ПРЕДЛОГ ЗАКОНА

О ПОТВРЂИВАЊУ УГОВОРА О КРЕДИТУ БР. ЦРС 1015 02 Д

ИЗМЕЂУ ФРАНЦУСКЕ АГЕНЦИЈЕ ЗА РАЗВОЈ И РЕПУБЛИКЕ СРБИЈЕ ЗА ПРОЈЕКАТ МОДЕРНИЗАЦИЈЕ ЖЕЛЕЗНИЧКОГ СЕКТОРА У СРБИЈИ ФАЗА 1

Члан 1.

Потврђује се Уговор о кредиту бр. ЦРС 1015 02 Д између Француске агенције за развој и Републике Србије за Пројекат модернизације железничког сектора у Србији Фаза 1, који је потписан у Београду 10. маја 2021. године, у оригиналу на енглеском језику.

Члан 2.

Текст Уговора о кредиту бр. ЦРС 1015 02 Д између Француске агенције за развој и Републике Србије за Пројекат модернизације железничког сектора у Србији Фаза 1, у оригиналу на енглеском језику и преводу на српски језик гласи:

**AFD AGREEMENT N° CRS 1015 02 D**

**CREDIT FACILITY AGREEMENT**

**dated as of May 10, 2021**

**between**

**AGENCE FRANÇAISE DE DEVELOPPEMENT**

The Lender

**and**

**THE REPUBLIC OF SERBIA**

The Borrower

TABLE OF CONTENTS

[1. definitions and interpretatioN 7](#_Toc66699758)

[1.1 Definitions 7](#_Toc66699759)

[1.2 Interpretation 7](#_Toc66699760)

[2. FACILITY, PURPOSE AND conditions OF UTILIsATION 7](#_Toc66699761)

[2.1 Facility 7](#_Toc66699762)

[2.2 Purpose 7](#_Toc66699763)

[2.3 Monitoring 7](#_Toc66699764)

[2.4 Conditions precedent 7](#_Toc66699765)

[3. Drawdown of Funds 8](#_Toc66699766)

[3.1 Drawdown amounts 8](#_Toc66699767)

[3.2 Drawdown request 8](#_Toc66699768)

[3.3 Payment completion 9](#_Toc66699769)

[3.4 Disbursement Methods 9](#_Toc66699770)

[4. Interest 13](#_Toc66699771)

[4.1 Interest Rate 13](#_Toc66699772)

[4.2 Calculation and payment of interest 14](#_Toc66699773)

[4.3 Late payment and default interest 15](#_Toc66699774)

[4.4 Communication of Interest Rates 15](#_Toc66699775)

[4.5 Effective Global Rate (*Taux Effectif Global*) 15](#_Toc66699776)

[5. Change to the calculation of interest 16](#_Toc66699777)

[5.1 Market Disruption 16](#_Toc66699778)

[5.2 Replacement of Screen Rate 16](#_Toc66699779)

[6. FEES 18](#_Toc66699780)

[6.1 Commitment fees 18](#_Toc66699781)

[6.2 Front-end Fee 18](#_Toc66699782)

[7. REPAYMENT 18](#_Toc66699783)

[8. Prepayment and Cancellation 19](#_Toc66699784)

[8.1 Voluntary prepayment 19](#_Toc66699785)

[8.2 Mandatory prepayment 19](#_Toc66699786)

[8.3 Cancellation by the Borrower 20](#_Toc66699787)

[8.4 Cancellation by the Lender 20](#_Toc66699788)

[8.5 Restrictions 20](#_Toc66699789)

[9. Additional Payment Obligations 21](#_Toc66699790)

[9.1 Costs and expenses 21](#_Toc66699791)

[9.2 Cancellation Indemnity 21](#_Toc66699792)

[9.3 Prepayment Indemnity 21](#_Toc66699793)

[9.4 Taxes and duties 22](#_Toc66699794)

[9.5 Additional Costs 22](#_Toc66699795)

[9.6 Currency indemnity 23](#_Toc66699796)

[9.7 Due dates 23](#_Toc66699797)

[10. Representations and warranties 23](#_Toc66699798)

[10.1 Power and authority 23](#_Toc66699799)

[10.2 Validity and admissibility in evidence 24](#_Toc66699800)

[10.3 Binding obligations 24](#_Toc66699801)

[10.4 No filing or stamp taxes 24](#_Toc66699802)

[10.5 Transfer of funds 24](#_Toc66699803)

[10.6 No conflict with other obligations 25](#_Toc66699804)

[10.7 Governing law and enforcement 25](#_Toc66699805)

[10.8 No default 25](#_Toc66699806)

[10.9 No misleading information 25](#_Toc66699807)

[10.10 Project Documents 25](#_Toc66699808)

[10.11 Project Authorisations 25](#_Toc66699809)

[10.12 Procurement 26](#_Toc66699810)

[10.13 Pari passu ranking 26](#_Toc66699811)

[10.14 Origin of funds, Acts of Corruption, Fraud and Anti-Competitive Practices 26](#_Toc66699812)

[10.15 No Material Adverse Effect 26](#_Toc66699813)

[11. Undertakings 27](#_Toc66699814)

[11.1 Compliance with Laws, Regulations and Obligations 27](#_Toc66699815)

[11.2 Authorisations 27](#_Toc66699816)

[11.3 Project Documents 27](#_Toc66699817)

[11.4 Implementation and preservation of the Project 28](#_Toc66699818)

[11.5 Procurement 28](#_Toc66699819)

[11.6 Environmental and social responsibility 29](#_Toc66699820)

[11.7 Additional financing 30](#_Toc66699821)

[11.8 Pari passu ranking 30](#_Toc66699822)

[11.9 Designated Account 30](#_Toc66699823)

[11.10 Inspections 30](#_Toc66699824)

[11.11 Project evaluation 30](#_Toc66699825)

[11.12 Implementation of the Project 31](#_Toc66699826)

[11.13 Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices 31](#_Toc66699827)

[12. Information Undertakings 31](#_Toc66699828)

[12.1 Financial Information 31](#_Toc66699829)

[12.2 Progress Report 32](#_Toc66699830)

[12.3 Co-Financing 32](#_Toc66699831)

[12.4 Information - miscellaneous 32](#_Toc66699832)

[13. Events of Defaults 32](#_Toc66699833)

[13.1 Events of Default 32](#_Toc66699834)

[13.2 Acceleration 35](#_Toc66699835)

[13.3 Notification of an Event of Default 35](#_Toc66699836)

[14. ADMINISTRATION OF THE FACILITY 36](#_Toc66699837)

[14.1 Payments 36](#_Toc66699838)

[14.2 Set-off 36](#_Toc66699839)

[14.3 Business Days 36](#_Toc66699840)

[14.4 Currency of payment 36](#_Toc66699841)

[14.5 Day count convention 36](#_Toc66699842)

[14.6 Place of payment 37](#_Toc66699843)

[14.7 Payment Systems Disruption 37](#_Toc66699844)

[15. MISCELLANEOUS 38](#_Toc66699845)

[15.1 Language 38](#_Toc66699846)

[15.2 Certifications and determinations 38](#_Toc66699847)

[15.3 Partial invalidity 38](#_Toc66699848)

[15.4 No Waiver 38](#_Toc66699849)

[15.5 Assignment 38](#_Toc66699850)

[15.6 Legal effect 39](#_Toc66699851)

[15.7 Entire agreement 39](#_Toc66699852)

[15.8 Amendments 39](#_Toc66699853)

[15.9 Confidentiality - Disclosure of information 39](#_Toc66699854)

[15.10 Limitation 39](#_Toc66699855)

[15.11 Hardship 39](#_Toc66699856)

[16. Notices 40](#_Toc66699857)

[16.1 In writing and addresses 40](#_Toc66699858)

[16.2 Delivery 40](#_Toc66699859)

[16.3 Electronic communications 41](#_Toc66699860)

[17. Governing Law, Enforcement and Choice of Domicile 41](#_Toc66699861)

[17.1 Governing Law 41](#_Toc66699862)

[17.2 Arbitration 41](#_Toc66699863)

[17.3 Service of process 42](#_Toc66699864)

[18. DURATION 42](#_Toc66699865)

[SCHEDULE 1A - Definitions 44](#_Toc66699866)

[SCHEDULE 1B - Construction 54](#_Toc66699867)

[SCHEDULE 2 - Project Description 55](#_Toc66699868)

[SCHEDULE 3 - Financing Plan 57](#_Toc66699869)

[Schedule 4 - Conditions Precedent 59](#_Toc66699870)

[SCHEDULE 5A - Form of Drawdown Request 61](#_Toc66699871)

[Schedule 5B - Form of confirmation of drawdown and rate 63](#_Toc66699872)

[Schedule 5C - Form of Rate Conversion Request 65](#_Toc66699873)

[Schedule 5D - Form of Rate Conversion Confirmation 66](#_Toc66699874)

[Schedule 6 - Information that the lender is authorized expressly to disclose on the Lender’s Website (in particular on its open data platform) 67](#_Toc66699875)

[SCHEDULE 7 – AFD’s Covenant of inTegrity 68](#_Toc66699876)

[SCHEDULE 8 – COMMUNICATION NOTE OF THE PROJECT 70](#_Toc66699877)

**CREDIT FACILITY AGREEMENT**

**BETWEEN:**

1. **REPUBLIC OF SERBIA** represented by the Government of the Republic of Serbia, through Minister of Finance Mr. Siniša Mali, who is duly authorized to sign this Agreement

(“Republic of Serbia” or the “Borrower”);

**AND**

1. **AGENCE FRANCAISE DE DEVELOPPEMENT**, a French public entity governed by French law, with registered office at 5, Rue Roland Barthes, 75598 Paris Cedex 12, France, registered with the Trade and Companies Register of Paris under number 775 665 599, represented by Ms. Cécile Couprie, in her capacity as Regional Director for Eurasia, duly authorised to sign this Agreement,

(“**AFD**” or the “**Lender**”);

(hereinafter jointly referred to as the “**Parties**” and each a “**Party**”);

**WHEREAS**:

1. The Borrower intends to implement the Phase 1 of Serbia Railway Sector Modernization project (the “**Project**”), as described further in Schedule 2 (*Project Description*) for a total value of one hundred and two million Euros (EUR 102,000,000).
2. The Borrower has requested that the Lender makes a facility available for the purposes of financing the Project in part.
3. The IBRD as Co-Financier intends to provide financing of the Project for an amount of up to fifty-one million Euros (EUR 51,000,000).
4. Pursuant to resolution n° C20210013 of the *Comité des Etats Etrangers* of AFDdated January 27, 2021, the Lender has agreed to make the Facility available to the Borrower pursuant to the terms and conditions of this Agreement.

**THEREFORE THE PARTIES HAVE AGREED** **AS FOLLOWS:**

1. definitions and interpretatioN
   1. Definitions

Capitalised words and expressions used in this Agreement (including those appearing in the recitals above and in the Schedules) shall have the meaning given to them in Schedule 1A (Definitions), except as otherwise provided in this Agreement.

* 1. Interpretation

Words and expressions used in this Agreement shall be construed pursuant to the provisions of Schedule 1B (*Construction*), unless the contrary intention appears.

1. FACILITY, PURPOSE AND conditions OF UTILIsATION
   1. Facility

Subject to the terms of this Agreement, the Lender makes available to the Borrower a Facility in a maximum aggregate amount of fifty-one million Euros (EUR 51,000, 000).

* 1. Purpose

The Borrower shall apply all amounts borrowed by it under this Facility exclusively towards financing and/or refinancing Eligible Expenses in accordance with the Project's description set out in Schedule 2 (*Project Description*) and the Financing Plan set out in Schedule 3 (*Financing Plan*)*.*

* 1. Monitoring

The Lender shall not be held responsible for the use of any amount borrowed which is not in accordance with the provisions of this Agreement.

* 1. Conditions precedent

No later than the Signing Date, the Borrower shall provide to the Lender all of the documents set out in Part I of Schedule 4 (*Conditions Precedent*).

A Drawdown Request may not be delivered to the Lender unless:

in the case of the first Drawdown, the Lender has received all of documents listed in Part II and III and/or IV of Schedule 4(Conditions Precedent) as the case may be, and has notified the Borrower that such documents are satisfactory in form and substance;

in the case of any subsequent Drawdown, the Lender has received all of the documents set out in Part  IV of Schedule 4 (Conditions Precedent) as the case may be, and has notified the Borrower that such documents are satisfactory in form and substance; and

on the date of the Drawdown Request and on the proposed Drawdown Date for the relevant Drawdown, no Payment Systems Disruption Event has occurred and the conditions set out in this Agreement have been fulfilled, including:

no Event of Default is continuing or would result from the proposed Drawdown;

no Co-Financier has suspended its payments in relation to the Project;

the Drawdown Request has been made in accordance with the terms of Clause 3.2 (Drawdown request);

each representation given by the Borrower in relation to Clause 10 (Representations and warranties) is true.

1. Drawdown of Funds
   1. Drawdown amounts

The Facility will be made available to the Borrower during the Availability Period, in several Drawdowns, provided that the number of Drawdowns shall not exceed seventy (70).

* 1. Drawdown request
     + 1. Provided that the conditions set out in Clause 2.4(b)(ii) (*Conditions precedent*) are satisfied the Borrower may draw on the Facility by delivering to the Lender a duly completed and signed Drawdown Request as described below:

An electronic copy of the Drawdown Request duly completed and signed, together with all the supporting documents required for the relevant conditions precedent fulfilment, shall at first be submitted, to the Co-Financier, simultaneously with submission of the relevant Withdrawal Application under the IBRD loan in accordance with the conditions and terms of the IBRD Loan Agreement; and

A hard copy of the duly completed and signed Drawdown Request shall be delivered by mail by the Borrower to the AFD office Director, at the address specified in Clause 16.1 (*In writing and addresses*).

Payments will be made in accordance with the instructions in the Disbursement and Financial Information Letter (DFIL), updated if necessary, issued by the Co-Financier.

Unless an exception is granted by the Lender, each Drawdown Request shall be made concurrently with a Withdrawal Application under the IBRD Loan Agreement for respective amounts to meet the *pari passu* financing indicated in Annex 3 (Financing Plan).

* + - 1. Each Drawdown Request is irrevocable and will be regarded as having been duly completed if:

the Drawdown Request is substantially in the form set out in Schedule 5A (*Form of Drawdown Request*);

the Drawdown Request is received by the Lender at the latest fifteen (15) Business Days prior to the Deadline for Drawdown;

the proposed Drawdown Date is a Business Day falling within the Availability Period;

the amount of the Drawdown complies with Clause 3.1 (*Drawdown amounts*); and

all of the documents set out in Part IV and/or IV of Schedule 4 (*Conditions Precedent*) as the case may be, for the purposes of the Drawdown are attached to the Drawdown Request, comply with the abovementioned Schedule and with the requirements of Clause 3.4 (*Disbursement Methods*), and are in form and substance satisfactory to the Lender.

Any documentary evidence, such as bills or paid invoices, shall include the reference number and date of the relevant payment order if applicable and required under the Co-Financier procedure.

The Borrower undertakes to keep possession of the documentary evidence originals, to make such evidence available to the Lender at any time and to provide the Lender with Certified copies or duplicates of such evidence as the Lender may request.

* 1. Payment completion

In application of the Co-Financing Agreement, once the Co-Financier has received a Withdrawal Application and the relevant supporting documents as described in Clause 3.2 (a) (i) above, the Co-Financier, on behalf and in the name of the Lender, will:

assess all these supporting documents submitted, in compliance with the its applicable internal rules and procedures; and

verify that the amount requested in the Drawdown Request complies with the co-financing requirements under the Co-Financing Agreement.

If the result of the assessment and the verification mentioned above is satisfactory to the Co-Financier, the latter will notify the Lender in writing of such result through a disbursement notice (the “**Disbursement Notice**”).

Subject to Clause 14.7 (*Payment Systems Disruption* ), if each of the conditions set out in Clause 2.4(b) (*Conditions precedent*) of this Agreement has been met, the Lender shall make the requested Drawdown available to the Borrower not later than the Drawdown Date.

The Lender shall provide the Borrower with a letter of Drawdown confirmation substantially in the form set out in Schedule 5B (*Form of confirmation of drawdown and rate*).

* 1. Disbursement Methods

The Facility shall be made available in accordance with one or more of the following terms:

* + 1. Reimbursement

Subject to the conditions set out in Part III and/or IV of Schedule 4 (*Conditions Precedent*) as the case may be, the funds may be paid directly to the Borrower in accordance with the terms and conditions of this Agreement, in order to refinance Eligible Expenses paid by the Borrower, provided that evidence of payment of the Eligible Expenses by the Borrower referred to in the Drawdown Request, has been delivered to the Lender through the Co-Financier in form and substance satisfactory to the Co-Financier.

The Lender may request directly or through the Co-Financier that the Borrower provides such other evidence showing that works or services corresponding to the relevant Eligible Expenses have been implemented.

* + 1. Direct payments

Subject to the conditions set out in Part III and/or IV of Schedule 4 (*Conditions Precedent*) as the case may be, the Borrower may request in the Drawdown Request that the proceeds of a Drawdown are made available directly to any Contractor who are owed money under any procurement contracts for the supply of goods, services and other works entered into for the purposes of implementing all or part of the Eligible Expenses of the Project.

The Borrower hereby authorises the Lender to make direct payments in accordance with paragraph (a) above from the proceeds of a Drawdown. The Lender will not be bound, at any time, to verify whether there is a restriction of any nature in connection with the requested Drawdown. The Lender reserves the right to reject such a request if it becomes aware of any such restriction.

The Lender shall not be liable in any way whatsoever in relation to the Drawdowns and the Borrower waives any action it may have against the Lender in this respect. The Borrower shall indemnify the Lender against any cost, loss or liability which the Lender incurs in relation to third party actions against the Lender in respect of such Drawdowns.

The Borrower acknowledges that any amount paid by the Lender pursuant to this Clause 3.4.2 will be a Drawdown and that it shall repay in full to the Lender all amounts paid under the Facility pursuant to this Clause 3.4.2 (*Direct payments* ), together with, and including but not limited to, all interest accrued on those amounts as from the relevant Drawdown Dates.

* + 1. Drawdowns in the form of Advances

The Facility may be made available by the Lender in the form of advances (“**Advance(s)**”) paid into the Designated Account.

* + - 1. Opening of the Designated Account

The Borrower shall open and maintain an account in the name of the Project (the “**Designated Account**”), at the National Bank of Serbia (“NBS”), for the sole purpose of (i) receipt of the proceeds of the Drawdowns of the Lender in the form of Advances, and (ii) payment of the Eligible Expenses.

The Borrower hereby undertakes and procures that any right of set-off of any party is waived in respect of the Designated Account and any other account opened in the name of the Borrower at the NBS, or against any other debt of the Borrower.

* + - 1. Initial Advance

Provided that the conditions set out in Clause 2.4 (*Conditions precedent*) have been satisfied, the Lender shall pay to the Designated Account an initial Advance of the amount specified in the corresponding Disbursement Notice submitted by the Co-Financier to the Lender.

* + - 1. Additional Advances

Additional Advances will be made upon the Borrower’s request in accordance with the same procedure required under the IBRD Loan Agreement and subject to the conditions referred to in Clause 2.4 (*Conditions precedent*).

* + - 1. Final Advance

Unless the Lender agrees otherwise, the final Advance shall be paid in accordance with the same conditions as the other Advances and, if applicable, shall take into account any change in the financing plan of the Project agreed between the Parties.

* + - 1. Justification for use of Advances

The Borrower agrees to deliver to the Lender:

no later than the Deadline for Use of Funds, a certificate signed by an authorised signatory of the Borrowercertifying that one hundred per cent (100%) of both the penultimate Advance and the final Advance have been used and providing a detailed breakdown of the sums paid in respect of the Eligible Expenses in the relevant period; and

no later than three (3) months after the date of delivery of the certificate referred to in subparagraph (i) above, a final audit report of the Designated Account (the “Final Audit Report”), carried out in accordance with the provisions of the IBRD Loan Agreement and the Project Operations Manual. The appointed auditor shall verify that all amounts drawn under the Facility and paid into the Designated Account have been used in accordance with the terms and conditions of this Agreement.

* + - 1. Applicable exchange rate

If any Eligible Expenses are denominated in a currency other than Euro, the Borrower shall convert the invoice amount into the equivalent amount in Euros in accordance with the provisions of the IBRD Loan Agreement and the Project Operations Manual.

* + - 1. Deadline for Use of Funds

The Borrower agrees that all funds paid in the form of Advances shall be used in full to pay Eligible Expenses no later than the Deadline for Use of Funds.

* + - 1. Control – Audit

The Borrower agrees that, during the Drawdown Period, the Designated Account shall be audited in accordance with the provisions of the IBRD Loan Agreement and the Project Operations Manual. The auditor shall verify that all amounts drawn under the Facility and paid into the Designated Account have been used in accordance with the terms of this Agreement.

Audit reports shall be made available by the Borrower to the Lender through the Co-Financier.

During the Drawdown Period, the Lender may carry out, or procure that a third party carries out on its behalf and at the cost of the Borrower, random inspections rather than systematic control of documentary evidence.

* + - 1. Failure to justify the use of Advances by the Deadline for Use of Funds

The Lender may request that the Borrower repays all amounts in respect of which utilisation has not been duly or sufficiently justified in accordance with the IBRD Loan Agreement, together with all other sums standing to the credit of the Designated Account on the Deadline for Use of Funds. The Borrower shall repay such amounts to the Lender within twenty (20) calendar days of receipt of such notification from the Lender. Any repayment by the Borrower under this Clause shall be treated as a mandatory prepayment in accordance with the provisions of Clause 8.2 (*Mandatory prepayment*).

* + - 1. Retention of documents

The Borrower shall retain documentary evidence and other documents in connection with the Designated Account and use of the Advances for a period of ten (10) years from the date of the last Drawdown under the Facility.

The Borrower undertakes to deliver such documentary evidences and other documents to the Lender, or to any auditing firm appointed by the Lender, upon the Lender’s request.

1. Interest
   1. Interest Rate
      1. Selection of Interest Rate

For each Drawdown, the Borrower may select a fixed Interest Rate or a floating Interest Rate, which shall apply to the amount set out in the relevant Drawdown Request, by stating the selected Interest Rate, i.e., fixed or floating, in the Drawdown Request delivered to the Lender substantially in the form set out in Schedule 5A (*Form of Drawdown Request*), subject to the following conditions:

Floating Interest Rate

The Borrower may select a floating Interest Rate, which shall be the percentage rate per annum, being the aggregate of:

* six-month EURIBOR, or, as the case may be, the Replacement Benchmark plus any Adjustment Margin, as determined in accordance with the provisions of Clause 5 (*Change to the calculation of interest*) of the Agreement; and
* the Margin.

Notwithstanding the above, in the case of the first Drawdown, if the first Interest Period is less than one hundred and thirty-five (135) days, the applicable EURIBOR shall be:

* one-month EURIBOR, or, as the case may be, the Replacement Benchmark plus any Adjustment Margin, as determined in accordance with the provisions of Clause 5 (*Change to the calculation of interest*) of the Agreement, if the first Interest Period is less than sixty (60) days; or
* three-month EURIBOR, or, as the case may be, the Replacement Benchmark plus any Adjustment Margin, as determined in accordance with the provisions of Clause 5 (*Change to the calculation of interest*) of the Agreement if the first Interest Period is between sixty (60) days and one hundred and thirty-five (135) days.

Fixed Interest Rate

Provided that the amount of a requested Drawdown is equal to or greater than three million Euros (EUR 3,000,000), the Borrower may select a fixed Interest Rate for such requested Drawdown. The fixed Interest Rate shall be the Fixed Reference Rate increased or decreased by any fluctuation of the Index Rate for the period from the Signing Date until the relevant Rate Setting Date.

* + 1. Minimum Interest Rate

The Interest Rate determined in accordance with Clause 4.1.1 (*Selection of Interest Rate)*, regardless of the elected option, shall not be less than zero point twenty-five per cent (0.25%) per annum, notwithstanding any decline in the Interest Rate.

* + 1. Conversion from a floating Interest Rate to a fixed Interest Rate

Rate Conversion upon the Borrower’s request

The Borrower may request at any time that the Lender converts the floating Interest Rate applicable to a Drawdown or several Drawdowns to a fixed Interest Rate, provided that the amount of such Drawdown or aggregate amount of Drawdowns (as applicable) is equal to, or higher than, three million Euros (EUR 3,000,000).

To this effect, the Borrower shall send to the Lender a Rate Conversion Request substantially in the form set out in Schedule 5C (*Form of Rate Conversion Request*). The Borrower may specify in the Rate Conversion Letter a maximum amount for fixed Interest Rate. If the fixed Interest Rate as calculated on the Rate Setting Date exceeds the maximum amount for fixed Interest Rate specified by the Borrower in the Rate Conversion Request, such Rate Conversion Request will be automatically cancelled.

The fixed Interest Rate will be effective two (2) Business Days after the Rate Setting Date.

Rate Conversion mechanics

The fixed Interest Rate applicable to the relevant Drawdown(s) shall be determined in accordance with Clause 4.1.1(ii) (*Fixed Interest Rate*) above on the Rate Setting Date referred to in subparagraph (i) above.

The Lender shall send to the Borrower a letter of confirmation of Rate Conversion substantially in the form set out in Schedule 5D (*Form of Rate Conversion Confirmation*).

A Rate Conversion is final and effected without costs.

* 1. Calculation and payment of interest

The Borrower shall pay accrued interest on Drawdown(s) on each Payment Date.

The amount of interest payable by the Borrower on a relevant Payment Date and for a relevant Interest Period shall be equal to the sum of any interest owed by the Borrower on the amount of the Outstanding Principal in respect of each Drawdown. Interest owed by the Borrower in respect of each Drawdown shall be calculated on the basis of:

the Outstanding Principal owed by the Borrower in respect of the relevant Drawdown as at the immediately preceding Payment Date or, in the case of the first Interest Period, on the corresponding Drawdown Date;

the exact number of days which have accrued during the relevant Interest Period on the basis of a three hundred and sixty (360) day year; and

the applicable Interest Rate determined in accordance with the provisions of Clause 4.1 (*Interest Rate*).

* 1. Late payment and default interest

Late payment and default interest on all amounts due and unpaid (except for interest)

If the Borrower fails to pay any amount payable by it to the Lender under this Agreement (whether a payment of principal, a Prepayment Indemnity, any fees or incidental expenses of any kind except for any unpaid overdue interest) on its due date, interest shall accrue on the overdue amount, to the extent permitted by law, from the due date up to the date of actual payment (both before and after an arbitral award, if any) at the Interest Rate applicable to the current Interest Period (default interest) increased by three point five per cent (3.5%) (late-payment interest). No formal prior notice from the Lender shall be necessary.

Late payment and default interest on unpaid overdue interest

Interest which has not been paid on its due date shall bear interest, provided they have remained unpaid for one year and to the extent permitted by law, at the Interest Rate applicable to the ongoing Interest Period (default interest), increased by three point five per cent (3.5%) (late-payment interest), to the extent that such Interest has been due and payable for at least one (1) year. No formal prior notice from the Lender shall be necessary.

The Borrower shall pay any outstanding interest under this Clause 4.3 (*Late payment and default interest*) immediately on demand by the Lender or on each Payment Date following the due date for the outstanding payment.

Receipt of any payment of late payment interest or default interest by the Lender shall neither imply the grant of any payment extension to the Borrower, nor operate as a waiver of any of the Lender’s rights hereunder.

* 1. Communication of Interest Rates

The Lender shall promptly notify the Borrower of the determination of each Interest Rate in accordance with this Agreement.

* 1. Effective Global Rate (*Taux Effectif Global*)

In order to comply with Articles L. 314-1 to L.314-5 and R.314-1 *et seq*. of the French Consumer Code and L. 313-4 of the French Monetary and Financial Code, the Lender informs the Borrower, and the Borrower accepts, that the effective global rate (*taux effectif global*) applicable to the Facility may be valued at an annual rate of zero point sixty-seven percent (0.67%) on the basis of a three hundred and sixty-five (365) day year and an Interest Period of six (6) months, subject to the following:

* + - 1. the above rate is given for information purposes only;
      2. the above rate is calculated on the basis that:

drawdown of the Facility is in full on the Signing Date;

no Drawdown made available to the Borrower will bear interest on the floating rate; and

the fixed rate for the duration of the facility should be equal to zero point sixty-three percent (0.63%);

* + - 1. the above rate takes into account the fees and costs payable by the Borrower under this Agreement, assuming that such fees and costs will remain fixed and will apply until the expiry of the term of this Agreement.

1. Change to the calculation of interest
   1. Market Disruption

(a) If a Market Disruption affects the interbank market in the Eurozone and it is impossible:

(i) for the fixed Interest Rate, to determine the fixed Interest Rate applicable to a Drawdown, or

(ii) for the variable Interest Rate, to determine the applicable EURIBOR for the relevant Interest Period,

the Lender shall inform the Borrower.

(b) Upon the occurrence of the event described in paragraph (a) above, the applicable Interest Rate, as the case may be, for the relevant Drawdown or for the relevant Interest Period will be the sum of:

(i) the Margin; and

(ii) the percentage rate per annum corresponding to the cost to the Lender of funding the relevant Drawdowns(s) from whatever source it may reasonably select. Such rate shall be notified to the Borrower as soon as possible and, in any case, prior to (1) the first Payment Date for interest owed under such Drawdown for the fixed Interest Rate or (2) the Payment Date for interest owed under such Interest Period for the variable Interest Rate.

* 1. Replacement of Screen Rate

5.2.1 Definitions

"**Relevant Nominating Body**" means any central bank, regulator, supervisor or working group or committee sponsored or chaired by, or constituted at the request of any of them.

"**Screen Rate Replacement Event**" means any of the following events or series of events:

(a) the definition, methodology, formula or means of determining the Screen Rate has materially changed;

(b) a law or regulation is enacted which prohibits the use of the Screen Rate, it being specified, for the avoidance of doubt, that the occurrence of this event shall not constitute a mandatory prepayment event;

(c) the administrator of the Screen Rate or its supervisor publicly announces:

(i) that it has ceased or will cease to provide the Screen Rate permanently or indefinitely, and, at that time, no successor administrator has been publicly nominated to continue to provide that Screen Rate;

(ii) that the Screen Rate has ceased or will cease to be published permanently or indefinitely; or

(iii) that the Screen Rate may no longer be used (whether now or in the future);

(d) a public announcement is made about the bankruptcy of the administrator of that Screen Rate or any other insolvency proceedings against it, and, at that time, no successor administrator has been publicly nominated to continue to provide that Screen Rate; or

(e) in the opinion of the Lender, the Screen Rate has ceased to be used in a series of comparable financing transactions.

"**Screen Rate**" means EURIBOR or, following the replacement of this rate by a Replacement Benchmark, the Replacement Benchmark.

"**Screen Rate Replacement Date**" means:

– with respect to the events referred to in items a), d) and e) of the above definition of Screen Rate Replacement Event, the date on which the Lender has knowledge of the occurrence of such event, and,

– with respect to the events referred to in items b) and c) of the above definition of Screen Rate Replacement Event, the date beyond which the use of the Screen Rate will be prohibited or the date on which the administrator of the Screen Rate permanently or indefinitely ceases to provide the Screen Rate or the date beyond which the Screen Rate may no longer be used.

5.2.2 Each Party acknowledges and agrees for the benefit of the other Party that if a Screen Rate Replacement Event occurs and in order to preserve the economic balance of the Agreement, the Lender may replace the Screen Rate with another rate (the "**Replacement Benchmark**") which may include an adjustment margin in order to avoid any transfer of economic value between the Parties (if any) (the "**Adjustment Margin**") and the Lender will determine the date from which the Replacement Benchmark and, if any, the Adjustment Margin shall replace the Screen Rate and any other amendments to the Agreement required as a result of the replacement of the Screen Rate by the Replacement Benchmark.

5.2.3 The determination of the Replacement Benchmark and the necessary amendments will be made in good faith and taking into account, (i) the recommendations of any Relevant Nominating Body, or (ii) the recommendations of the administrator of the Screen Rate, or (iii) the industry solution recommended by professional associations in the banking sector or, (iv) the market practice observed in a series of comparable financing transactions on the replacement date.

5.2.4 In case of replacement of the Screen Rate, the Lender will promptly notify the Borrower of the replacement terms and conditions to replace the Screen Rate with the Replacement Benchmark, which will be applicable to Interest Periods starting at least two Business Days after the Screen Rate Replacement Date.

5.2.5 The provisions of Clause 5.2 (*Replacement of Screen Rate*) shall prevail over the provisions of Clause 5.1 (*Market Disruption*).

1. FEES
   1. Commitment fees

One hundred and eighty (180) calendar days after the Signing Date, the Borrower shall pay to the Lender a commitment fee (due and calculated as mentioned below) of zero point twenty five percent (0.25%) per annum.

The commitment fee shall be computed at the rate specified above on the amount of the Available Credit pro-rated for the actual number of days elapsed increased by the amount of any Drawdowns to be made available by the Lender in accordance with any pending Drawdown Requests.

The first commitment fee shall be calculated for the period from (i) from the date falling sixty (60) calendar days after the Signing Date (excluded) up to (ii) the immediately following Payment Date (included). Subsequent commitment fees shall be calculated for periods commencing on the day immediately following a Payment Date (included) and ending on the next Payment Date (included).

The accrued commitment fee shall be payable (i) on each Payment Date within the Availability Period; (ii) on the Payment Date following the last day of the Drawdown Period; and (iii) in the event the Available Credit is cancelled in full, on the Payment Date following the effective date of such cancellation.

* 1. Front-end Fee

No later than one hundred and eighty (180) calendar days after the Signing Date and prior to the first Drawdown, the Borrower shall pay to the Lender an appraisal fee of zero point twenty five per cent (0.25%) calculated on the maximum amount of the Facility.

1. REPAYMENT

Following expiry of the Grace Period, the Borrower shall repay the Lender the principal amount of the Facility in eight (8) equal semi-annual instalments, due and payable on each Payment Date.

The first instalment shall be due and payable on December 15th, 2027 and the last instalment shall be due and payable on June 15th, 2031.

At the end of the Drawdown Period, the Lender shall deliver to the Borrower an amortisation schedule in respect of the Facility taking into account, if applicable, any potential cancellation of the Facility pursuant to Clauses 8.3 (Cancellation by the Borrower) and/or 8.4 (Cancellation by the Lender).

1. Prepayment and Cancellation
   1. Voluntary prepayment

The Borrower shall not be entitled to prepay the whole or any part of the Facility prior to the expiration date of a five years (5) period starting on the Signing Date.

As from the date referred to in the previous paragraph, the Borrower may prepay the whole or any part of the Facility, subject to the following conditions:

* + - 1. the Borrower shall notify the Lender of its intention to prepay by not less than thirty (30) Business Days’ written and irrevocable notice prior to the contemplated prepayment date;
      2. the amount to be prepaid shall be equal to one or several instalment(s) in principal;
      3. the contemplated prepayment date shall be a Payment Date;
      4. all prepayments shall be made together with the payment of accrued interest, any fees, indemnities and related costs in connection with the prepaid amount as provided under this Agreement;
      5. there is no outstanding unpaid amount; and
      6. in case of a part prepayment, the Borrower shall have given evidence, satisfactory to the Lender, that it has sufficient committed funding available for the purpose of financing the Project as determined in the Financing Plan.

On the Payment Date on which the prepayment is made, the Borrower shall pay the full amount of the Prepayment Indemnities due and payable pursuant to Clause 9.3 (*Prepayment Indemnity*)

* 1. Mandatory prepayment

The Borrower shall immediately prepay the whole or part of the Facility upon receipt of a notice from the Lender informing the Borrower of any of the following events:

* + - 1. Illegality: it becomes unlawful for the Lender pursuant to its applicable law to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Facility;
      2. Additional Costs: the amount of any Additional Costs referred to in Clause 9.5 (*Additional Costs*) is significant and the Borrower has refused to pay such Additional Costs;
      3. Default: the Lender declares an Event of Default in accordance with Clause 13 (*Events of Defaults*);
      4. Failure to justify use of funds: the Borrower fails to justify in a manner satisfactory to the Lender the use of the Advances by the Deadline for Use of Funds;
      5. Prepayment to a Co-Financier: the Borrower prepays whole or part of any amounts owed to a Co-Financier, in which case the Lender shall be entitled to request that the Borrower prepays, as the case may be, the Facility or an amount of the outstanding Facility in proportion with the amount prepaid to the Co-Financier.

In the case of each of the events specified in paragraphs (a), (b) and (c) above, the Lender reserves the right, after having notified the Borrower in writing, to exercise its rights as a creditor in the manner specified in paragraph (b) of Clause 13.2 (*Acceleration*).

* 1. Cancellation by the Borrower

Prior to the Deadline for Drawdown, the Borrower may cancel the whole or any part of the Available Credit by giving the Lender a three (3) Business Days’ prior notice.

Upon receipt of such notice of cancellation, the Lender shall cancel the amount notified by the Borrower, provided that the Eligible Expenses, as specified in the Financing Plan, are covered in a manner satisfactory to the Lender, except in the event that the Project is abandoned by the Borrower.

* 1. Cancellation by the Lender

The Available Credit shall be immediately cancelled upon delivery of a notice to the Borrower which shall be immediately effective, if:

* + - 1. the Available Credit is not equal to zero on the Deadline for Drawdown;
      2. the first Drawdown has not occurred on the expiry date of a fourteen (14) month period from approval of the Facility by the competent organs of the Lender, as mentioned in paragraph (C) of the Recitals;
      3. an Event of Default has occurred and is continuing; or
      4. an event referred to in Clause 8.2 (*Mandatory prepayment*) has occurred;

except where, in the case of paragraphs (a) and (b) of this Clause 8.4 (*Cancellation by the Lender*), the Lender has proposed to postpone the Deadline for Drawdown or the deadline for the first Drawdown on the basis of new financial conditions which will apply to any Drawdowns under the Available Credit and the Borrower has agreed on the proposition.

* 1. Restrictions

Any notice of prepayment or cancellation given by a Party pursuant to this Clause 8 (*Prepayment and Cancellation*) shall be irrevocable, and, unless otherwise provided in this Agreement, any such notice shall specify the date or dates on which the relevant prepayment or cancellation is to be made and the amount of that prepayment or cancellation.

The Borrower shall not prepay or cancel all or any part of the Facility except at the times and in the manner expressly provided for in this Agreement.

Any prepayment under this Agreement shall be made together with payment of (i) accrued interest on the prepaid amount, (ii) outstanding fees, and (iii) the Prepayment Indemnity referred to in Clause 9.3 (*Prepayment Indemnity*).

Any prepayment amount will be applied against the remaining instalments in inverse order of maturity.

The Borrower may not re-borrow the whole or any part of the Facility which has been prepaid or cancelled.

1. Additional Payment Obligations
   1. Costs and expenses
      1. If an amendment to this Agreement is required, the Borrower shall reimburse to the Lender for all costs (including legal fees) reasonably incurred in responding to, evaluating, negotiating or complying with that requirement.
      2. The Borrower shall reimburse to the Lender for all costs and expenses (including legal fees) incurred by it in connection with the enforcement or preservation of any of its rights under this Agreement.
      3. The Borrower shall pay directly or, if applicable, reimburse the Lender in case of an advance made by the Lender, the amount of all costs and expenses in connection with the transfer of funds to, or for the account of, the Borrower from Paris to any other place agreed with the Lender, as well as any transfer fees and expenses in connection with the payment of all sums due under the Facility.
   2. Cancellation Indemnity

If the Facility is cancelled in full or in part in accordance with the terms of Clauses 8.3 (*Cancellation by the Borrower*) and/or 8.4 (*Cancellation by the Lender*) paragraphs (a), (b) and (c), the Borrower shall pay a cancellation indemnity computed at two point five (2.5%) on the cancelled amount of the Facility.

Each cancellation indemnity shall be due and payable on the Payment Date immediately following a cancellation of all or part of the Facility.

* 1. Prepayment Indemnity

On account of any losses suffered by the Lender as a result of the prepayment of the whole or any part of the Facility in accordance with Clauses 8.1 (*Voluntary prepayment*) or 8.2 (*Mandatory prepayment*), the Borrower shall pay to the Lender an indemnity equal to the aggregate amount of:

* the Prepayment Compensatory Indemnity; and
* any costs arising out of the break of any interest rate hedging swap transactions put in place by the Lender in connection with the amount prepaid.
  1. Taxes and duties
     1. Registration costs

The Borrower shall pay directly, or, if applicable, reimburse the Lender in case of an advance made by the Lender, the costs of all stamp duty, registration and other similar taxes payable in respect of the Agreement and any potential amendment thereto.

* + 1. Withholding Tax

The Borrower undertakes that all payments made to the Lender under this Agreement shall be free of any Withholding Tax in accordance with the interstate agreement entered into between the Republic of Serbia and the French Republic on February 25, 2019.

If a Withholding Tax is required by law, the Borrower undertakes to gross-up the amount of any such payment to such amount which leaves the Lender with an amount equal to the payment which would have been due if no payment of Withholding Tax had been required.

The Borrower shall reimburse to the Lender all expenses and/or Taxes for the Borrower’s account which have been paid by the Lender (if applicable), with the exception of any Taxes due in France.

* 1. Additional Costs

The Borrower shall pay to the Lender, within ten (10) Business Days of the Lender’s request, all Additional Costs incurred by the Lender as a result of: (i) the coming into force of any new law or regulation, or any amendment to, or any change in the interpretation or application of any existing law or regulation; or (ii) compliance with any law or regulation made after the Signing Date.

In this Clause, “**Additional Costs**” means:

any cost arising after the Signing Date out of one of the event referred to in the first paragraph of this Clause and not taken into account by the Lender to compute the financial conditions of the Facility; or

any reduction of any amount due and payable under this Agreement,

which is incurred or suffered by the Lender as a result of (i) making the Facility available to the Borrower or (ii) entering into or performing its obligations under the Agreement.

* 1. Currency indemnity

If any sum due by the Borrower under this Agreement, or any order, judgment or award given or made in relation to such a sum, has to be converted from the currency in which that sum is payable into another currency, for the purpose of:

making or filing a claim or proof against the Borrower; or

obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall indemnify the Lender against and, within ten (10) Business Days of the Lender’s request and as permitted by law, pay to the Lender, the amount of any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between: (A) the exchange rate used to convert the relevant sum from the first currency to the second currency; and (B) the exchange rate or rate(s) available to the Lender at the time of its receipt of that sum. This obligation to indemnify the Lender is independent of any other obligation of the Borrower under this Agreement.

The Borrower waives any right it may have in any jurisdiction to pay any amount due under this Agreement in a currency or currency unit other than that in which it is expressed to be payable.

* 1. Due dates

Any indemnity or reimbursement payable by the Borrower to the Lender under this Clause 9 (*Additional Payment Obligations*) is due and payable on the Payment Date immediately following the circumstances which have given rise to the relevant indemnity or reimbursement.

Notwithstanding the above, any indemnity to be paid in connection with a prepayment pursuant to Clause 9.3 (*Prepayment Indemnity*) is due and payable on the date of the relevant prepayment.

1. Representations and warranties

All the representations and warranties set out in this Clause 10 (*Representations and warranties*) are made by the Borrower for the benefit of the Lender on the Signing Date. All the representations and warranties in this Clause 10 (*Representations and warranties*) are also deemed to be made by the Borrower on the date on which all of the conditions precedent listed in Part III of Schedule 4 (*Conditions Precedent*) are satisfied, on the date of each Drawdown Request, on each Drawdown Date and on each Payment Date, except that the repeating representations contained in Clause 10.9 (*No misleading information*) are deemed to be made by the Borrower in relation to the information provided by the Borrower since the date on which the representation was last made.

* 1. Power and authority

The Borrower has the power to enter into, perform and deliver this Agreement and Project Documents and to perform all contemplated obligations. The Borrower has taken all necessary action to authorise its entry into, performance and delivery of this Agreement and Project Documents and the transactions contemplated by this Agreement and Project Documents.

* 1. Validity and admissibility in evidence

All Authorisations required:

* + - 1. to enable the Borrower to lawfully enter into, and exercise its rights and comply with its obligations under this Agreement and Project Documents; and
      2. to make this Agreement and the Project Documents admissible in evidence in the courts of the jurisdiction of the Borrower or in arbitration proceedings as defined under Clause 17 (*Governing Law, Enforcement and Choice of Domicile*),

have been obtained and are in full force and effect, and no circumstances exist which could result in the revocation, non-renewal or modification, in whole or in part, of any such Authorisations.

* 1. Binding obligations

The obligations expressed to be assumed by the Borrower under this Agreement and the Project Documents comply with all laws and regulations applicable to the Borrower in its jurisdiction and are legal, valid, binding and enforceable obligations which are effective in accordance with their written terms.

* 1. No filing or stamp taxes

Under the laws of the jurisdiction of incorporation of the Borrower, it is not necessary that the Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar taxes or fees be paid on or in relation to the Agreement or the transactions contemplated therein.

* 1. Transfer of funds

All amounts due by the Borrower to the Lender under this Agreement whether as principal or interest, late payment interest, Prepayment Indemnity, incidental costs and expenses or any other sum are freely convertible and transferable.

This representation shall remain in full force and effect until full repayment of all sums due to the Lender. In the event that the repayment dates of the Facility are extended by the Lender, no further confirmation of this representation shall be necessary.

The Borrower shall obtain Euros necessary for compliance with this representation in due course.

Should any difficulty in respect of Lender’s right of conversion and free transfer of any sum under this Agreement occur for any reason, including but not limiting to: (i) the coming into force of any new law or regulation, or any amendment to, or any change in the interpretation or application of any existing law or regulation; or (ii) compliance with any law or regulation made after the Signing Date; the Borrower will secure, without delay, all required certificates/confirmations from competent authorities (including National Bank of Serbia) in order to enable that all due sums under this Agreement are freely convertible and transferable.

* 1. No conflict with other obligations

The entry into and performance by the Borrower of, and the transactions contemplated by, this Agreement and the Project Documents do not conflict with any domestic or foreign law or regulation applicable to it, its constitutional documents (or any similar documents) or any agreement or instrument binding upon the Borrower or affecting any of its assets.

* 1. Governing law and enforcement

The choice of French law as the governing law of this Agreement will be recognised and enforced by the courts and arbitration tribunals in the jurisdiction of the Borrower.

Any judgment obtained in relation to this Agreement in a French court or any award by an arbitration tribunal will be recognised and enforced in the jurisdiction of incorporation of the Borrower.

* 1. No default

No Event of Default is continuing or is reasonably likely to occur.

No breach of the Borrower is continuing in relation to any other agreement binding upon it, or affecting any of its assets, which has, or is reasonably likely to have, a Material Adverse Effect.

* 1. No misleading information

All information and documents supplied by the Borrower to the Lender were true, accurate and up-to-date as at the date they were provided or, if appropriate, as at the date at which they are stated to be given and have not been varied, revoked, cancelled or renewed on revised terms, and are not misleading in any material respect as a result of an omission, the occurrence of new circumstances or the disclosure or non-disclosure of any information.

* 1. Project Documents

The Project Documents represent the entire agreement relating to the Project on the Signing Date and are valid, binding and enforceable against third parties. The Project Documents have not been amended, terminated or suspended without the prior approval of the Lender since the date on which they were delivered to the Lender and there is no current dispute in connection with the validity of the Project Documents.

* 1. Project Authorisations

All Project Authorisations have been obtained or effected and are in full force and effect and there are no circumstances which may result in any Project Authorisation being revoked, cancelled, not renewed or varied in whole or in part.

* 1. Procurement

The Borrower: (i) has received a copy of the Applicable Procurement Guidelines and (ii) understands the terms of the Applicable Procurement Guidelines, in particular, those terms relating to any actions which the Lender may take in the case of a breach of the Applicable Procurement Guidelines.

The Borrower is contractually bound by the Applicable Procurement Guidelines as if such Applicable Procurement Guidelines were incorporated by reference into this Agreement. The Borrower confirms that the procurement, allocation and performance of the contracts relating to the implementation of the Project comply with the Applicable Procurement Guidelines.

The Borrower has acknowledged the content of the Schedule AFD’s Covenant of Integrity in Schedule 7 (*AFD’s Covenant of Integrity*) of this Agreement. Requirements stipulated in AFD’s Covenant of Integrity must be formally produced by any holder of a contract to be concluded within the framework of the Project and therefore, where appropriate, included in the pre-procurement documentation

* 1. Pari passu ranking

The Borrower’s payment obligations under this Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors.

* 1. Origin of funds, Acts of Corruption, Fraud and Anti-Competitive Practices

The Borrower represents and warrants that:

all the funds invested in the Project are from the proceeds of the Facility and the Co-financing, pursuant to the Law Approving the Budget of the Republic of Serbia for the year 2021 (Zakon o budžetu Republike Srbije za 2021. godinu, Official Gazette of the Republic of Serbia, no. 149/2020);

the Project (in particular, the negotiation, award and performance of any contracts financed with the Facility) has not given rise to any Act of Corruption, Fraud or Anti-Competitive Practice.

* 1. No Material Adverse Effect

The Borrower represents and warrants that no event or circumstance which is likely to have a Material Adverse Effect has occurred or is likely to occur.

* 1. No immunity

If and to the extent that the Borrower may now or in future in any jurisdiction claim immunity for itself or its assets and to the extent that a jurisdiction grants immunity to the Borrower, the Borrower will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in connection with this Agreement to the fullest extent permitted by the laws of such jurisdiction.

The Borrower does not waive any immunity in respect of any present or future (i) “premises of the mission” as defined in the Vienna Convention on Diplomatic Relations signed in 1961, (ii) “consular premises” as defined in the Vienna Convention on Consular Relations signed in 1963, (iii) assets that cannot be in commerce, (iv) military property or military assets and buildings, weapons and equipment designated for defence, state and public security, (v) receivables the assignment of which is restricted by law, (vi) natural resources, common use items, grids in public ownership, river basin land and water facilities in public ownership, protected natural heritage in public ownership and cultural heritage in public ownership, (vii) real estate in public ownership which is, partly or entirely, used by the authorities of the Republic of Serbia, autonomous provinces or local self-government for the purpose of exercising their rights and duties; (viii) the state's, autonomous province’s or local government’s stocks and shares in companies and public enterprises, unless the relevant entity consented to the establishment of a pledge over such stocks or shares, (ix) movable or immovable assets of health institutions, unless a mortgage was established based on the government's decision, (x) monetary assets and financial instruments determined as financial collateral in accordance with the law regulating financial collateral including monetary assets and financial instruments which are pledged in accordance with such law or (xi) other assets exempt from enforcement by international law or international treaties.

1. Undertakings

The undertakings in this Clause 11 (*Undertakings*) take effect on the Signing Date and remain in full force and effect for as long as any amount is outstanding under this Agreement.

* 1. Compliance with Laws, Regulations and Obligations

The Borrower shall comply:

* + - 1. in all respects with all laws and regulations to which it and/or the Project is subject, particularly in relation to all applicable environmental protection, safety and labour laws; and
      2. with all of its obligations under the Project Documents.
  1. Authorisations

The Borrower shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any applicable law or regulation to enable it to perform its obligations under this Agreement and the Project Documents and to ensure the legality, validity, enforceability and admissibility in evidence of this Agreement or any Project Document.

* 1. Project Documents

The Borrower through the Ministry of Construction, Transports and Infrastructure (MCTI) shall provide the Co-Financier on behalf of the Lender for no-objection or information, as the case may be, with a copy of any Project Documents or amendment thereto and shall not (and shall not agree to) make any material amendment to any Project Document without obtaining the Co-Financier’s prior no-objection.

* 1. Implementation and preservation of the Project

The Borrower through MCTI shall:

implement the Project in accordance with the generally accepted safety principles and in accordance with technical standards in force; and

maintain the Project assets in accordance with all applicable laws and regulations and in good operating and maintenance conditions, and use such assets in compliance with their purpose and all applicable laws and regulations.

* 1. Procurement

In relation to the procurement, award and performance of contracts entered into in connection with the implementation of the Project, the Borrower shall comply with, and implement, the Applicable Procurement Procedures.

The Borrower shall take all actions and steps necessary for the effective implementation of the Applicable Procurement Procedures.

The Borrower through MCTI undertakes to:

submit (a) updated procurement plans, and (b) contracts subjects to prior review of the Co-Financier.

in the case of prior review contracts, provide the Lender with a copy of the evaluation report (including prequalification report and shortlisting report, as applicable) at the same time it is submitted to the Co-Financier. If the bidder does not meet AFD’s financing eligibility requirements, the Lender will promptly inform the Co-Financier and the Borrower. The Co-Financier and the Lender shall then consult with the Borrower to determine the appropriate course of action;

in the case of post review contracts, include in the terms of reference of the audits referred to in Article 3.4.3(h) (*Control – Audit*) a review of the Borrower’s controls and operating procedures for complying with AFD’s financing eligibility requirements regarding any Financial Sanctions List;

retain all documentation with respect to contracts subjects to post review during project implementation and up to two years after the Completion Date;

in case of contracts subject to international competition, publish the procurement notices on the website <http://afd.dgmarket.com>;

in addition to the Applicable Procurement Procedures, make the AFD’s Covenant of Integrity, as provided in Schedule 7 (*AFD’s Covenant of Integrity*), as a binding document to each of the Contractors including in cases of non-competitive procurement processes.

* 1. Environmental and social responsibility
     1. Implementation of environmental and social measures

In order to promote sustainable development, the Parties agree that it is necessary to promote compliance with internationally recognised environmental and labour standards, including fundamental conventions of the International Labour Organization (“**ILO**”) and the international environmental laws and regulations applicable in the Borrower’s jurisdiction. For such purpose, the Borrower shall:

with respect to its business activities:

* + - 1. comply with international standards for the protection of the environment and labour laws, particularly the fundamental conventions of the ILO and the international environmental conventions, in accordance with the applicable laws and regulations of the country in which the Project is being implemented.

with respect to the Project:

* + - 1. include in the procurement contracts, and, as the case may be, in the bidding documents, a clause whereby the contracting parties agree, and agree to procure that their sub-contractors (if any) agree, to comply with such standards in accordance with the applicable laws and regulations of the country where the Project is being implemented. The Lender will be entitled to request that the Borrower deliver a report on environmental and social conditions of implementation of the Project;
      2. put in place appropriate mitigation measures specific to the Project as defined within the context of the environmental and social risk management policy of the Project and described in the ESCP referred to in the IBRD Loan Agreement;
      3. require that the Contractors appointed for implementation of the Project, apply the mitigation measures set out in paragraph (c) above and procure that their subcontractors (if any) comply with all such measures and take all appropriate steps in the event of a failure to put in place such mitigation measures; and
      4. provide the Lender through the Co Financier with annual follow-up reports in relation to the ESCP.
    1. Environmental and social (ES) complaints-management
       1. The Borrower (i) confirms that it has received a copy of the ES Complaints-Management Mechanism’s Rules of Procedure and has acknowledged its terms, in particular with respect to actions that may be taken by the Lender in the event that a third party lodges a complaint, and (ii) acknowledges that these ES Complaints-Management Mechanism’s Rules of Procedure have, as between the Borrower and the Lender, the same contractually binding effect as this Agreement.
       2. The Borrower expressly authorises the Lender to disclose to the experts (as defined in the ES Complaints-Management Mechanism’s Rules of Procedure) and to parties involved in the compliance review and/or conciliation processes, the Project documents concerning environmental and social matters necessary for processing the environmental and social complaint.
  1. Additional financing

The Borrower shall not amend or alter the Financing Plan without obtaining the Lender’s prior written consent and shall finance any additional costs not anticipated in the Financing Plan on terms which ensure that the Facility will be repaid.

* 1. Pari passu ranking

The Borrower undertakes (i) to ensure that its payment obligations under this Agreement rank at all times at least *pari passu* with its other present and future unsecured and unsubordinated payment obligations; (ii) not to grant prior ranking or guarantees to any other lenders except if the same ranking or guarantees are granted by the Borrower in favour of the Lender, if so requested by the Lender.

* 1. Designated Account

The Borrower shall open, maintain and fund the Designated Account in accordance with the terms and conditions of this Agreement.

* 1. Inspections

The Borrower hereby authorizes the Lender and its representatives to carry out inspections the purpose of which will be to assess the implementation and operations of the Project as well as the impact and the achievement of the objectives of the Project.

The Borrower shall co-operate and provide all reasonable assistance and information to the Lender and its representatives when carrying out such inspections, the timing and format of which shall be determined by the Lender following consultation with the Borrower.

The Borrower shall retain and make available for inspection by the Lender, all documents relating to the Eligible Expenses for a period of ten (10) years from the date of the last Drawdown under the Facility.

* 1. Project evaluation

The Borrower acknowledges that the Lender may carry out, or procure that a third party carries out on its behalf, an evaluation of the Project. Feedback from this evaluation will be used to produce a summary containing information on the Project, such as: total amount and duration of the funding, objectives of the Project, expected and achieved quantified outputs of the Project, assessment of the relevance, effectiveness, impact and viability/sustainability of the Project, main conclusions and recommendations.

The main objective of the evaluation will be the articulation of credible and independent judgement on the key issues of relevance, implementation (efficiency) and effects (effectiveness, impact and sustainability).

Evaluators will need to take into account in a balanced way the different legitimate points of view that may be expressed and conduct the evaluation impartially.

The Borrower will be involved as closely as possible in the evaluation, from the drafting of the Terms of Reference to the delivery of the final report.

The Borrower agrees to the publication of this summary, in particular on the Lender's website.

* 1. Implementation of the Project

The Borrower shall:

ensure that any person, group or entity participating in the implementation of the Project is not listed on any Financial Sanctions List (including in particular the fight against terrorist financing); and

not finance any supplies or sectors which are subject to an Embargo by the United Nations, the European Union or France.

* 1. Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices

The Borrower undertakes:

to ensure that the funds, other than those of State origin, invested in the Project will not be of an Illicit Origin;

To ensure that the Project (in particular during the negotiation, entry into and performance of the contracts funded out of the Facility) shall not give rise to any Act of Corruption, Fraud or Anti-Competitive Practice;

as soon as it becomes aware of, or suspects, any Act of Corruption, Fraud or Anti-Competitive Practice, to inform the Lender without any delay;

in the event referred to in paragraph (iii) above, or at the Lender’s request if the Lender suspects that the acts or practices referred to in paragraph (iii) have occurred, take all necessary actions to remedy the situation in a manner satisfactory to the Lender and within the time period determined by the Lender; and

to notify the Lender without delay if it has knowledge of any information which leads it to suspect any Illicit Origin of any funds invested in the Project.

1. Information Undertakings

The undertakings in this Clause 12 (*Information Undertakings*) take effect on the Signing Date and remain in full force and effect for as long as any amount is outstanding under this Agreement.

* 1. Financial Information

The Borrower shall supply to the Lender any information that the Lender may reasonably require in relation to the Borrower’s foreign and domestic debt as well as the status of any guaranteed loans.

* 1. Progress Report

During the implementation of the Project, the Borrower shall supply to the Lender through the Co-Financier the Project progress reports in the format and content defined under the Project Operations Manual.

* 1. Co-Financing

The Borrower shall promptly inform the Lender of any cancellation (in whole or in part) or any prepayment by the Co-Financier.

* 1. Information - miscellaneous

The Borrower shall supply to the Lender and (the Co-Financier with respect to (b) to (c):

* + - 1. promptly upon becoming aware of them, details of any event or circumstance which is or may be an Event of Default or which has or may have a Material Adverse Effect, the nature of such an event and all the actions taken or to be taken to remedy it (if any);
      2. promptly upon becoming aware of them, details of any incident or accident directly related to the implementation of the Project which might have a significant impact on the Project site, the working conditions of its employees or Contractors’ employees, the nature of such incident or accident, together with details of any action taken or proposed to be taken, as applicable, by the Borrower to remedy it;
      3. promptly, details of any decision or event which might affect the organisation, completion or operation of the Project;
      4. promptly but in any event within five (5) Business Days after becoming aware of them, details of any notification of default, termination, dispute or material claim made against it under a Project Document or affecting the Project, together with details of any action taken or proposed to be taken by the Borrower to remedy it;
      5. during the completion of services (including but not limited to services related to studies and monitoring where the Project involves the provision of such services), the interim and final reports drafted by any service provider, and after full completion of such services an overall execution report;
      6. promptly, any further information regarding its financial condition, assets and operations or any documents or other communications given or received by it under any Project Document that the Lender may reasonably request.

1. Events of Defaults
   1. Events of Default

Each of the events or circumstances set out in this Clause 13.1 (*Events of Default*) is an Event of Default.

* + - 1. Payment Default

The Borrower does not pay on the due date any amount payable by it under this Agreement in the manner required under this Agreement. However, without prejudice to Clause 4.3 (*Late payment and default* interest), no Event of Default will occur under this paragraph (a) if such payment is made in full by the Borrower within five (5) Business Days of the due date.

* + - 1. Project Documents

Any Project Document, or any of the rights and obligations set out therein, ceases to be in full force and effect, is subject to a notice of termination or its validity, legality or enforceability is challenged.

No Event of Default will occur pursuant to this paragraph (b) if (i) the challenge or notice of termination is withdrawn within thirty (30) calendar days after the date on which the Lender informed the Borrower of such challenge or notice or the Borrower became aware of such challenge or notice; and (ii), according to the opinion of the Lender and the Co-Financier, such dispute or request has not had a Material Adverse Effect during such thirty (30) day period.

* + - 1. Undertakings and Obligations

The Borrower does not comply with any term of the Agreement, including, without limitation, any of the undertakings it has given pursuant to Clause 11 (*Undertakings*) and Clause 12 (*Information Undertakings*).

Save for the undertakings given pursuant to Clause 11.6 (*Environmental and Social Liability*), Clauses 11.12 (

*Implementation of the* Project) and 11.13 (*Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices*) in respect of which no grace period is permitted, no Event of Default will occur under this paragraph (c) if the non-compliance is capable of remedy and is remedied within five (5) Business Days of the earlier of (A) the date of the Lender’ notice of failure to the Borrower; and (B) the Borrower becoming aware of the breach, or within the time limit determined by the Lender in the case referred to in subparagraph (iv) of Clause 11.13 (*Origin of funds, no Acts of Corruption, Fraud or Anti-Competitive Practices*)*.*

* + - 1. Misrepresentation

A representation or warranty made by the Borrower in the Agreement, including under Clause 10 (*Representations* and warranties), or in any document delivered by or on behalf of the Borrower under or in relation to the Agreement, is incorrect or misleading or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

* + - 1. Cross Default

Subject to paragraph (iii), any Financial Indebtedness of the Borrower is not paid on its due date or, if applicable, within any grace period granted pursuant to the relevant documentation.

A creditor has cancelled or suspended its commitment towards the Borrower pursuant to any Financial Indebtedness, or has declared the Financial Indebtedness due and payable prior to its specified maturity, or requested prepayment in full of the Financial Indebtedness, in each case, as a result of an event of default or any provision having a similar effect (howsoever described) pursuant to the relevant documentation.

No Event of Default will occur under this Clause 13.1 (e) if the relevant amount of Financial Indebtedness or the commitment for Financial Indebtedness falling within paragraphs (i) and (ii) above is less than thirty millions Euros (EUR 30,000,000) (or its equivalent in any other currency(ies)).

* + - 1. Unlawfulness

It is or becomes unlawful for the Borrower to perform any of its obligations under this Agreement.

Any obligation of the Borrower under this Agreement is not or ceases to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lender under this Agreement.

* + - 1. Material adverse change

Any event (including a change in the political situation of the country of the Borrower) or any measure which is likely, according to the Lender’s opinion, to have a Material Adverse Effect occurs or is likely to occur.

* + - 1. Withdrawal or suspension of the Project

Any of the following occurs:

the implementation of the Project is suspended or postponed for a period exceeding six (6) months; or

the Project has not been completed in full by the Deadline for Use of Funds; or

the Borrower withdraws from, or ceases to participate in, the Project.

* + - 1. Authorisations

Any Authorisation required for the Borrower in order to perform or comply with its obligations under this Agreement or its other material obligations under any Project Documents or required in the ordinary course of the Project is not obtained within the required timeframe or is cancelled or becomes invalid or otherwise ceases to be in full force and effect.

* + - 1. Judgments, rulings or decisions having a Material Adverse Effect

Any judgment or arbitral award or any judicial or administrative decision affecting the Borrower has or is reasonably likely, according to the opinion of the Lender, to have a Material Adverse Effect, occurs or is likely to occur.

* + - 1. Suspension of free convertibility and free transfer

Free convertibility and free transfer of any of the amounts due by the Borrower under this Agreement, or any other facility provided by the Lender to the Borrower or any other borrower of the jurisdiction of the Borrower, is challenged.

Any foreign exchange law is amended, enacted or introduced or is reasonably to be amended, enacted or introduced in the Republic of Serbia that (in the opinion of the Lender): (i) has or is reasonably likely to have the effect of prohibiting, or restricting or delaying in any material respect any payment that the Borrower is required to make pursuant to the terms of this Agreement; or (ii) is materially prejudicial to the interests of the Lenders under or in connection with this Agreement.

* 1. Acceleration

On and at any time after the occurrence of an Event of Default, the Lender may, without providing any formal demand or commencing any judicial or extra-judicial proceedings, by written notice to the Borrower:

* + - 1. cancel the Available Credit; and/or
      2. declare that all or part of the Facility, together with any accrued or outstanding interest and all other amounts outstanding under this Agreement, are immediately due and payable.

Without prejudice to the above, in the event that an Event of Default occurs as set out in Clause 13.1 (*Events of Default*), the Lender reserves the right to, upon written notice to the Borrower, (i) suspend or postpone any Drawdowns under the Facility; and/or (ii) suspend the finalisation of any agreements relating to other possible financial offers which have been notified by the Lender to the Borrower; and/or (iii) suspend or postpone any drawdown under any loan agreement entered into between the Borrower and the Lender.

If any drawdowns are postponed or suspended by a Co-Financier under an agreement between such Co-Financier and the Borrower, the Lender reserves the right to postpone or suspend any Drawdowns under the Facility.

* 1. Notification of an Event of Default

In accordance with Clause 12.4 (*Information*), the Borrower shall promptly notify the Lender upon becoming aware of any event which is or is likely to be an Event of Default and inform the Lender of all the measures contemplated by the Borrower to remedy it.

1. ADMINISTRATION OF THE FACILITY
   1. Payments

All payments received by the Lender under this Agreement shall be applied towards the payment of expenses, fees, interest, principal amounts or any other sum due under this Agreement in the following order:

* + - * 1. incidental costs and expenses;
        2. fees;
        3. late-payment interest and default interest;
        4. accrued interest;
        5. principal repayments.

Any payments received from the Borrower shall be applied first in or towards payment of any sums due and payable under the Facility or under other loans extended by the Lender to the Borrower, should it be in the Lender’s interest to apply these sums to such other loans, in the order set out above.

* 1. Set-off

Without prior approval of the Borrower, the Lender may, at any time, set-off due and payable obligations owed by the Borrower against any amounts held by the Lender on behalf of the Borrower or any due and payable obligations owed by the Lender to the Borrower. If the obligations are in different currencies, the Lender may convert either obligation at the prevailing currency exchange rate for the purpose of the set-off.

All payments made by the Borrower under the Agreement shall be calculated and made without set-off. The Borrower is prohibited from making any set-off.

* 1. Business Days

If a payment is due on a day which is not a Business Day, the due date for that payment shall be the next Business Day if the next Business Day is in the same calendar month, or the preceding Business Day if the next Business Day is not in the same calendar month.

During any extension of the Payment Date for a principal or unpaid amount under this Agreement, interest shall be payable on that amount during the extension period at the rate applicable on the original Payment Date.

* 1. Currency of payment

The currency of each amount payable under this Agreement is Euros, except as provided in Clause 14.6 (*Place of payment*).

* 1. Day count convention

Any interest, fee or expense accruing under this Agreement will be calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days in accordance with European interbank market practice.

* 1. Place of payment

Any funds to be transferred by the Lender to the Borrower under the Facility will be paid to the bank account specifically designated for such purpose by the Borrower and mentioned in the Disbursement Notice submitted by the Co-Financier to the Lender, provided that the Lender has given its prior consent on the selected bank.

Any payment to be made by the Borrower to the Lender shall be paid on the due date by no later than 11:00 am (Paris time) to the following bank account:

RIB Code:   30001 00064 00000040235 03

IBAN Code:               FR76 3000 1000 6400 0000 4023 503

Banque de France SWIFT code (BIC):              BDFEFRPPCCT

opened by the Lender at the Banque de France (head office/main branch) in Paris or any other account notified by the Lender to the Borrower.

The Borrower shall request from the bank responsible for transferring any amounts to the Lender that it provides the following information in any wire transfer messages in a comprehensive manner and in the order set out below:

* + Principal: name, address, bank account number
  + Principal’s bank: name and address
  + Reference: name of the Borrower, name of the Project, reference number of the Agreement

All payments made by the Borrower shall comply with this Clause 14.6 (*Place of payment*) in order for the relevant payment obligation to be deemed discharged in full.

* 1. Payment Systems Disruption

If the Lender determines (in its discretion) that a Payment Systems Disruption Event has occurred or the Borrower notifies the Lender that a Payment Systems Disruption Event has occurred, the Lender:

* + - 1. may, and shall if requested by the Borrower, enter into discussions with the Borrower with a view to agreeing any changes to the operation and administration of the Facility as the Lender may deem necessary in the circumstances;
      2. shall not be obliged to enter into discussions with the Borrower in relation to any of the changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, it has no obligation to agree to such changes; and
      3. shall not be liable for any cost, loss or liability arising as a result of its taking, or failing to take, any actions pursuant to this Clause 14.7 (*Payment Systems Disruption* ).

1. MISCELLANEOUS
   1. Language

The language of this Agreement is English. If this Agreement is translated into another language, the English version shall prevail in the event of any conflicting interpretation or in the event of a dispute between the Parties.

All notices given or documents provided under, or in connection with, this Agreement shall be in English.

The Lender may request that a notice or document provided under, or in connection with, this Agreement which is not in English is accompanied by a certified English translation, in which case, the English translation shall prevail unless the document is a statutory document of a company, legal text or other official document.

* 1. Certifications and determinations

In any litigation or arbitration arising out of or in connection with this Agreement, entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

Any certification or determination by the Lender of a rate or amount under this Agreement will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

* 1. Partial invalidity

If, at any time, a term of this Agreement is or becomes illegal, invalid or unenforceable, neither the validity, legality or enforceability of the remaining provisions of this Agreement will in any way be affected or impaired.

* 1. No Waiver

Failure to exercise, or a delay in exercising, on the part of the Lender of any right under the Agreement shall not operate as a waiver of that right.

Partial exercise of any right shall not prevent any further exercise of such right or the exercise of any other right or remedy under the applicable law.

The rights and remedies of the Lender under this Agreement are cumulative and not exclusive of any rights and remedies under the applicable law.

* 1. Assignment

The Borrower may not assign or transfer, in any manner whatsoever, all or any of its rights and obligations under this Agreement without the prior written consent of the Lender.

The Lender may assign or transfer any of its rights or obligations under this Agreement to any other third party and may enter into any sub-participation agreement relating thereto.

* 1. Legal effect

The Schedules annexed hereto, the Procurement Guidelines and the recitals hereof form part of this Agreement and have the same legal effect.

* 1. Entire agreement

As of the Signing Date, this Agreement represents the entire agreement between the Parties in relation to the matters set out herein, and supersedes and replaces all previous documents, agreements or understandings which may have been exchanged or communicated as part of the negotiations in connection with this Agreement.

* 1. Amendments

No amendment may be made to this Agreement unless expressly agreed in writing between the Parties.

* 1. Confidentiality - Disclosure of information

The Borrower shall not disclose the content of this Agreement to any third party without the prior consent of the Lender except to:

any person to whom the Borrower has a disclosure obligation under any applicable law, regulation or judicial ruling; or

Notwithstanding any existing confidentiality agreement, the Lender may disclose any information or documents in relation to the Project to: (i) its auditors, experts, rating agencies, legal advisers or supervisory bodies; (ii) any person or entity to whom the Lender may assign or transfer all or part of its rights or obligations under the Agreement;(iii) the Co-Financier; and any person or entity for the purpose of taking any protective measures or preserving the rights of the Lender under the Agreement.

Furthermore, the Borrower hereby expressly authorizes the Lender to communicate and to disclose on the Lender’s Website information relating to the Project and its financing as listed in Schedule 6 (*Information that and the Lender is authorized expressly to disclose on the Lender’s Website (in particular on its open data platform)*).

* 1. Limitation

The statute of limitations of any claims under this this Agreement shall be ten (10) years, except for any claim of interest due under this Agreement.

* 1. Hardship

Each Party hereby acknowledges that the provisions of article 1195 of the French Code civil shall not apply to it with respect to its obligations under the Agreement and it shall be not entitled to make any claim under article 1195 of the French Code civil.

1. Notices
   1. In writing and addresses

Any notice, request or other communication to be given or made under or in connection with this Agreement shall be given or made in writing and, unless otherwise stated, may be given or made by fax or by letter sent by the post office to the address and number of the relevant Party set out below:

For the Borrower:

**MINISTRY OF FINANCE**

Address: 20 Kneza Milosa St. 11000 Belgrade

Telephone: (381-11) 3202-350

Facsimile: (381-11) 3618-961

E-mail: kabinet@mfin.gov.rs

Attention: Mr. Siniša Mali, Minister of Finance

For the Lender:

**AFD – WESTERN BALKANS REGIONAL Office**

Address: Zmaj Jovina 11, 11000 Belgrade, Republic of Serbia

Telephone: (381-11) 7858-830

Attention: AFD Director for Western Balkans Regional Office

With a copy to:

AFD – PARIS HEAD OFFICE

Address: 5, rue Roland Barthes – 75598 Paris Cedex 12, France

Telephone: + 33 1 53 44 31 31

Attention: Director of Europe, Middle East and Asia Department

or such other address, fax number, department or officer as one Party notifies to the other Party.

* 1. Delivery

Any notice, request or communication made or any document sent by a Party to the other Party in connection with this Agreement will only be effective:

* + - 1. if by fax, when received in a legible form; and
      2. if by letter sent though the post office, when delivered to the correct address,

and, where a particular person or a department is specified as part of the address details provided under Clause 16.1 (*In writing and addresses*), if such notice, request or communication has been addressed to that person or department.

* 1. Electronic communications
     + 1. Any communication made by one person to another under or in connection with this Agreement may be made by electronic mail or other electronic means if the Parties:

agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

(notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

notify each other of any change to their address or any other such information supplied by them.

* + - 1. Any electronic communication made between the Parties will be effective only when actually received in a readable form.

1. Governing Law, Enforcement and Choice of Domicile
   1. Governing Law

This Agreement is governed by French law.

* 1. Arbitration

Any dispute arising out of or in connection with this Agreement shall be referred to and finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce applicable on the date of commencement of arbitration proceedings, by one or more arbitrators to be appointed in accordance with such Rules.

The seat of arbitration shall be Paris and the language of arbitration shall be English.

This arbitration clause shall remain in full force and effect if this Agreement is declared void or is terminated or cancelled and following expiry of this Agreement. The Parties’ contractual obligations under this Agreement are not suspended if a Party initiates legal proceedings against the other Party.

The Parties expressly agree that, by signing this Agreement, the Borrower irrevocably waives all rights of immunity in respect of jurisdiction or execution on which it could otherwise rely.

For the avoidance of doubt, this waiver includes a waiver of immunity from:

1. Any suit or legal, judicial or arbitral process arising out of, in relation to or in connection with this Agreement;
2. Giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues;
3. Any effort to confirm, recognize, enforce or execute any decision, settlement, award judgment, execution order or, in an action in rem, any effort for the arrest, for the arrest, detention or sale of any of its assets and revenues that result from any arbitration, or any legal, judicial or administrative proceedings.

The Borrower does not waive any immunity in respect of any present or future (i) “premises of the mission” as defined in the Vienna Convention on Diplomatic Relations signed in 1961, (ii) “consular premises” as defined in the Vienna Convention on Consular Relations signed in 1963, (iii) assets that cannot be in commerce, (iv) military property or military assets and buildings, weapons and equipment designated for defence, state and public security, (v) receivables the assignment of which is restricted by law, (vi) natural resources, common use items, grids in public ownership, river basin land and water facilities in public ownership, protected natural heritage in public ownership and cultural heritage in public ownership, (vii) real estate in public ownership which is, partly or entirely, used by the authorities of the Republic of Serbia, autonomous provinces or local self-government for the purpose of exercising their rights and duties; (viii) the state's, autonomous province’s or local government’s stocks and shares in companies and public enterprises, unless the relevant entity consented to the establishment of a pledge over such stocks or shares, (ix) movable or immovable assets of health institutions, unless a mortgage was established based on the government's decision, (x) monetary assets and financial instruments determined as financial collateral in accordance with the law regulating financial collateral including monetary assets and financial instruments which are pledged in accordance with such law or (xi) other assets exempt from enforcement by international law or international treaties

* 1. Service of process

Without prejudice to any applicable law, for the purposes of serving judicial and extrajudicial documents in connection with any action or proceedings referred to above, the Borrower irrevocably chooses its registered office as at the date of this Agreement at the address set out in Clause 16 (*Notices*) for service of process, and the Lender chooses the address “AFD SIEGE” set out in Clause 16 (*Notices*) for service of process.

1. DURATION

This Agreement comes into force on the Effective Date and remains in full force and effect for as long as any amount is outstanding under this Agreement.

Notwithstanding the above, the obligations under Clauses 12.4(e) (*Information - miscellaneous*) and 15.9 (*Confidentiality - Disclosure of information*)shall survive and remain in full force and effect for a period of five years after the last Payment Date; the provisions of Clause 11.6.2 (*Environmental and social (ES)* complaints-management) shall continue to have effect whilst any grievance lodged under the ES Complaints-Management Mechanism’s Rules of Procedure is still being processed or monitored**.**

Executed in three (3) originals, one (1) for the Lender and two (2) for the Borrower, in Belgrade (Republic of Serbia), on May 10, 2021.

|  |
| --- |
| **BORROWER** |
| **REPUBLIC OF SERBIA**    Represented by:  **Name: His Excellency Mr. Siniša Mali**  **Capacity: Minister of Finance** |
|  |
| **LENDER** |
| **AGENCE FRANÇAISE DE DÉVELOPPEMENT**    Represented by:  **Name: Ms. Cécile Couprie**  **Capacity: Regional Director for Eurasia** |
| Cosigner, His Excellency Mr. Jean-Louis Falconi, Ambassador of France |

SCHEDULE 1A - Definitions

|  |  |
| --- | --- |
| **Act of Corruption** | means any of the following:   * + - 1. the act of promising, offering or giving, directly or indirectly, to a Public Official or to any person who directs or works, in any capacity, for a private sector entity, an undue advantage of any nature, for the relevant person himself or herself or for another person or entity, in order that this person acts or refrains from acting in breach of his or her legal, contractual or professional obligations and, having for effect to influence his or her own actions or those of another person or entity; or       2. the act of a Public Official or any person who directs or works, in any capacity, for a private sector entity, soliciting or accepting, directly or indirectly, an undue advantage of any nature, for the relevant person himself or herself or for another person or entity, in order that this person acts or refrains from acting in breach of his or her legal, contractual or professional obligations and, having for effect to influence his or her own actions or those of another person or entity. |
| **Advance(s)** | has the meaning given to it in Clause 3.4 (*Disbursement Methods*) |
| **AFD’s Covenant of Integrity** | Means the statement, to be signed by each of the Contractors, as provided in Schedule 7 (*AFD’s Covenant of Integrity*), and the content of which can be updated from time to time by the Lender. |
| **Agreement** | means this credit facility agreement, including its recitals, Schedules and, if applicable, any amendments made in writing thereto. |
| **Anti-Competitive Practices** | means:   * + - 1. any concerted or implicit action having as its object and/or as its effects to impede, restrict or distort fair competition in a market, including without limitation when it tends to: (i) limit market access or the free exercise of competition by other companies; (ii) prevent price setting by the free play of markets by artificially favouring the increase or decrease of such prices; (iii) limit or control any production, markets, investment or technical progress; or (iv) share out markets or sources of supply;       2. any abuse by a company or group of companies of a dominant position within a domestic market or in a substantial part thereof; or       3. any bid or predatory pricing having as its object and/or its effect to eliminate from a market, or to prevent a company or one of its products from accessing the market. |
| **Applicable Procurement Guidelines** | means those procurement policies, guidelines and procedures referred to in the IBRD Loan Agreement. |
| **Authorisation(s)** | means any authorisation, consent, approval, resolution, permit, licence, exemption, filing, notarisation or registration, or any exemptions in respect thereof, obtained from or provided by an Authority, whether granted by means of an act, or deemed granted if no answer is received within a defined time limit, as well as any approval and consent given by the Borrower’s creditors. |
| **Authority(ies)** | means any government or statutory entity, department or commission exercising a public prerogative, or any administration, court, agency or State or any governmental, administrative, tax or judicial entity. |
| **Availability Period** | means the period from and including the Signing Date up to the Deadline for Drawdown. |
| **Available Credit** | means, at any given time, the maximum principal amount specified in Clause 2.1 (*Facility*) less:   1. the aggregate amount of any Drawdowns drawn by the Borrower; 2. the amount of any Drawdown to be made pursuant to any pending Drawdown Request; and 3. any portion of the Facility which has been cancelled pursuant to Clauses 8.3 (*Cancellation by the Borrower*) and/or 8.4 (*Cancellation by the Lender*). |
| **Business Day** | means a day (other than Saturday or Sunday) on which banks are open for the entire day for general business in Paris, and which is a TARGET Day in the event that a Drawdown has to be done on such day. |
| **Certified** | means for any copy, photocopy or other duplicate of an original document, the certification by any duly authorised person, as to the conformity of the copy, photocopy or duplicate with the original document. |
| **Co-Financier** | means the International Bank for Reconstruction and Development (IBRD). |
| **Co-Financing** | means the loan provided by the Co-Financier with a maximum amount of fifty-one million Euros (EUR 51,000,000) to finance in part the Project. |
| **Co-Financing Agreement** | means the agreement to be entered into between the Lender and the Co-Financier, providing terms and conditions under which, among others, the Lender and the Co-Financier shall co-finance the Project and a number of monitoring works that the Lender delegates to the Co-Financier with respect to the Facility and the Project implementation. |
| **Contractor(s)** | means third party contractor(s) in charge of implementing all or part of the Project pursuant to Project Documents. |
| **Deadline for Drawdown** | means April 30th, 2027, date after which no further Drawdown may occur. |
| **Deadline for Use of Funds** | means April 30th, 2027. |
| **Disbursement and Financial Information Letter *or*****DFIL** | means the Disbursement and Financial Information Letter to be issued by the Co-Financier to the Borrower (after prior consultation with the Lender) providing instructions with respect to drawdowns (disbursements) under the Facility and the Co-Financier Loan Agreement between the Borrower and the Co-Financier, in accordance with the Co-Financing Agreement, as such DFIL may be amended from time to time. |
| **Drawdown** | means a drawdown of all or part of the Facility made, or to be made, available by the Lender to the Borrower pursuant to the terms and conditions set out in Clause 3 (*Drawdown of Funds*) or the principal amount outstanding of such Drawdown which remains due and payable at a given time [including any Advance]. |
| **Drawdown Date** | means the date on which a Drawdown is made available by the Lender. |
| **Drawdown Period** | means the period starting on the first Drawdown Date up to and including the first of the following date:  the date on which the Available Credit is equal to zero;  the Deadline for Drawdown. |
| **Drawdown Request** | means a request substantially in the form set out in Schedule 5A (*Form of Drawdown Request*). |
| **Disbursement Notice** | means the notice sent by the Co-Financier to the Lender advising the Lender to make available to the Borrower the requested Drawdown, in accordance with the Co-Financing Agreement. |
| **Effective Date** | means the date on which the conditions set out in Part II of Schedule 4 (*Conditions Precedent*) have been fulfilled and shall occur at the latest 180 calendar days after the Signing Date. |
| **Eligible Expense(s)** | means the expense(s) relating to the components of the Project as set out in Schedule 3 (*Financing Plan*). |
| **Embargo** | means any sanction of a commercial nature aiming at prohibiting any import and/or export (supply, sale or transfer) of one or several goods, products or services going to and/or coming from a country for a given period as published and amended from time to time by the United Nations, the European Union or France. |
| **ES Complaints-Management Mechanism’s Rules of Procedure** | means the contractual terms contained in the Environmental and Social Complaints-Management Mechanism’s Rules of Procedure, which is available on the Website, as amended from time to time. |
| **ESCP** | means the environmental and social commitment plan referred to in the IBRD Loan Agreement, setting out the Beneficiary’s commitment to avoid, mitigate or compensate negative consequences of the Project, on human and natural environment and any planned monitoring, as well as the formal steps required in order to carry out such actions. |
| **EURIBOR** | means the inter-bank rate applicable to Euro for any deposits denominated in Euro for a period comparable to the relevant period, as determined by the European Money Markets Institute (EMMI), or any successor administrator, at 11:00 am Brussels time, two (2) Business Days before the first day of the Interest Period. |
| **Euro(s) or EUR** | means the single currency of the member states of the European Economic and Monetary Union, including France, and having legal tender in such Member States. |
| **Event of Default** | means any event or circumstance set out in Clause 13.1 (*Events of Default*). |
| **Facility** | means the credit facility made available by the Lender to the Borrower in accordance with this Agreement up to the maximum principal amount set out in Clause 2.1 (*Facility*). |
| **Financial Indebtedness** | means any financial indebtedness for and in respect of:  (a) any monies borrowed on a short, medium or long-term basis;   * + - 1. any amounts raised pursuant to the issue of bonds, notes, debentures, loan stock or any similar instruments;       2. any funds raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;       3. any potential payment obligation that results from a guarantee, bond, or any other instrument. |
| **Financial Sanctions List** | means the list(s) of persons, groups or entities which are subject to financial sanctions by the United Nations, the European Union and/or France.  For information purposes only and for the convenience of the Borrower, who may rely on, the following references or website addresses:  **For the lists maintained by the United Nations**, the following website may be consulted:  https://www.un.org/securitycouncil/fr/content/un-sc-consolidated-list  **For the lists maintained by the European Union**, the following website may be consulted:  https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions\_fr  **For the lists maintained by France**, the following website may be consulted:  https://www.tresor.economie.gouv.fr/services-aux-entreprises/sanctions-economiques/dispositif-national-de-gel-des-avoirs |
| **Financing Plan** | means the financing plan of the Project set out in Schedule 3 (*Financing Plan*). |
| **Fixed Reference Rate** | means zero point sixty-three percent (0.63%) per annum. |
| **Fraud** | means any unfair practice (acts or omissions) deliberately intended to mislead others, to intentionally conceal elements there from, or to betray or vitiate his/her consent, to circumvent any legal or regulatory requirements and/or to violate internal rules and procedures of the Borrower or a third party in order to obtain an illegitimate benefit. |
| **Fraud against the Financial Interests of the European Community** | means any intentional act or omission intended to damage the European Union budget and involving (i) the use or presentation of false, inaccurate or incomplete statements or documents, which has as effect the misappropriation or wrongful retention of funds or any illegal reduction in resources of the general budget of the European Union; (ii) the non-disclosure of information with the same effect; and (iii) misappropriation of such funds for purposes other than those for which such funds were originally granted. |
| **Grace Period** | means the period from the Signing Date up to and including the date falling seventy-two (72) months after such date, during which no principal repayment under the Facility is due and payable. |
| **IBRD** | means International Bank for Reconstruction and Development. |
| **IBRD Loan Agreement** | means the agreement and all the related financing documentations to be entered into between IBRD (the Co-Financier) and the Borrower providing terms and conditions under which the IBRD loan will be made available to the Borrower. |
| **Illicit Origin** | means funds obtained through:   * + - 1. the commission of any predicate offence as designated in the FATF 40 recommendations Glossary under "*Designated categories of offences*" (http://www.fatf-gafi.org/media/fatf/documents/recommendations/Recommandations\_GAFI.pdf );       2. any Act of Corruption; or       3. any Fraud against the Financial Interests of the European Community, if or when applicable. |
| **Index Rate** | means the TEC 10 daily index, the ten-year constant maturity rate displayed on a daily basis on the relevant quotation page of the Reference Financial Institution or any other index which may replace the TEC 10 daily index. On the Signing Date, the Index Rate on April 26, 2021 is minus zero point zero one percent (-0.01%) per annum. |
| **Interest Period(s)** | means each period from a Payment Date (exclusive) up to the next Payment Date (inclusive). For each Drawdown under the Facility, the first interest period shall start on the Drawdown Date (exclusive) and end on the next successive Payment Date (inclusive). |
| **Interest Rate** | means the interest rate expressed as a percentage and determined in accordance with Clause 4.1 (*Interest Rate*). |
| **Margin** | means sixty-five (65) basis points per annum. |
| **Market Disruption Event** | means the occurrence of one of the following events:  EURIBOR is not determined by the European Money Markets Institute (EMMI), or any successor administrator, at 11:00am Brussels time, two (2) Business Days before the first day of the relevant Interest Period or on the Rate Setting Date; or  before close of business of the European interbank market, two (2) Business Days prior to the first day of the relevant Interest Period or on the Rate Setting Date, the Borrower receives notification from the Lender that (i) the cost to the Lender of obtaining matching resources in the relevant interbank market would be in excess of EURIBOR for the relevant Interest Period; or (ii) it cannot or will not be able to obtain matching resources on the relevant interbank market in the ordinary course of business to fund the relevant Drawdown for the relevant time period. |
| **Material Adverse Effect** | means a material and adverse effect on:   * + - 1. the Project, insofar as it would jeopardise the implementation and operation of the Project in accordance with this Agreement and the Project Documents;       2. the business, assets, financial condition of the Borrower or its ability to perform its obligations under this Agreement and the Project Documents;       3. the validity or enforceability of this Agreement and any Project Documents; or       4. any right or remedy of the Lender under this Agreement. |
| **National Bank of Serbia or NBS** | Means the central bank of the Republic of Serbia. |
| **Outstanding Principal** | means, in respect of any Drawdown, the outstanding principal amount due in respect of such Drawdown, corresponding to the amount of the Drawdown paid by the Lender to the Borrower less the aggregate of instalments of principal repaid by the Borrower to the Lender in respect of such Drawdown. |
| **Payment Dates** | means June 15 and December 15 of each year. |
| **Payment Systems Disruption Event** | means either or both of:   * + - 1. a material disruption to the payment or communication systems or to the financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by this Agreement to be carried out), provided that the disruption is not caused by, and is beyond the control of, any of the Parties; or       2. the occurrence of any other event which results in a disruption (of a technical or system-related nature) to the treasury or payment operations of a Party preventing that, or any other Party:          1. from performing its payment obligations under this Agreement; or          2. from communicating with the other Parties in accordance with the terms of this Agreement   and which (in either case) is not caused by, and is beyond the control of, either Party. |
| **Prepayment Compensatory Indemnity** | means the indemnity calculated by applying the following percentage to the amount of the Facility which is repaid in advance:   * if the repayment occurs prior to the 6th anniversary (exclusive) of the Signing Date: two percent (2%); * if the repayment occurs between the 6th anniversary (inclusive) and the 8th anniversary (exclusive) of the Signing Date: one percent (1%); * if the repayment occurs after the 8th anniversary (inclusive) of the Signing Date: zero point five percent (0.5%). |
| **Project** | means the project as described in Schedule 2 (*Project Description*). |
| **Designated Account** | has the meaning given to that term in Clause 3.4.3. |
| **Project Authorisations** | means the Authorisations necessary in order for (i) the Borrower to implement the Project and execute all Project Documents to which it is a party, and to exercise its rights and perform its obligations under the Project Documents to which it is a party; and (ii) the Project Documents to which the Borrower is a party, to be admissible as evidence before courts in the jurisdiction of the Borrower or before a competent arbitral tribunal. |
| **Project Documents** | means all documents, and in particular agreements, delivered or executed by the Borrower in relation to the implementation of the Project, i.e.:   * + the Project Operations Manual   + RD Agreement as defined in the IBRD Loan Agreement   + IZS Agreement as defined in the IBRD Loan Agreement   + Serbia Cargo Agreement in the IBRD Loan Agreement   + Serbia Voz Agreement as defined in the IBRD Loan Agreement |
| **Project Operations Manual** | has the meaning given to it in the IBRD Loan Agreement |
| **Public Official** | means any holder of legislative, executive, administrative or judicial office whether appointed or elected, serving on permanent basis or otherwise, paid or unpaid, regardless of rank, or any other person defined as a public official under the domestic law of the Borrower’s jurisdiction of incorporation, and any other person exercising a public function, including for a public agency or organisation, or providing a public service. |
| **Rate Conversion** | means the conversion of the floating rate applicable to all or part of the Facility into a fixed rate pursuant to Clause 4.1 (*Interest Rate*). |
| **Rate Conversion Request** | means a request substantially in the form attached as Schedule 5C (*Form of Rate Conversion Request***)**. |
| **Rate Setting Date** | means:  I - in relation to any Interest Period for which an Interest Rate is to be determined:   * + - * 1. the first Wednesday (or, if that date is not a Business Day, the immediately following Business Day) following the date of receipt by the Lender of the Drawdown Request, provided that the Drawdown Request is received by the Lender at least two (2) full Business Days prior to said Wednesday;         2. the second Wednesday (or, if that date is not a Business Day, the immediately following Business Day) following the date of receipt by the Lender of the Drawdown Request, if the Drawdown Request was not received by the Lender at least two (2) full Business Days prior to the first Wednesday specified in paragraph (i) above.   II - in the case of a Rate Conversion:   * + - * 1. the first Wednesday (or, if that date is not a Business Day, the immediately following Business Day) following the date of receipt by the Lender of the Rate Conversion Request, provided such date is at least two (2) full Business Days prior to the first Wednesday;         2. the second Wednesday (or, if that date is not a Business Day, the immediately following Business Day) following the date of receipt by the Lender of the Rate Conversion Request, if such date is not at least two (2) full Business Days prior to the first Wednesday. |
| **Reference Financial Institution** | means a financial institution chosen as a suitable reference financial institution by the Lender and which regularly publishes quotations of financial instruments on one of the international financial information networks according to the practices recognised by the banking industry. |
| **Schedule(s)** | means any schedule or schedules to this Agreement. |
| **Signing Date** | means the date of execution of this Agreement by all the Parties. |
| **TARGET Day** | means a day on which the Trans European Automated Real Time Gross Settlement Express Transfer 2 (TARGET2) system, or any successor thereto, is open for payment settlement in Euros. |
| **Tax(es)** | means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with a failure to pay or any delay in the payment of any such amounts). |
| **Website** | means the website of AFD (http://www.afd.fr/) or any other such replacement website. |
| **Withholding Tax** | means any deduction or retention in respect of a Tax on any payment made under or in connection with this Agreement. |
| **Withdrawal Application** | has the meaning given to it under the IBRD Loan Agreement. |

SCHEDULE 1B - Construction

* 1. “**assets**” includes present and future properties, revenues and rights of every description;
  2. any reference to the “**Borrower**”, a “**Party**” or a “**Lender**” includes its successors in title, permitted assigns and permitted transferees;
  3. any reference to a financing document or other document is a reference to this Agreement or to such other document as amended, restated or supplemented and includes, if applicable, any document which replaces it through novation, in accordance with the financing documents;
  4. a “**guarantee**” includes any *cautionnement, aval* and any *garantie* which is independent from the debt to which it relates;
  5. “**indebtedness”** means any obligation of any person whatsoever (whether incurred as principal or as surety) for the payment or repayment of money, whether present, future, actual or contingent;
  6. a “**person**” includes any person, company, corporation, partnership, trust, government, state or state agency or any association, or group of two or more of the foregoing (whether or not having separate legal personality);
  7. a “**regulation**” includes any legislation, regulation, rule, decree, official directive, instruction, request, advice, recommendation, decision or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, supervisory authority, regulatory authority, independent administrative authority, agency, department or any division of any other authority or organisation (including any regulation issued by an industrial or commercial public entity) having an effect on this Agreement or on the rights and obligations of a Party;
  8. a provision of law is a reference to that provision as amended;
  9. unless otherwise provided, a time of day is a reference to Paris time;
  10. The Section, Clause and Schedule headings are for ease of reference only and do not affect the interpretation of this Agreement;
  11. unless otherwise provided, words and expressions used in any other document relating to this Agreement or in any notice given in connection with this Agreement have the same meaning in that document or notice as in this Agreement;
  12. an Event of Default is “continuing” if it has not been remedied or if the Lender has not waived any of its rights relating thereto;
  13. a reference to a Clause or Schedule shall be a reference to a Clause or Schedule of this Agreement; and
  14. words importing the plural shall include the singular and vice-versa.

SCHEDULE 2 - Project Description

The objective of the Project is to enhance the efficiency and safety of existing railway assets and improve governance and institutional capacity of the railway sector.

The Project constitutes a phase of the Multi-Phase Programmatic Approach (MPA) Program and consists of the following parts:

### Component 1: Infrastructure Investments and Asset Management

* 1. Reliable and Safe Railway Infrastructure

Provision of support to IZS for the carrying out of a program of track renewal and safety interventions to restore service performance, including, *inter alia*: (a) the renewal of critically important lines and tunnels in Belgrade city center; (b) the construction of the second stage of the main railway station in Belgrade city center; (c) the improvement of railway level crossings; (d) the installation of four measurement stations to monitor rolling stock, provide data to predict and prevent future failures, and help to identify maintenance needs proactively; and (e) the supervision of all civil works.

* 1. Technical Documentation

Provision of support for the preparatory technical work to ensure the readiness of the infrastructure investment pipeline for subsequent phases of the MPA Program, including, *inter alia*, the carrying out of feasibility studies, preliminary designs, detailed designs, spatial plans, environmental management plans, environmental impact assessments and resettlement plans, if applicable.

* 1. Asset Management

(a) adoption of a specialized railway infrastructure asset management system encompassing the functionalities of the LCC analysis, cost-benefit, failure mode effects and criticality analysis and reliability, availability, maintainability and safety as IZS’s standard tool for planning and decision making for financing activities; (b) provision of technical assistance to develop railway infrastructure implementation plans aiming at rationalizing the scheduling of railway improvements to minimize delays and uncertainties for cargo and passenger operations during the carrying out of civil works; and (c) acquisition of machinery to carry out critical repairs of track infrastructure and to refurbish existing passenger trains.

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### Component 2: Institutional Strengthening and Project Management

2.1 Sectoral Governance

Provision of technical assistance and financing of investments to strengthen the governance of the IZS, RD, Serbia Cargo and Serbia Voz, and improve their efficiency and results, including, *inter alia*: (a) the provision of support to IZS, Serbia Cargo and Serbia Voz to adopt commercially oriented, independent management and modernize their internal structures and systems through wider adoption of ICT technologies and introduction of business support systems, asset management systems, financial reporting systems, and document management systems; (b) the carrying out of training and provision of technical support to enhance RD’s capacity as a railway market and safety regulator; and (c) the provision of assistance to complete proper contractual arrangements in the railway sector by developing and implementing a Statement of Requirements.

2.2 Human Capital

Provision of technical assistance and carrying out of capacity building activities to establish mechanisms and frameworks for long term development of human resources and knowledge sharing in the railways sector, including, *inter alia*: (a) the development and implementation of robust human resources systems, strategies, and knowledge curricula with corresponding gender action plans in IZS, Serbia Cargo and Serbia Voz; (b) the design of educational, training and retraining programs in cooperation with vocational schools and universities; and (c) the establishment of a railway PhD program for women, through the financing of scholarships.

2.3. Project Management and Citizen Engagement

Provision of Project management support, including, *inter alia*: (a) the financing of staff and technical support for the PIU and Project Implementation Teams; (b) the carrying out of Training and knowledge exchange; (c) the carrying out of communication and citizen engagement activities; (d) the carrying out of Project audits; and (e) the acquisition of office equipment and financing of Operating Costs.

### 

### Component 3: Railway Modernization Enablers

3.1 Intelligent Railway and Safety Management Systems

Carrying out of structured planning of intelligent railway systems, introduction of safety management systems in the Borrower’s railway sector and development of the regulations for the General Data Protection Law and cybersecurity rule book, including, *inter alia*: (a) the provision of technical assistance to help IZS, RD, Serbia Cargo and Serbia Voz to implement the European Railway Traffic Management System and develop an implementation plan for the intelligent railway systems; and (b) the implementation of the safety management systems approach.

3.2 Integrated Territorial Development

Provision of better connectivity to, and synchronization with, other transport modes and improvement of accessibility of the train terminals, through: (a) the financing of a comprehensive study on how railway services could attract more users through better integration with the existing and future urban landscape; (b) the identification and prioritization of short to long term investments to be implemented in the next phases of the MPA Program and the carrying out of pilots to finance integration investments identified in the study mentioned in (a) herein, including the strengthening non-motorized transport through the financing of bicycle parking facilities and safe non-motorized transport access to the station.

3.3 Modal Shift

Provision of support to shift traffic toward the railways as a greener and more affordable transport mode, through: (a) the financing of a study to identify opportunities for increasing railway market share, including, *inter alia*, the potential for attracting additional traffic, social implications, and impact on environmental footprint; and (b) the carrying out of an analysis of the ownership alternatives for Serbia Cargo and the establishment of a roadmap for implementation of the selected approaches.

SCHEDULE 3 - Financing Plan

**PART I - FINANCING PLAN**

|  |  |
| --- | --- |
| **Phase 1** | **Amount**  **(EUR million)\*** |
| Component 1. Infrastructure Investments and Asset Management | 87.7 |
| Component 2. Institutional Strengthening and Project Management | 8.4 |
| Component 3. Railway Modernization Enablers | 5.9 |
| **TOTAL** | **102.0** |

**PART II - ELIGIBLE EXPENSES**

|  |  |  |
| --- | --- | --- |
| **Category** | **Amount of the Facility**  **Allocated**  **(expressed in EUR)** | **Percentage of expenditures to be financed by the Facility out of the Project’s total amount [AFD and IBRD loans combined]** |
| (1) Goods, works, non-consulting services, consulting services, Training and Operating Costs for the Project | Fifty-one million Euros (EUR 51,000,000) | 50% (inclusive of Taxes other than Value Added Tax and Customs Duties for works, goods and non-consulting services) |
| TOTAL AMOUNT | Fifty-one million Euros (EUR 51,000,000) |  |

For the purpose of this table:

the custom duties and value added tax for the importation and supply of works, goods and non-consulting services, within the Borrower’s territory and for the purpose of the implementation of the Project, shall not be financed out of Facility proceeds. The Borrower confirms that the importation and supply of works, goods and non-consulting services, within the Borrower’s territory and for the purpose of the implementation of the Project, shall be exempted from customs duties and value added tax; and

the term “Project’s total amount” means the total cost of Project activities to be jointly financed by the Facility and by the Co-Financier, which is estimated to be the equivalent of EUR 102,000,000;

as Front-end fees are not Eligible Expenses under the Facility, the 50% “Percentage of expenditures to be financed by the Facility out of the Project’s total amount” will be the applied financing rate of the Lender under expenditures relevant to Category (1) Eligible Expenses set forth in the table, except for the last Drawdown which amount will be increased by one hundred twenty seven thousand and five hundred Euros (EUR 127,500) [*i.e. amount equivalent to the amount of the Front-end fee payable by the Borrower under IBRD Loan Agreement*] as compared to the amount of the last drawdown under IBRD Loan Agreement.

Notwithstanding the above provisions, no Drawdown shall be made for payments made prior to the Signing Date, except that drawdowns up to an aggregate amount not to exceed one million Euros (EUR 1,000,000) may be made for payments made prior to this date but on or after January 1, 2021, for Eligible Expenses.

**PART III - NON-ELIGIBLE EXPENSES**

Front-end fees are not eligible.

Schedule 4 - Conditions Precedent

The following applies to all documents delivered by the Borrower as a condition precedent:

* if the document which is delivered is not an original but a photocopy, the original Certified photocopy shall be delivered to the Lender;
* the final version of a document which draft was previously sent to, and agreed upon by the Lender, shall not materially differ from the agreed draft;
* documents not previously sent and agreed upon, shall be satisfactory to the Lender.

**Part** **I – Conditions Precedent to be satisfied on the Signing Date**

1. Delivery by the Borrower to the Lender of a Certified copy of a conclusion of the Government of the Republic of Serbia approving the report from the negotiations with regard to conclusion of this Agreement, approving the borrowing by the Borrower under this Agreement and expressly authorizing Minister of Finance of the Republic of Serbia to execute this Agreement;
2. A certificate of the Borrower (signed by authorized signatory) confirming that (i) borrowing the total Facility commitments would not cause any borrowing, guaranteeing or similar limit binding on the Borrower to be exceeded, and (ii) that the public debt loan under this Agreement is within the limits set by the law governing the budget of the Republic of Serbia;
3. Delivery to the Lender from MMD law firm (mandated by the Lender) of a draft legal opinion, in form and substance satisfactory to the Lender;
4. Confirmation from the Co-Financier to the Lender that its Board of Directors has approved the IBRD loan

**Part** **II - Conditions Precedent to the effectiveness of the Agreement**

1. This Agreement has been duly signed by the Lender and the Borrower;
2. Delivery by the Borrower to the Lender of the following documents:
3. An original of the legal opinion from the Minister of Justice customary for this type of transaction in form and content satisfactory to the Lender with certified copies (each with an official translation into the language of this Agreement) of all documents to which such legal opinion refers, demonstrating that the Agreement is legally effective and enforceable and, in particular: (i) that the Borrower has met all requirements under its constitutional law and other applicable legal provisions for the valid assumption of all its obligations under this Agreement, (ii) that no official authorisations, consents, licenses, registrations and/or approvals of any governmental authority or agency (including the National Bank of Republic of Serbia) are required or advisable in connection with the execution and performance of this Agreement by the Borrower (including without limitation that all amounts due by the Borrower to the Lender under this Agreement whether as principal or interest, late payment interest, Prepayment Indemnity, incidental costs and expenses or any other sum are freely convertible and transferable), (iii) that choice of French law to govern this Agreement and the submission to arbitration are valid and binding, as well as that arbitration awards against the Borrower will be recognized and enforceable in the Republic of Serbia, and (iv) that neither the Borrower nor any of its property has any right of immunity from arbitration, suit, execution or other legal process;
4. Evidence of the enactment by the National Assembly of the Republic of Serbia of the law ratifying this Agreement (together with evidence of such law being promulgated by the President of the Republic of Serbia) and published in the Official Gazette of the Republic of Serbia;
5. Confirmation of the Ministry of Finance of the Republic of Serbia that this Agreement has been duly evidenced therewith;
6. Signature of the IBRD Loan Agreement

**Part III - Conditions Precedent to the First Drawdown**

* 1. This Agreement has become effective upon the satisfaction of the conditions stipulated in the PART II of this Schedule 4 of the Agreement;
  2. Confirmation that the IBRD Loan Agreement has become effective and that the conditions precedent to the first disbursement in respect of such loan have been fulfilled
  3. a copy of the government conclusion appointing and authorising persons to sign the Drawdown Requests and a certificate of specimen of the signature of each person listed in this conclusion;
  4. The Co-Financing Agreement between the Lender and the Co-Financier has been executed;
  5. Delivery to the Lender from MMD law firm (mandated by the Lender) of a duly executed legal opinion, in form and substance satisfactory to the Lender;
  6. Payment by the Borrower to the Lender of all fees and expenses due and payable under this Agreement.
  7. In Case of Advance, a certificate of the National Bank of Serbia certifying that the Designated Account has been opened in the name of the Project and providing account details for such Designated Account.

**Part** **IV - Conditions Precedent for All Drawdowns including the First Drawdown**

Reception by the Lender from the Co-Financier of the Disbursement Notice related to the Drawdown requested

SCHEDULE 5A - Form of Drawdown Request

*[on the Borrower’s letterhead]*

To: Agence Française de Développement

On: [*date*]

**Borrower’s Name – Credit Facility Agreement n**° **[●] dated [●]**

**Drawdown Request n°[●]**

Dear Sirs,

1. We refer to the Credit Facility Agreement n° [●] entered into between the Borrower and the Lender dated [●] (the “**Agreement**”). Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
2. This letter is a Drawdown Request.
3. We irrevocably request that the Lender makes a Drawdown available on the following terms:

Amount: EUR [●] or, if less, the Available Credit.

Interest Rate: [*fixed / floating*]

Proposed Drawdown Date: [*optional*]

1. The Interest Rate will be determined in accordance with the provisions of Clause 4 (*Interest*) and Clause 5 (*Change to the calculation of interest*)of the Agreement. The Interest Rate applicable to the requested Drawdown will be provided to us in writing and we accept this Interest Rate [(subject to the paragraph below, if applicable)], including when the Interest Rate is determined by reference to a Replacement Benchmark plus any Adjustment Margin as notified by the Lender following the occurrence of a Screen Rate Replacement Event.
2. We confirm that each condition specified in Clause 2.4 (*Conditions precedent*) is satisfied on the date of this Drawdown Request and that no Event of Default is continuing or is likely to occur. We agree to notify the Lender immediately if any of the conditions referred to above is not satisfied on or before the Drawdown Date.
3. The proceeds of this Drawdown should be credited to the following bank account:

|  |  |
| --- | --- |
| * 1. Name [of the Borrower]: | [●] |
| * 1. Address [of the Borrower]: | [●] |
| * 1. IBAN Account Number: | [●] |
| * 1. SWIFT Number: | [●] |
| * 1. Bank and bank’s address [of the Borrower]: | [●] |
| * 1. [if currency other than Euro] correspondent bank and account number of the Borrower’s bank: | [●] |

1. This Drawdown Request is irrevocable.
2. We have attached to this Drawdown Request all relevant supporting documents specified in Clause 2.4 (*Conditions precedent)* of the Agreement:

[List of supporting documents]

Yours sincerely,

Authorised signatory of Borrower

Schedule 5B - Form of confirmation of drawdown and rate

*[on Agence Française de Développement letterhead]*

To: [*the* *Borrower*]

Date: [●]

Ref: Drawdown Request n° [●] dated [●]

**Borrower’s Name – Credit Facility Agreement n**°**[●] dated [●]**

**Drawdown Confirmation n°[●]**

Dear Sirs,

* + - 1. We refer to the Credit Facility Agreement n°[●] entered into between the Borrower and the Lender dated [●] (the “**Agreement**”). Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
      2. By a Drawdown Request Letter dated [●], the Borrower has requested that the Lender makes available a Drawdown in the amount of EUR [●], pursuant to the terms and conditions of the Agreement.
      3. The Drawdown which has been made available according to your Drawdown Request is as follows:
  + Amount: [●*amount in words*] ([●])
  + Applicable interest rate: [●*percentage in words*] ([●]%) per annum [equal to the aggregate of the six-month EURIBOR (equal to [●]% per annum) [[1]](#footnote-1) and the Margin] [[2]](#footnote-2)
  + Drawdown Date: [●]

For fixed-Interest Rate loans only

For information purposes only:

* + Rate Setting Date: [●]
  + Fixed Reference Rate: [●*percentage in words*] ([●]%) per annum
  + Effective global rate (per annum): [●*percentage in words*] ([●]%)
  + Index Rate: [●*percentage in words*] ([●]%)
  + Index Rate on the Rate Setting Date: [●].

[It being specified that the above Interest Rate may vary in accordance with the provisions of clauses 4.1.1(i) (*Floating Interest Rate)* and 5.2 (*Replacement of a Screen Rate*) of the Agreement.][[3]](#footnote-3)

Yours sincerely,

Authorised signatory of *Agence Française de Développement*

Schedule 5C - Form of Rate Conversion Request

*[on the Borrower’s letterhead]*

To: AGENCE FRANÇAISE DE DÉVELOPPEMENT

On: [*date*]

**Borrower’s Name – Credit Facility Agreement n**°**[●] dated [●]**

**Rate Conversion Request n°[●]**

Dear Sirs,

* + - 1. We refer to the Credit Facility Agreement n°[●] entered into between the Borrower and the Lender dated [●] (the “**Agreement**”). Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
      2. Pursuant to Clause 4.1.3 (i) (*Conversion from a floating Interest Rate to a fixed Interest Rate*) of the Agreement, we hereby request that you convert the floating Interest Rate of the following Drawdowns:
  + [***list the relevant Drawdowns***],

into a fixed Interest Rate in accordance with the terms of the Agreement.

3. This rate conversion request will be deemed null and void if the applicable fixed Interest Rate exceeds [●] [●%].

Yours sincerely,

Authorised signatory of Borrower

Schedule 5D - Form of Rate Conversion Confirmation

*[on Agence Française de Développement letterhead]*

To: [*the* *Borrower*]

Date: [●]

Re: Rate Conversion Request n° [●] dated [●]

**Borrower’s Name – Credit Facility Agreement n**°**[●] dated [●]**

**Rate Conversion Confirmation n°[●]**

Dear Sirs,

**SUBJECT:** Conversion from a floating Interest Rate to a fixed Interest Rate

1. We refer to the Credit Facility Agreement n°[●] entered into between the Borrower and the Lender dated [●] (the “**Agreement**”). Capitalised words and expressions used but not defined herein have the meanings given to them in the Agreement.
2. We refer also to your Rate Conversion Request dated [●]. We confirm that the fixed Interest Rate applicable to the Drawdown(s) referred to in your Rate Conversion Request delivered in accordance with Clause 4.1.3 (i) (*Conversion from a floating Interest Rate to a fixed Interest Rate*) of the Agreement is:
   * [●]% per annum.
3. This fixed Interest Rate, calculated in accordance with Clause 4.1.1 (*Selection of Interest Rate*) will apply to the Drawdown(s) referred in your Rate Conversion Request from [⚫] (effective date).
4. Further, we notify you that the effective global rate per annum of the Facility is [⚫]%.;Yours sincerely,

Authorised representative of *Agence Française de Développement*

Schedule 6 - Information that the lender is authorized expressly to disclose on the Lender’s Website (in particular on its open data platform)

1. Information relating to the Project

* Number and name in AFD’s book;
* Description;
* Operating sector;
* Place of implementation;
* Expected project starting date;
* Expected project completion date; and
* Status of implementation updated on a semi-annual basis.

1. Information relating to the financing of the Project

* Kind of financing (loan, grant, co-financing, delegated funds);
* Principal amount of the Facility;
* Total amount drown on annual basis;
* Drawdown amounts planning on a three year basis; and
* Amount of the Facility which has been drawn down (updated as the implementation of the Project goes).

1. Other information

* Transaction information notice attached to this Schedule; and
* The summary of the Project evaluation, the content of which is defined in Article 11.12 “Project Evaluation ".

SCHEDULE 7 – AFD’s Covenant of inTegrity

Invitation of Bids/Proposals/Contract No.\_\_\_\_\_\_\_\_\_\_

To:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

We declare and undertake that neither we nor anyone, including any member of our joint venture or any of our suppliers, contractors, sub-contractors, consultants, sub-consultants, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any activity prohibited under AFD’s General Policy on Combatting Corruption, Fraud, Anti-Competitive Practices, Money Laundering and Terrorist Financing[1] (“AFD’s General Policy”) in connection with the present procurement process and (in case of award) the execution of the above-referenced contract (“Contract”), including any amendments thereto.

We acknowledge that AFD’s participation in the financing of the Contract is subject to AFD’s General Policy. As such, we acknowledge that AFD will not be able to participate in the financing of the Contract if we, including any member of our joint venture, or any of our suppliers, contractors, subcontractors, consultants or sub-consultants are ineligible as a result of a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations or are on any of the following lists (AFD’s Sanction Lists):

EU financial sanctions list https://eeas.europa.eu/headquarters/headquarters-homepage/8442/consolidated-list-sanctions\_fr

French financial sanctions list http://www.tresor.economie.gouv.fr/4248\_Dispositif-National-de-Gel-Terroriste

EU commercial sanctions list https://eeas.europa.eu/sites/eeas/files/restrictive\_measures-2017-08-04.pdf

We shall permit, and shall cause our sub-contractors, sub-consultants, agents (whether declared or not), personnel, consultants, service providers or suppliers, to permit the AFD to inspect all accounts, records, and other documents relating to the procurement process and/or Contract execution (in the case of award), and to have them audited by auditors appointed by the AFD.

We agree to preserve all accounts, records, and other documents (whether in hard copy or electronic format) related to the procurement and execution of the Contract.

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ In the capacity of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Duly empowered to sign in the name and on behalf of [2]:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCHEDULE 8 – COMMUNICATION NOTE OF THE PROJECT

# CONTEXT AND STRATEGIC CHALLENGES OF THE PROJECT

The Republic of Serbia is located on the major transport corridors of Europe and lies on a key section of the Pan-European Corridor X connecting Thessaloniki (Greece) to Salzburg (Austria). The potential of rail transport (freight and passenger) is significant but requires enhancement of the efficiency of the railway network (commercial speed, reliability, safety).

The Serbian government has carried out ambitious reforms, with a double aim: to support the development of the railway sector, and to adopt the European Union's acquis. In 2015, the single historical railway company was separated into three state-owned railway companies: an infrastructure manager (IZS), a passenger operator (SV) and a freight operator (SC) under the supervision of the Ministry of Construction, Transport and Infrastructure (MCTI). The historical debt was restructured and a regulator was created. During the 2016-2020 period, with the support of the World Bank, rail reform continued, with the objectives of improving the sector's efficiency and reducing public subsidies. As a result, the Serbian government adopted a national program for the development of railway infrastructure (2017-2021), with an associated investment plan of 3.8 billion Euros.

The reform agenda is currently structured around five major goals: (i) strengthening the regulation of the sector; (ii) improving infrastructure; (iii) optimizing the efficiency of railway companies; (iv) improving reliability and safety; and (v) increasing the modal share of railways.

# OBJECTIVES AND CONTENT OF THE PROJECT

The purpose of the Railway Sector Modernization Program (hereinafter “the program”) is to support the modernization of the Serbian railway sector. It is divided into 3 successive phases, from 2021 to 2029. In operational terms, the main objectives are (i) to improve intermodality for freight and passengers; (ii) to improve the financial worthiness of operators; (iii) to improve the efficiency of capital investment; (iv) to improve the maintenance of rail infrastructure; (v) to increase the number of private actors and investments; and (vi) to improve the gender balance in companies.

The Serbian government and the World Bank have solicited the French Development Agency (AFD) to co-finance Phase 1 of the program, with the perspective to pursue this partnership under Phases 2 and 3. Phase 1, which is the subject of this financing, comprises three components:

* Component n°1 (84.5 MEUR): renovation of railway infrastructure, with priority given to urban mobility (Belgrade station, north-eastern suburban branch to Pančevo), safety (level crossings) and improved asset management;
* Component n°2 (8.7 MEUR): institutional strengthening and project management;
* Component No. 3 (EUR 8.8 million): facilitation actions for rail modernization, including an "intelligent transport" system (introduction of digital technology).

Component 1 prioritizes investments to improve the suburban service on the northeast branch of Belgrade’s railway network as well as the connectivity with Belgrade Centre railway station (“Prokop”). In doing so, it is fully in line with the urban mobility strategy of Serbia’s capital city.

# STAKEHOLDERS AND IMPLEMENTATION FRAMEWORK

The Borrower is the Republic of Serbia, represented by its Ministry of Finance (MoF). The MCTI will be the project owner for all the program’s components, through a Project Management Unit (PMU) technically supported by dedicated units stemming from each state-owned railway company. This PMU will manage program monitoring and reporting to the World Bank and AFD. The overall governance of the program including its policy aspects will be ensured by a high-level steering committee chaired by the MCTI. Fiduciary management will be carried out by the pre-existing Central Fiduciary Unit (CFU) embedded with the MoF.

AFD will delegate appraisal and supervision tasks to the World Bank, with pari passu drawdowns, according to the AFD-World Bank co-financing framework agreement.

# COST AND FINANCING

AFD co-financing of Phase 1 amounts to 51 million Euros, i.e. 50% of the Phase 1 total amount.

# MAIN EXPECTED IMPACTS

The aim of the program is to integrate the Serbian railway network into the Single European Railway Area, in order to strengthen the country's trade opportunities and to foster economic development, while at the same time to support Serbia in achieving its greenhouse gases emission reduction objectives. In order to do so, and to increase the network’s efficiency, it is necessary to act qualitatively and quantitatively on the freight and passenger rail offer. This should result in a decrease in the contribution of the state budget to the sector. Special attention to the promotion of gender equality will provide new economic opportunities for women and improve their access to mobility. The other major effect expected is a significant decrease in the railway accident rate.

The prioritization of investments under Phase 1 on suburban service issues signals a government priority on reinforcing daily train service around Belgrade: one of the expected effects is an improvement in sustainable urban mobility and access to mobility and urban amenities for the most vulnerable segments of the population. The main positive socio-economic impact and climate change co-benefits are associated with the improvement of this service. The program is classified as a 100% climate co-benefits project.

1. If the six-month EURIBOR is not available on the date of confirmation of drawdown due to the occurrence of a Screen Rate Replacement Event, the Replacement Benchmark, the precise terms and conditions of replacement of such Screen Rate with a Replacement Benchmark and the related total effective rates will be communicated to the Borrower in a separate letter. [↑](#footnote-ref-1)
2. To be deleted in case of fixed Interest Rate. [↑](#footnote-ref-2)
3. Will be deleted in case of fixed Interest Rate. [↑](#footnote-ref-3)