

Dated: 25 February 2019

INFRACO AFRICA LIMITED

and

**THE TRUSTEES OF THE PRIVATE INFRASTRUCTURE
DEVELOPMENT GROUP TRUST**

and

**THE PRIVATE INFRASTRUCTURE DEVELOPMENT
GROUP LIMITED**

SUBSCRIPTION AGREEMENT (No 5)
relating to shares in InfraCo Africa Limited

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THIS AGREEMENT is made on 25 february 2019

BETWEEN

- (1) **INFRACO AFRICA LIMITED**, a company incorporated under the laws of England whose registered office is at 6 Bevis Marks, London, EC3A 7BA, United Kingdom with registered number 05196897 ("**InfraCo Africa**"); and
- (2) **SG KLEINWORT HAMBROS TRUST COMPANY (UK) LTD.** of 5th Floor, 8 St James's Square, London, SW1Y 4JU United Kingdom, **MULTICONSULT TRUSTEES LTD.** of Les Cascades Building, Edith Cavell Street, Port Louis, Mauritius and **MINIMAX LTD.** of Les Cascades Building, Edith Cavell Street, Port Louis, Mauritius as trustees of the **PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP TRUST**, a trust created under the laws of Mauritius (the "**PIDG Trust**"); and
- (3) **THE PRIVATE INFRASTRUCTURE DEVELOPMENT GROUP LIMITED**, a company incorporated under the laws of England whose registered office is at 6 Bevis Marks, London EC3A 7BA with registered number 11265124 ("**PIDG Ltd**").

INTRODUCTION

- (A) InfraCo Africa has been established for the purpose set out in Clause 2.1.
- (B) The current equity funding of InfraCo Africa has been raised from the PIDG Trust which has subscribed a total of GBP 137,298,355 for 137,298,355 InfraCo Africa Shares (the "**Issued Shares**") pursuant to a first subscription agreement dated 15 April 2005, a second subscription agreement dated 20 February 2009, a third subscription agreement dated 30 December 2009, a fourth Subscription Agreement dated 14 March 2014 (all as amended from time to time) and various applications for the allotment of InfraCo Africa Shares.
- (C) PIDG Ltd was incorporated on 20 March 2018 as a wholly owned corporate entity of the PIDG Trust to provide central management of PIDG (as defined below) including the administration of funding and financing for InfraCo Africa.
- (D) On 30 November 2016 Kleinwort Benson Trustees Limited (registered in England and Wales with number 514879) signed an asset purchase agreement to purchase the majority of the assets of SG Hambros Trust Company Limited (this agreement did not include the PIDG Trust and its assets). Effective on 30 November 2016 the name of Kleinwort Benson Trustees Limited changed to SG Kleinwort Hambros Trust Company (UK) Limited. As a consequence, SG Hambros Trust Company Limited has retired as Principal Trustee of the PIDG Trust and in due course will be wound up. SG Kleinwort Hambros Trust Company (UK) Limited has become the Principal Trustee of the PIDG Trust by a Second Amended and Restated Declaration of Trust for the PIDG Trust dated 4 September 2018. As at the date of this Agreement, the existing shares in InfraCo Africa are still held by SG Hambros Trust Company Ltd, Multiconsult Trustees Ltd and Minimax Ltd on trust for the

PIDG Trust and will be transferred to SG Kleinwort Hambros Trust Company (UK) Ltd, Multiconsult Trustees Ltd and Minimax Ltd as current trustees of the PIDG Trust in due course. All shares under this Agreement will be issued to SG Kleinwort Hambros Trust Company (UK) Ltd, Multiconsult Trustees Ltd and Minimax Ltd as trustees of the PIDG Trust.

- (E) The PIDG Trust wishes to subscribe and record subscriptions for additional shares in the capital of InfraCo Africa on the terms and subject to the conditions set out in this Agreement, with funding provided by DGIS, SECO and DFID (as defined in Clause 1.1 below). ADA was formerly a PIDG Owner (as defined in Clause 1.1 below) and provided funding for InfraCo Africa but terminated its membership of PIDG on 16 July 2014.
- (F) This Agreement amends the PIDG Trust / InfraCo Africa Subscription Agreement (No. 4) dated 14 March 2014 (as amended) ("**Subscription Agreement (No.4)**").

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement:

- 1.1.1 "**2017 SECO Grant Arrangement**" means the grant arrangement for multiple PIDG activities entered into between SECO and the PIDG Trust dated 22 November 2017 pursuant to which SECO has agreed to grant up to USD US\$10,000,000 to the PIDG Trust to enable the PIDG Trust to subscribe for InfraCo Africa Shares (USD 4,000,000 of which was disbursed to InfraCo Africa by the PIDG Trust under Subscription Agreement (No.4) but the balance of which will be provided under this Agreement);
- 1.1.2 "**2018 DGIS Conditional Loan Agreement**" means the conditional loan agreement for multiple PIDG activities entered into between DGIS, PIDG Ltd and the PIDG Trust dated 22 November 2018 pursuant to which DGIS has agreed to make available to the PIDG Trust an interest free loan for PIDG Ltd to allocate to the activities of PIDG. PIDG Ltd expects to allocate up to US\$31,000,000 (or such other amount as may be agreed between the parties thereto) to enable the PIDG Trust to subscribe for InfraCo Africa Shares;
- 1.1.3 "**Accounting Period**" means the accounting period of InfraCo Africa commencing each year on 1 January and ending on the following 31 December;
- 1.1.4 "**Accounts**" mean the latest available audited financial statements of InfraCo Africa, at any time, and the latest available management accounts of InfraCo Africa;

- 1.1.5 **“Board”** means the board of directors of InfraCo Africa, and **“Director”** means any member of the Board;
- 1.1.6 **“Business Day”** means a day (other than a Saturday or Sunday) on which banks are generally open for normal business in London;
- 1.1.7 **“Completion”** means the implementation of the matters described in Clause 6;
- 1.1.8 **“Conditions”** means the conditions precedent and subsequent referred to in Clause 3;
- 1.1.9 **“Current Exchange Rate”** means the relevant rate of exchange obtained by SG Kleinwort Hambros Bank Limited (as bankers to the PIDG Trust) in the London foreign exchange market on the date and time at which a Subscription Amount is disbursed by the PIDG Trust to InfraCo Africa and communicated in writing by SG Kleinwort Hambros Bank Limited via PIDG Ltd to InfraCo Africa (or otherwise as may be agreed in writing between the Parties);
- 1.1.10 **“Developer”** means any developer appointed by InfraCo Africa in accordance with a Developer Services Agreement and to which appointment PIDG Ltd has not objected from time to time;
- 1.1.11 **“Developer Services Agreement”** means each agreement entered into between InfraCo Africa and a Developer for the provision of project development services to InfraCo Africa;
- 1.1.12 **“DFID”** means the Government of the United Kingdom, acting through the Secretary of State for International Development at the Department for International Development;
- 1.1.13 **“Financial Year”** means 1 January to 31 December in each year (or such other period as may be approved by InfraCo Africa with the prior written consent of PIDG Ltd);
- 1.1.14 **“Fifth DFID Grant Arrangement”** means the grant arrangement for multiple PIDG activities entered into between DFID, PIDG Ltd and the PIDG Trust dated 4 December 2018 as may be amended from time to time, pursuant to which DFID agreed to grant up to £49,800,000 (or such other amount as may be agreed between the parties thereto) to the PIDG Trust to enable the PIDG Trust to apply for InfraCo Africa Shares;
- 1.1.15 **“Funding Instruments”** shall mean the 2017 SECO Grant Arrangement, the Fifth DFID Grant Arrangement and the 2018 DGIS Conditional Loan Agreement;

- 1.1.16 **“InfraCo Africa Constitution”** means the Memorandum and Articles of Association or other constitutional documents of InfraCo Africa for the time being;
- 1.1.17 **“InfraCo Africa Owners”** means the PIDG Owners that fund InfraCo Africa, which at the date of this Agreement are DFID; the Swiss State Secretariat for Economic Affairs of the Government of the Confederation of Switzerland (**“SECO”**); the Government of the Netherlands represented by the Directorate-General for International Cooperation – The Netherlands Minister for Foreign Trade and Development Co-operation (**“DGIS”**), and any additional InfraCo Africa owner(s);
- 1.1.18 **“InfraCo Africa Operating Policies and Procedures”** means the operating policies and procedures of InfraCo Africa approved by PIDG Ltd and, where applicable, the PIDG Owners, as amended from time to time;
- 1.1.19 **“InfraCo Africa Shares”** means ordinary shares of £1 each in the capital of InfraCo Africa, having the rights and being subject to the restrictions set out in the InfraCo Africa Constitution;
- 1.1.20 **“IFRS”** means the International Financial Reporting Standards issued by the International Accounting Standards Board, as amended from time to time;
- 1.1.21 **“Issued Shares”** has the meaning given to it in Recital B;
- 1.1.22 **“Material Adverse Effect”** means a material adverse effect (which is continuing) on InfraCo Africa’s business, operations, assets, financial condition results or general affairs or its ability to fulfil its obligations under this Agreement but in any event, not including any such material adverse effect which has been cured or remedied;
- 1.1.23 **“PIDG”** means the Private Infrastructure Development Group;
- 1.1.24 **“PIDG Code of Conduct”** means the code of conduct approved by the PIDG Owners and PIDG Ltd from time to time and which all PIDG Companies and PIDG Ltd are required to adopt and incorporate into their governing documents as a minimum standard of conduct;
- 1.1.25 **“PIDG Company”** means a corporate entity (e.g. a private company limited by shares or a limited liability partnership) owned (either wholly or in part) by the PIDG Trust including InfraCo Africa but not including PIDG Ltd;
- 1.1.26 **“PIDG Operating Policies and Procedures”** means the operating policies and procedures approved by the PIDG Owners and PIDG Ltd from time to time (or

equivalent policies and procedures) and which the PIDG Owners require all PIDG Companies and PIDG Ltd to adopt and incorporate into their governing documents as a minimum standard including the PIDG Procurement Policy and Guidelines, the PIDG Environmental and Social Policy and Procedures, the PIDG Disclosure Policy and Procedures, the PIDG Anti-corruption and Integrity Policy and Procedures and the PIDG Appointment and Evaluation of Directors Policy and Procedures, the PIDG Remuneration Policy and Procedures (including the PIDG Remuneration Framework), the PIDG Travel and Expense Reimbursement Policy and Procedures, the PIDG Conflict of Interest and Share Dealing Policy and Procedures, the PIDG Complaints Policy and Procedures, the PIDG Risk Management Policy and Procedures and the PIDG Due Diligence Policy and Procedures;

- 1.1.27 **“PIDG Owner”** means an organisation that has acceded to the memorandum of understanding for the PIDG dated 10 October 2013 and is a member of the PIDG;
- 1.1.28 **“PIDG Results Monitoring Handbook”** means the results monitoring handbook of the PIDG approved by PIDG Ltd (as at the date of this Agreement the most recent revision date was September 2013) as amended from time;
- 1.1.29 **“Purpose”** means the purpose of InfraCo Africa referred to in Clause 2.1 and as more particularly described in the InfraCo Africa Operating Policies and Procedures;
- 1.1.30 **“Quarter”** means each period of three months ending on 31 March, 30 June, 30 September and 31 December in each Financial Year;
- 1.1.31 **“Reorganisation Agreement”** means the agreement dated 29 June 2018 and entered into between, *inter alia*, the PIDG Trust, InfraCo Africa, PIDG Ltd and the InfraCo Africa Owners to implement the governance framework approved by the PIDG Owners in Sydney, Australia in November 2016;
- 1.1.32 **“Second Amended and Restated InfraCo Africa Funders’ Agreement”** means the second amended and restated agreement between InfraCo Africa, PIDG Ltd and the PIDG Trust in relation to the funding and operation of InfraCo Africa Limited dated on or around the date of this Subscription Agreement (or such other agreement(s) as may be agreed by the Parties for the future funding of InfraCo Africa) with regard to, *inter alia*, the funding of InfraCo Africa and the regulation of certain Shareholder matters as amended from time to time;
- 1.1.33 **“Shareholder”** means the holder of any InfraCo Africa Share;

- 1.1.34 **“Subscription”** means a subscription for InfraCo Africa Shares by the PIDG Trust pursuant to the terms hereof;
- 1.1.35 **“Subscription Amount”** means the amount so specified in any Subscription Request;
- 1.1.36 **“Subscription Date”** means the date specified in any Subscription Request;
- 1.1.37 **“Subscription Request”** means a written dated notice from InfraCo Africa to the PIDG Trust in the form set out in Schedule 3;
- 1.1.38 **“Total Available Commitment”** for any calendar year means the amount set out as the total available commitment from the PIDG Trust for such calendar year in Schedule 1 (as may be increased or decreased from time to time in accordance with the provisions of Clause 4.5); and
- 1.1.39 **“Warranties”** means the warranties contained in Clause 5;
- 1.2 Any express reference to an enactment (which includes any legislation in any jurisdiction) includes references to:
 - 1.2.1 that enactment as re-enacted, amended, extended or applied by or under any other enactment before or after the date of this Agreement;
 - 1.2.2 any enactment which that enactment re-enacts (with or without modification); and
 - 1.2.3 any subordinate legislation (including regulations) made (before or after the date of this Agreement) under any enactment, as re-enacted, amended, extended or applied as described in Clause 1.2.1, or under any enactment referred to in Clause 1.2.2.
- 1.3 References to an **“agreement”** or **“document”** shall be construed as a reference to such agreement or document as the same may have been amended, varied, supplemented or novated in writing at the relevant time in accordance with the requirements of such agreement or document and, if applicable, of this Agreement.
- 1.4 References to a **“company”** shall be construed so as to include a company, a subsidiary, corporation or other body corporate or other legal entity, wherever and however incorporated or established.
- 1.5 A company is a **“subsidiary”** of another company, its **“holding company”** if that other company:

- 1.5.1 holds a majority of the voting rights in it, or
- 1.5.2 is a member of it and has the right to appoint or remove a majority of its board of directors, or
- 1.5.3 is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it,
- or if it is a subsidiary of a company which itself is a subsidiary of that other company.
- 1.6 A company is a “**wholly-owned subsidiary**” of another company if it has no members except that other and that other's wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.
- 1.7 References to a “**person**” shall be construed so as to include any individual, firm, company, government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality).
- 1.8 References to any English legal term for any action, remedy, method or judicial proceeding, legal document, legal status, court, official, or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term.
- 1.9 References to “**£**” or “**£Sterling**” are to the lawful currency from time to time of the United Kingdom. References to “**US Dollars**” or “**US\$**” or “**USD**” are to the lawful currency from time to time of the United States of America. References to “**€**” or “**Euros**” are to the lawful currency from time to time of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community (signed in Rome on March 25, 1957), as amended.
- 1.10 Where there is any inconsistency between the definitions set out in this Clause and the definitions set out in any Clause or Schedule, then for the purposes of construing such Clause or Schedule, the definitions set out in such Clause or Schedule shall prevail.
- 1.11 The singular shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa.
- 1.12 The index and the headings in this Agreement do not affect its interpretation.

- 1.13 Any Schedule or Appendix to this Agreement shall take effect as if set out in this Agreement and references to this Agreement shall include its Schedules and Appendices.
- 1.14 References to (i) a “**Party**” is to a party to this Agreement, and to (ii) “**Clauses**”, “**Paragraphs**” and “**Schedules**” are references to the clauses, paragraphs and schedules of this Agreement.
- 1.15 Clauses 1.2 to 1.14 apply unless the contrary intention appears.

2. PURPOSE AND USE OF FUNDS

- 2.1 The purpose of InfraCo Africa is as set out in Clause 2 of the Second Amended and Restated InfraCo Africa Funders’ Agreement.
- 2.2 Subject to Clause 3, the PIDG Trust agrees to subscribe at £1 per InfraCo Africa Share for InfraCo Africa Shares for a maximum pro rated subscription price as set out in Schedule 1 (in which case InfraCo Africa agrees to allot such InfraCo Africa Shares to the PIDG Trust), which shall in no circumstances exceed the figure set out in Schedule 1 to this Agreement in respect of the relevant year (subject to the provisions of Clause 4.1).
- 2.3 Subject to Clause 2.4 below, the consideration received by InfraCo Africa pursuant to Clause 2.2 shall be used exclusively by InfraCo Africa (i) for the purpose set out in Clause 2.1, (ii) the Funding Instruments and (iii) as working capital in connection therewith in accordance with the relevant Subscription Request.

3. CONDITIONS PRECEDENT AND SUBSEQUENT TO SUBSCRIPTION

- 3.1 The obligations of the PIDG Trust in respect of each Subscription are conditional on each of the following being fulfilled to PIDG Ltd’s satisfaction (in both form and content):
- 3.1.1 there having been no breach of:
- (a) any of the Warranties given by InfraCo Africa hereunder;
 - (b) any provision of the InfraCo Africa Operating Policies and Procedures (unless waived or approved in advance in writing by PIDG Ltd); or
 - (c) any provision of the PIDG Operating Policies and Procedures (unless waived or approved in advance in writing by PIDG Ltd);

- 3.1.2 there having been no breach of any provision of this Agreement, the Second Amended and Restated InfraCo Africa Funders' Agreement, any Developer Services Agreement or any of the Funding Instruments and the Subscription shall not cause any such breach to occur;
- 3.1.3 each of this Agreement, the Second Amended and Restated InfraCo Africa Funders' Agreement, and each of the Funding Instruments remains in full force and effect;
- 3.1.4 receipt by PIDG Ltd of a needs letter (the "**Needs Letter**") in accordance with the requirements of the Second Amended and Restated InfraCo Africa Funders' Agreement;
- 3.1.5 receipt by the PIDG Trust of sufficient funds from the InfraCo Africa Owners under the relevant Funding Instruments to subscribe for the InfraCo Africa Shares as requested under the relevant Subscription Request;
- 3.1.6 the issue of such further InfraCo Africa Shares to the PIDG Trust pursuant to the terms hereof being approved (if necessary) (i) by the Board, and (ii) by ordinary resolution of Shareholders on the record as at the date thereof.
- 3.2 PIDG Ltd undertakes to confirm to InfraCo Africa in writing when the Conditions specified in Clause 3.1 have been fulfilled to its satisfaction.
- 3.3 PIDG Ltd may waive all or any of the Conditions in whole or in part at any time by notice in writing to InfraCo Africa. Any such waiver may be subject to further conditions.
- 3.4 Each of the Parties shall use all reasonable endeavours to assist in the fulfilment of the Conditions.

4. **SUBSCRIPTION**

- 4.1 Subject to Clause 3.1, and in reliance on the warranties and other covenants and undertakings on the part of InfraCo Africa as set out in this Agreement, on receipt of a Subscription Request signed by InfraCo Africa and submitted to it by PIDG Ltd in accordance with Clause 4.2 the PIDG Trust shall, on the relevant Subscription Date subscribe at fully paid up nominal value for such number of InfraCo Africa Shares as are represented by the relevant Subscription Amount, (requested in US Dollars, Euros and/or £Sterling, as applicable, in the relevant Subscription Request and as calculated and allocated between the relevant currencies in consultation with PIDG Ltd and in accordance with Schedule 1 hereto and the provisions of the Second Amended and Restated InfraCo Africa Funders' Agreement) provided that the aggregate Subscription Amount under this

Agreement shall not in any circumstances exceed the maximum subscription price referred to in Clause 2.2.

- 4.2 Following receipt of a Subscription Request, InfraCo Africa shall allot to the PIDG Trust as soon as possible after the relevant Subscription Date such amount of InfraCo Africa Shares as result from the conversion of the Subscription Amount from the currency specified in the Subscription Request to £Sterling as at the Current Exchange Rate on the date of receipt by InfraCo Africa of the Subscription Amount (if the Subscription Amount is not in £Sterling) PROVIDED THAT, subject to Clause 4.5 the sum of all Subscription Amounts for Subscription Requests issued in any calendar year shall not exceed the amounts listed in Schedule 1 as the Total Available Commitment for such year.
- 4.3 Subject to Clause 4.1, whenever InfraCo Africa desires the PIDG Trust to make a Subscription InfraCo Africa shall deliver to PIDG Ltd a Subscription Request appropriately completed to be received by PIDG Ltd not later than 12.00 noon (London time) 15 Business Days prior to the proposed Subscription Date. Each Subscription Request shall attach copies of any documents required under this Agreement or the Second Amended and Restated InfraCo Africa Funders' Agreement. PIDG Ltd shall submit a copy of the Subscription Request to the PIDG Trust upon receipt from InfraCo Africa in order to notify the PIDG Trust that it may be expected to subscribe for InfraCo Africa Shares if the relevant conditions precedent set out in Clause 3 have been fulfilled to PIDG Ltd's satisfaction or waived in accordance with Clause 3.3.
- 4.4 Subject to the terms of this Agreement, the PIDG Trust shall on the Subscription Date specified in the relevant Subscription Request pay the amount requested in full in cash in US Dollars, Euros or £Sterling, (as requested in the relevant Subscription Request,) to the credit of InfraCo Africa at such bank as may be designated in the Subscription Request (and cash shall include the electronic transfer of funds).
- 4.5 In the event that the total of all Subscription Amounts requested in any calendar year is less than the Total Available Commitment for such calendar year, the Total Available Commitment for the following calendar year shall be increased by such difference, subject to the approval of PIDG Ltd.

5. WARRANTIES / UNDERTAKINGS

- 5.1 The PIDG Trust, InfraCo Africa and PIDG Ltd each warrant to each other, that in each case:
- 5.1.1 it has the requisite power and authority to enter into and perform this Agreement;

- 5.1.2 this Agreement constitutes valid and legally binding obligations on it in accordance with its terms;
- 5.1.3 compliance with the terms of this Agreement does not and will not conflict with or constitute a default under any provision of:
- (a) any agreement or instrument to which it is a party; or
 - (b) its constitutional documents; or
 - (c) any order, judgment, injunction, or as far as it is aware any other restriction of any kind or character by which it is bound.
- 5.2 InfraCo Africa further warrants to the PIDG Trust and PIDG Ltd on the date of this Agreement and on each Subscription Date that:
- 5.2.1 it is a company duly incorporated under the laws of England and has the requisite power and authority to conduct its business as described in Clause 2.1 of this Agreement;
- 5.2.2 the particulars of InfraCo Africa set out in Schedule 2 (as amended from time to time with the consent of the PIDG Trust and PIDG Ltd) are correct;
- 5.2.3 except as referred to in this Agreement, the Second Amended and Restated InfraCo Africa Funders' Agreement, the Reorganisation Agreement or as set out in the InfraCo Africa Constitution, no person has any right, contingent or otherwise, to subscribe for or otherwise to acquire any shares or other securities of InfraCo Africa.
- 5.2.4 neither the entry into this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any indenture, mortgage, agreement or other instrument or arrangement to which InfraCo Africa is a party or by which it is bound, or violate any of the terms or provisions of the InfraCo Africa Constitution or any authorisation, judgment, decree or order or any law or other rule or regulation applicable to InfraCo Africa;
- 5.2.5 InfraCo Africa has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated hereby. All authorisations required to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement and to make it admissible in evidence in its jurisdiction of incorporation have been obtained and are in full force and effect;

- 5.2.6 InfraCo Africa is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets to an extent or in a manner which might result in a Material Adverse Effect;
- 5.2.7 all tax returns and reports of InfraCo Africa required by applicable law to be filed have been duly filed and all taxes, obligations, fees and other governmental charges upon InfraCo Africa, or its properties, or its income or assets, which are due and payable or to be withheld, have been paid or withheld, other than those presently payable without penalty or interest or with respect to which the failure to pay has not resulted in or may reasonably be not expected to result in a Material Adverse Effect;
- 5.2.8 InfraCo Africa is not engaged in nor, to the best of its knowledge after due enquiry, threatened by, any litigation, arbitration or administrative proceedings which, if determined in a manner adverse to InfraCo Africa by a final non-appealable judgment or decision of a court, arbitral tribunal or administrative or other body would result in or may reasonably be expected to result in a Material Adverse Effect;
- 5.2.9 to the best of its knowledge and belief after due enquiry, InfraCo Africa is not in violation of any applicable law or regulation which has resulted in or may reasonably be expected to result in a Material Adverse Effect;
- 5.2.10 under the laws of England it is not required that this Agreement be filed, recorded, or enrolled with any court or other authority in England or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated herein;
- 5.2.11 the Accounts of InfraCo Africa for the period to 31 December 2017 have been prepared with due care and attention, on bases consistent with those adopted in the preparation of previous accounts of InfraCo Africa and show with reasonable accuracy the state of affairs and financial position of InfraCo Africa.
- 5.3 InfraCo Africa hereby undertakes to the PIDG Trust and PIDG Ltd that:
- 5.3.1 it will at all times conduct its business in accordance with the Reorganisation Agreement, InfraCo Africa Operating Policies and Procedures, the PIDG Code of Conduct and the PIDG Operating Policies and Procedures and comply with OECD Principles of Corporate Governance issued from time to time to the extent applicable for InfraCo Africa;
- 5.3.2 it will procure that the audited financial statements it produces in respect of each Accounting Period are prepared in accordance with IFRS;

- 5.3.3 it will not enter into any transaction with any person other than in the ordinary course of its business on the basis of arm's length arrangements;
- 5.3.4 internal procedures and controls have been instituted for the purpose of preventing Developers (if any) and InfraCo Africa from becoming an instrument for money laundering, the financing of terrorist activities, fraud or other corrupt or illegal purposes or practices; and
- 5.3.5 it will provide to PIDG Ltd the documentation and information (as set out in clause 8 (Reporting) in the Second Amended and Restated InfraCo Africa Funders' Agreement) and in the case of items 8.1 (iv) and (vi) therein (the PIDG Trust management accounts and audited accounts) provide such assistance to the PIDG Trust and PIDG Ltd as is within InfraCo Africa's control.
- 5.4 Each of the Warranties set out in this Clause 5 is separate and independent.
- 5.5 In this Clause the following additional definitions and rules of interpretation apply:
- "Claim"** means a claim under the Warranties;
- "Substantiated Claim"** means a Claim in respect of which liability is admitted by the party against whom such Claim is brought or which has been adjudicated upon by an arbitrator(s) or a Court of competent jurisdiction and no right of appeal lies in respect of such adjudication or the parties are debarred by passage of time or otherwise from making appeal.
- A Claim is **"connected"** with another Claim or Substantiated Claim if they all arise out of the occurrence of the same event or relate to the same subject matter.
- 5.5.1 This Clause limits the liability of each Party in relation to any Claim.
- 5.5.2 The liability of each Party for all Substantiated Claims against it, when taken together, will not exceed such sum as has actually been subscribed by the PIDG Trust for InfraCo Africa Shares pursuant to this Agreement, and no Party shall be entitled to recover damages or otherwise obtain reimbursement or restitution more than once in respect of the same loss.
- 5.5.3 No Party will be liable for a Claim unless:
- (a) the amount of a Substantiated Claim, or of a series of connected Substantiated Claims of which that Substantiated Claim is one, exceeds ten thousand pounds sterling (£10,000);

- (b) the amount of all Substantiated Claims that are not excluded under Clause 5.5.3(a) when taken together exceeds fifty thousand pounds sterling (£50,000) in which case, the whole amount (and not just the amount by which the limit in this sub-clause is exceeded) is recoverable.
- 5.5.4 No Party is liable for any Claim to the extent that the Claim relates to any matter specifically and fully provided for in the Accounts.
- 5.5.5 No Party is liable for a Claim unless the Party making the Claim has given notice in writing of the Claim to the Party against which the Claim is made, specifying in reasonable detail the nature of the Claim and the amount claimed, within the period of (as the case may be) one (1) year beginning with the date of this Agreement or, in respect of any Warranty given by InfraCo Africa to the PIDG Trust and PIDG Ltd pursuant to this Agreement one (1) year beginning with the date of each Subscription by the PIDG Trust hereunder.
- 5.5.6 Nothing in this Clause applies to a Claim that arises or is delayed as a result of dishonesty, fraud or wilful concealment by a Party against whom the Claim is made or by its agents or advisers.

6. COMPLETION

- 6.1 Subject to Clause 4, completion of each Subscription shall take place on the Subscription Date set out in the relevant Subscription Request at such time and place as the Parties shall agree.
- 6.2 At completion of each Subscription, InfraCo Africa shall procure that meetings of the Board (and, if necessary, of the Shareholders) are held or written resolutions passed at/by which it is resolved that subject to receipt of the subscription moneys by InfraCo Africa:
 - 6.2.1 the PIDG Trust shall be allotted the number of InfraCo Africa Shares set out in the relevant Subscription Request;
 - 6.2.2 the PIDG Trust shall be entered in the register of members of InfraCo Africa as the holders of such InfraCo Africa Shares allotted to it and share certificates shall be issued accordingly.
- 6.3 Following completion of the matters referred to in Clause 6.2:
 - 6.3.1 the PIDG Trust shall pay InfraCo Africa in full for the InfraCo Africa Shares allotted to it in immediately available funds in accordance with Clause 4.2; and

- 6.3.2 a certificate for the InfraCo Africa Shares allotted shall be delivered to the PIDG Trust.

7. CONFIDENTIALITY

- 7.1 Subject to Clause 7.2, the PIDG Trust and PIDG Ltd undertake to InfraCo Africa, and the PIDG Trust and PIDG Ltd shall procure that the InfraCo Africa Owners and PIDG Owners shall undertake to InfraCo Africa that they shall keep confidential all information of a secret or confidential nature received by them relating to InfraCo Africa (it being understood that this Agreement, the Funding Instruments, and the Second Amended and Restated InfraCo Africa Funders' Agreement and the Reorganisation Agreement shall not be confidential).

- 7.2 Clause 7.1 does not apply to the disclosure of information:

- 7.2.1 pursuant to PIDG Disclosure Policy and Procedures;
- 7.2.2 to the extent that such information comes into the public domain (other than through a breach of this Clause 7) or as required by law (including the UK Freedom of Information Act 2000) or by any court or any other regulatory body; or
- 7.2.3 to any of PIDG Ltd and/or the PIDG Trust's trustees, officers and employees and its and their professional advisers provided that such disclosure is made on the basis that the information is treated as confidential by the recipient and used by him only for the purpose for which it was disclosed.

8. DISPUTES

- 8.1 **Governing Law:** This Agreement is governed by, and all disputes, claims, controversies, or disagreements of whatever nature arising out of or in connection with this Agreement, including any question regarding its existence, validity, termination or enforceability (a "**Dispute**") shall be resolved in accordance with the laws of England.
- 8.2 **Amicable Settlement:** If any Dispute arises between any of the Parties, they shall use all reasonable endeavours to resolve the matter amicably. If one Party gives any other Party notice that a material Dispute has arisen and the Parties are unable to resolve such Dispute within thirty (30) days of service of such notice, then such Dispute shall be referred to the respective chairs or chief executives or their equivalents of the Parties in dispute. No Party shall resort to arbitration against any other Party under this Agreement until at least thirty (30) days after such referral. This shall not affect a Party's right, where appropriate, to seek interim relief.

- 8.3 **Arbitration:** All Disputes which are unresolved by the chairs or chief executives or their equivalents pursuant to Clause 8.2, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("LCIA") Rules, which Rules are deemed to be incorporated herein.
- 8.4 **Constitution and Language:** Arbitration under the LCIA Rules shall consist of one arbitrator who shall be either a barrister or a solicitor admitted to practice in England and Wales for at least fifteen (15) years. The parties to an arbitration under this Agreement shall attempt to agree the arbitrator within twenty (20) days of the commencement of the arbitration. Failing such agreement the sole arbitrator shall be appointed by the LCIA Court. The seat of the arbitration shall always be, and all arbitration proceedings shall be in London, England (though if the parties to an arbitration agree, any arbitration proceeding may be held in such other venue as may be mutually convenient). The language of the arbitration shall be English.
- 8.5 **Appeals:** None of the Parties shall make an application pursuant to Sections 45 or 69 of the Arbitration Act 1996. The decision of the arbitrator shall be final and binding and non-appealable.
- 8.6 **Aid to Arbitration:** All Parties irrevocably submit to the non-exclusive jurisdiction of the courts of England to support and assist the arbitration process pursuant to Clause 8.3 including, if necessary, the grant of interlocutory relief pending the outcome of that process.
- 8.7 **Agent:** Each Party not resident in the United Kingdom hereby appoints the party set out against its name below as its agent for the service of process in England for any Dispute, service upon whom shall be deemed completed whether or not forwarded to or received by the relevant appointer:

The PIDG Trust

c/o SG Kleinwort Hambros Trust Company (UK) Limited
5th Floor, 8 St James's Square
London, SW1Y 4JU
United Kingdom
For the attention of: Rachel Iles

9. **NOTICES**

- 9.1 Without prejudice to the provisions of clause 8.7 above, all notices or other communications to be given under this Agreement shall be made in writing and by letter or facsimile transmission (save as otherwise stated) and shall be deemed to be duly given or made when delivered (in the case of personal delivery), when despatched (in the case of facsimile transmission, provided that the sender has received a receipt indicating proper transmission and a hard copy of such notice or

communication is forthwith sent by prepaid post to the relevant address set out below) or ten days after being despatched in the post, postage prepaid, by the quickest mail available and by registered mail if available (in the case of a letter) to such Party at its address or facsimile number specified in Clause 9.2, or at such other address or facsimile number as such Party may hereafter specify for such purpose to the others by notice in writing.

9.2 The addresses referred to in Clause 9.1 are:

9.2.1 InfraCo Africa:

6 Bevis Marks
London
EC3A 7BA United Kingdom

E-mail: IMT@infracoafrica.com
F.A.O. Chief Executive Officer, InfraCo Africa Ltd

9.2.2 The PIDG Trust:

c/o SG Kleinwort Hambros Trust Company (UK) Ltd
Norfolk House
31 St James's Square
London, SW1Y 4JR
United Kingdom

E-mail: Rachel.iles@sghambros.com
F.A.O. Rachel Iles

9.2.3 PIDG Limited:

6 Bevis Marks
London
EC3A 7BA

E-mail: Diane.Harris@pidg.org; Karen.Lynch@pidg.org
F.A.O. Company Secretary, PIDG Ltd

- 9.3 A notice or other communication received on a day other than a Business Day, or after business hours, in the place of receipt shall be deemed to be given on the next following Business Day in such place.

10. **GENERAL**

- 10.1 Each of the Parties shall, to the extent permitted by law, from time to time do or procure all things as may be required to give effect to this Agreement and to all

other agreements referred to in this Agreement (including any novation agreement), including, without limitation, the execution of all deeds and documents, procuring the convening of all meetings, the giving of all necessary waivers and consents, the passing of all resolutions and otherwise exercising all powers and rights available to them to ensure that the Shareholders and any Directors of InfraCo Africa appointed by them (or their alternates) give effect to the terms of this Agreement.

- 10.2 No Party shall make or permit any person connected with it to make any announcement concerning this Agreement or any ancillary matter before, on or after the date of this Agreement except as required by law or any regulatory body.
- 10.3 The Parties shall each bear their own costs and expenses incurred in relation to the preparation, negotiation and execution of this Agreement and all ancillary matters.
- 10.4 This Agreement and the documents referred to in it contain the whole agreement between the Parties relating to the transactions contemplated by this Agreement and supersede all previous agreements between the Parties relating to these transactions.
- 10.5 This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any Party may enter into this Agreement by executing a counterpart.
- 10.6 No amendment or variation of this Agreement or any provision of this Agreement shall be effective unless it is in writing and duly executed by or on behalf of all the Parties.
- 10.7 None of the rights or obligations under this Agreement may be assigned or transferred without each Party's prior written consent.
- 10.8 Any Party may release or compromise in whole or in part any liability of the other Parties under this Agreement or grant any of them any time or other indulgence, but any such action shall not affect any other liability of such other Parties hereunder.
- 10.9 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties nor constitute any Party the agent of any other Party for any purpose.
- 10.10 The provisions contained in each Clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others is invalid; if any provision is void but would be valid if some part of it were deleted, the provision shall apply with such modification as may be necessary to make it valid.
- 10.11 In giving any opinion, approval, consent or waiver or refusing any opinion, approval, consent or waiver under this Agreement, the PIDG Trust and/or PIDG

Ltd may act entirely at its discretion except where explicitly stated otherwise in this Agreement.

10.12 Time is not of the essence in relation to any obligations under this Agreement unless:

10.12.1 time is expressly stated to be of the essence in relation to that obligation;

10.12.2 one Party fails to perform an obligation by the time specified in this Agreement another Party serves a notice on the defaulting Party requiring it to perform the obligation by a specified time and stating that time is of the essence in relation to that obligation.

10.13 The language of this Agreement is English and all notices, demands, requests, statements, certificates or other documents or communications shall be in English unless otherwise agreed in writing.

10.14 Save where expressly stated to the contrary, the Contracts (Rights of Third Parties) Act 1999 of England and Wales shall not apply to this Agreement.

THIS AGREEMENT has been signed by the Parties or their duly authorised representatives on the date which appears on the first page of this Agreement.

EXECUTED by **INFRACO**)
AFRICA LIMITED acting by the)
identified person(s) acting on the)
authority of the said company in)
accordance with the laws of England)


Name: A. P. HUTCHINSON
Title: CEO

EXECUTED by **THE PRIVATE**)
INFRASTRUCTURE)
DEVELOPMENT GROUP)
LIMITED acting by the identified)
person(s) acting on the authority of)
the said company in accordance with)
the laws of England)

Name: _____
Title: Director

**EXECUTED by THE PRIVATE)
INFRASTRUCTURE)
DEVELOPMENT GROUP TRUST)
acting by its trustees on the authority)
of the said trust in accordance with the)
laws of their respective jurisdictions)
of incorporation)**

Name/Title:
(authorised signatory for
**SG Kleinwort Hambros Trust company (UK)
Ltd**)

Name/ Title:
(authorised signatory for
Multiconsult Trustees Ltd)

Name/ Title:
(authorised signatory for
Minimax Ltd)

THIS AGREEMENT has been signed by the Parties or their duly authorised representatives on the date which appears on the first page of this Agreement.

EXECUTED by INFRACO
AFRICA LIMITED acting by the
identified person(s) acting on the
authority of the said company in
accordance with the laws of England

Name:
Title: Director

EXECUTED by THE PRIVATE
INFRASTRUCTURE
DEVELOPMENT GROUP
LIMITED acting by the identified
person(s) acting on the authority of
the said company in accordance with
the laws of England

Name:
Title: Director / CFO

EXECUTED by THE PRIVATE
INFRASTRUCTURE
DEVELOPMENT GROUP TRUST
acting by its trustees on the authority
of the said trust in accordance with the
laws of their respective jurisdictions
of incorporation

Name/Title: *Rachel Lee* *Scott Rice*
RACHEL LEE-DIRECTOR *SCOTT RICE*
(authorised signatory for TRUST OPERATIONS
SG Kleinwort Hambros Trust company (UK) MANAGER
Ltd)

Name/ Title:
(authorised signatory for
Multiconsult Trustees Ltd)

Name/ Title:
(authorised signatory for
Minimax Ltd)

THIS AGREEMENT has been signed by the Parties or their duly authorised representatives on the date which appears on the first page of this Agreement.

**EXECUTED by INFRACO
AFRICA LIMITED** acting by the
identified person(s) acting on the
authority of the said company in
accordance with the laws of England

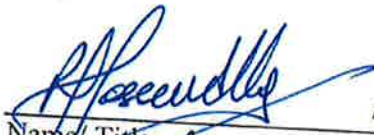

Name: _____
Title: Director


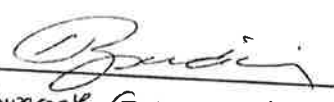
**EXECUTED by THE PRIVATE
INFRASTRUCTURE
DEVELOPMENT GROUP
LIMITED** acting by the identified
person(s) acting on the authority of
the said company in accordance with
the laws of England

Name: _____
Title: Director

**EXECUTED by THE PRIVATE
INFRASTRUCTURE
DEVELOPMENT GROUP TRUST**
acting by its trustees on the authority
of the said trust in accordance with the
laws of their respective jurisdictions
of incorporation

Name/Title: _____
(authorised signatory for
**SG Kleinwort Hambros Trust company (UK)
Ltd**)

 
Name/ Title: Rubina Hossen Ali and Ashraf Ramtola
(authorised signatory for
Multiconsult Trustees Ltd)

 
Name/ Title: Gyaneshwar Nath Gowrea and Kamal
(authorised signatory for
Minimax Ltd)
Ramgopalrao

SCHEDULE 1

THE PIDG TRUST SUBSCRIPTION

A 2018	B 2019	C 2020	D 2021	Total
£23,700,000*	-	£14,300,000*	£11,800,000*	£49,800,000
TOTAL AVAILABLE COMMITMENT				
\$13,000,000**	\$8,000,000**	\$5,000,000**	\$5,000,000**	\$37,000,000
\$3,000,000***	\$2,000,000***	\$1,000,000***		

*Indicative amounts to be disbursed between 1 April 2018 and 31 March 2021 under the Fifth DFID Letter of Arrangement, subject to proof of need by InfraCo Africa. The amount of funding to be disbursed in each year of the disbursement period 1 January 2019 – 31 March 2021 shall be agreed between DFID and PIDG Ltd by 31 December of the preceding year.

**Indicative amounts to be disbursed under the 2018 DGIS Conditional Loan Agreement, subject to proof of need by InfraCo Africa and allocation by PIDG Ltd.

***Amounts to be disbursed based on funding available pursuant to the 2017 SECO Grant Arrangement may require authorisation on an annual basis by the Federal Parliament of the Swiss Confederation.

SCHEDULE 2
PARTICULARS OF INFRACO AFRICA LIMITED

Share Capital:

Class	Ordinary shares of £1 each
Issued	137,298,355

Shareholders:

Name	Number of InfraCo Africa Shares: 137,298,355
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SG Hambros Trust Company Ltd,
 Multiconsult Trustees Ltd. and
 Minimax Ltd as trustees of the
 Private Infrastructure Development
 Group Trust

Directors:	Philippe Valahu, Mike Chilton, Tania Songini, Jim Cohen, Godfrey Mwindaare
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Secretary:	Jordans Limited
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Registered office:

6 Bevis Marks
 London
 EC3A 7BA
 United Kingdom

Company number:	05196897
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Date of incorporation:	4 August 2004
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Accounting reference date:	31 December
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Auditors:	Mazars LLP
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SCHEDULE 3
FORM OF SUBSCRIPTION REQUEST

To: PIDG Trust
c/o The Private Infrastructure Development Group Limited
6 Bevis Marks
London
EC3A 7BA
United Kingdom

Date

Dear Sirs

**Subscription Request - Subscription Agreement (No. 5) dated [] (the
“Subscription Agreement (No. 5)”)**

Terms used in this Subscription Request shall have the same meaning given to them in Subscription Agreement (No. 5) unless otherwise defined herein.

[The “Current Exchange Rate” means the relevant rate of exchange for [] to GB Pounds Sterling obtained by SG Kleinwort Hambros Bank Limited (as bankers to the PIDG Trust) in the London foreign exchange market on the date and time at which the Subscription Amount is disbursed by PIDG Trust to InfraCo Africa and communicated in writing by SG Kleinwort Hambros Bank Ltd via PIDG Ltd to InfraCo Africa (or otherwise as may be agreed in writing between the PIDG Trust and InfraCo Africa).

Pursuant to Clause 4 of the Subscription Agreement (No. 5) between ourselves, yourselves and PIDG Ltd, we hereby request the following proposed subscription [for][of []] InfraCo Africa Shares of [GB£1.00] in the capital of InfraCo Africa:

1. Number of InfraCo Africa Shares to be subscribed: [[] InfraCo Africa Shares]
[such number of InfraCo Africa Shares denominated in GB Pounds Sterling as result from the application of the Current Exchange Rate to the Subscription Amount referred to below and communicated in writing by the PIDG Trust (via PIDG Ltd) to InfraCo Africa].
2. Subscription Date: []
3. Subscription Amount: £ / US\$ []

4. Payment Instructions:

Bank: []

Address: []

A/C Name: []

A/C Number: []

We confirm, warrant and represent that (i)(a) the matters warranted in Clause 5 of the Subscription Agreement (No. 5) and (i)(b) the matters relating to InfraCo Africa which the PIDG Trust is obliged to confirm, warrant and represent to [DFID in relation to the relevant disbursement request(s) under the Fifth DFID Grant Arrangement] [SECO in relation to the 2017 SECO Grant Arrangement] are true and accurate at the date of this Subscription Request and will be true and accurate as at the Subscription Date specified above as if made at such date, and (ii) that the conditions set out in Clause 3.1 of the Subscription Agreement (No. 5) have been duly complied with.

Yours faithfully

For and on behalf of
InfraCo Africa Limited
Authorised Signatory