable prior notice shall be necessary if an Event of Default or Potential Event of Default is continuing or if special circumstances so require), permit representatives of BANK NAME, during normal office hours, to:

- (i) visit any of the sites and premises where the business of the Borrower is conducted;
- (ii) inspect any of the Borrower's sites, facilities, plants and equipment;
- (iii) have access to the Borrower's books of account and all records; and
- (iv) have access to those employees, agents, contractors and subcontractors of the Borrower who have or may have knowledge of matters with respect to which BANK NAME seeks information;

() through its employees, agents, contractors and subcontractors, design, construct, operate, maintain and monitor all of its sites, plants, equipment and facilities:

- (i) in accordance with the Environmental and Social Law and the Environmental, Health and Safety Guidelines; [and]
- [(iii) in compliance with applicable environmental[, indigenous peoples, involuntary resettlement, cultural property protection], occupational health and safety requirements, and any child labor and forced labor laws, rules and regulations (including any international treaty obligations, if any) of the Government of the Country and the local authorities [modify as necessary for Federal systems];]

() make the ERS, or, as appropriate, information contained in the ERS, available to all those who request it from the Company;

() periodically review the form of the Annual Monitoring Report and advise BANK NAME as to whether modification of the form is necessary based on any changes in the Project, and revise the form as agreed with BANK NAME;

[() insert any other specific environmental or social covenants];

Section 6.02. *Negative Covenants*

([]) [The Borrower shall not provide [Sub-loans][funding][support] to [Clients] [Sub-borrowers] engaged in any of the activities on the Exclusion List;]

Section 6.03. Reporting Requirements. Unless BANK NAME otherwise agrees, the Borrower shall:

() within ninety (90) days after the end of each Financial Year, deliver to BANK NAME an annual monitoring report in a form consistent with Sections 5.01() and 6.01(), confirming compliance with the Environmental and Social Law, the Environmental, Health and Safety Guidelines, the ERS, the applicable [national or local] requirements, [and Section _____] or, as the case may be, detailing any non-compliance, and setting out the action being taken to ensure compliance;

() as soon as possible but no later than three (3) days after its occurrence, notify BANK NAME of any incident or accident within the Project area or areas otherwise within the Borrower's management or control, which has or may reasonably be expected to have a material adverse effect on the environment, health or safety, including, without limitation, explosions, spills or workplace accidents which result in death, serious or multiple injury or major pollution, specifying, in each case, the nature of the incident or accident, the on-site and off-site impacts arising or likely to arise therefrom and the measures the Borrower is taking or plans to take to address those impacts; and keep BANK NAME informed of the on-going implementation of those measures;

ARTICLE VII

Events of Default

Section 7.02. *Events of Default*. It shall be an Event of Default if:

() the Borrower fails to comply with any of its obligations under this Agreement or any other Transaction Document or any other agreement between the Borrower and BANK NAME (other than for the payment of the principal of, or interest on, the Loan or any other loan from BANK NAME to the Borrower), and any such failure continues for a period of thirty (30) days after the date on which [BANK NAME notifies the Borrower] of that failure;

[(q) [any other Events of Default]