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| €400,000,000 MIGA Facility Agreement   dated 10 December 2021    between  Republic of Serbia represented by the Government of the Republic of Serbia acting by and through the Ministry of Finance as Borrower  and  J.P. Morgan AG as Agent  and  JPMorgan Chase Bank, N.A., London Branch as Initial Mandated Lead Arranger  and  Credit Agricole Corporate and Investment Bank, Raiffeisen Bank International AG and Santander Bank N.A. as Mandated Lead Arrangers  and  CaixaBank, S.A. and UBS Switzerland AG as Lead Arrangers  and  Banco Santander, S.A., CaixaBank, S.A., Credit Agricole Corporate and Investment Bank, JPMorgan Chase Bank, N.A., London Branch, Raiffeisen Bank International AG and UBS Switzerland AG as Original Lenders  relating to a senior unsecured term loan facility to finance the provision of certain construction services by Bechtel Enka UK Limited, operating in Serbia through Bechtel Enka UK Limited Ogranak Beograd to Koridori Srbije d.o.o. Beograd in relation to the construction of the Infrastructure Corridor E-761 highway section Pojate-Preljina (the Morava Corridor) | |

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**THIS AGREEMENT** is dated 10 December 2021 and made between:

1. **REPUBLIC OF SERBIA**, represented by the Government of the Republic of Serbia, acting by and through the Ministry of Finance, as borrower (the **"Borrower"**);
2. **J.P. MORGAN AG**, registered with the Commercial Register B of the local court of Frankfurt am Main under registration number HRB 16861 whose registered office is at Taunustor 1 (TaunusTurm), 60310 Frankfurt am Main, Germany as agent of the other Finance Parties (the **"Agent"**);
3. **JPMORGAN CHASE BANK, N.A., LONDON BRANCH** as initial mandated lead arranger (the **"Initial Mandated Lead Arranger"**);
4. **CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, RAIFFEISEN BANK INTERNATIONAL AG** and **SANTANDER BANK N.A.** as mandated lead arrangers (together, the **"Mandated Lead Arrangers"** and each individually a **"Mandated Lead Arranger"**);
5. **CAIXABANK, S.A.** and **UBS SWITZERLAND AG** as lead arrangers (together, the **"Lead Arrangers"** and each individually a **"Lead Arranger"**); and
6. **BANCO SANTANDER, S.A., CAIXABANK, S.A., CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, JPMORGAN CHASE BANK, N.A., LONDON BRANCH, RAIFFEISEN BANK INTERNATIONAL AG** and **UBS SWITZERLAND AG** as lenders (the **"Original Lenders"**).

**THE PARTIES AGREE AS FOLLOWS**:

1. DEFINITIONS AND INTERPRETATION
   1. **Definitions**

In this Agreement:

1. **"Affiliate"** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;
2. **"Annual Monitoring Report"** means an annual environmental and social monitoring report:
   1. confirming compliance by the Borrower and the Implementing Entity with the MIGA Performance Standards, any applicable E&S Management System, the ESAP, the E&S Standards and Applicable E&S Laws; and
   2. identifying any material non-compliance or failure and the actions being taken to remedy any such deficiency;
3. **"Anti-Corruption Laws"** means:
   1. the Bribery Act 2010;
   2. the Foreign Corrupt Practices Act 1977; and
   3. any laws or regulations in any jurisdiction relating to bribery, corruption or any similar practices;
4. **"Applicable E&S Laws"** means all applicable statutes, laws, ordinances, rules, regulations and international conventions or agreements, including, without limitation, all authorisations setting standards concerning environmental, social, labour, health and safety, or security risks of the type contemplated by the MIGA Performance Standards;
5. **"Applicable Law"** means:
   1. any law, statute, decree, constitution, regulation, rule, by-law, order, authorisation, judgment, injunction or other directive of any Government Entity or otherwise which is applicable in the Relevant Jurisdiction;
   2. any treaty, pact or other binding agreement to which any Government Entity is a signatory or party; or
   3. any judicial or administrative interpretation with binding characteristics or application of those described in paragraph ‎(a) or ‎(b) above,
6. and in each case, which is applicable to the Borrower, the Implementing Entity, the Borrower's assets, the Implementing Entity's Assets or the Transaction Documents;
7. **"Arrangers"** means the Initial Mandated Lead Arranger, the Mandated Lead Arrangers or the Lead Arrangers;
8. **"Assignment Agreement"** means an agreement substantially in the form set out in ‎‎schedule 5 (Form of Assignment Agreement) or any other form agreed between the relevant assignor and assignee in form and substance satisfactory to the Agent;

**"Authorisation"** means an authorisation, consent, permit, approval, resolution, licence, exemption, filing, notarisation or registration;

1. **"Availability Period"** means the period from and including the Effective Date to and including the earlier of:
   1. the date falling 36 months after the Effective Date (or such later date as may be agreed by the Agent, acting on the instructions of all of the Lenders and MIGA); and
   2. the date on which the Facility has been fully utilised or cancelled;
2. **"Available Commitment"** means a Lender's Commitment minus:
   1. the amount of its participation in any outstanding Loans;
   2. in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date; and
   3. the amount of any repayments received to date;
3. **"Available Facility"** means the aggregate for the time being of each Lender's Available Commitment;
4. **"Blocking Law"** has the meaning given this term in clause ‎‎17.17(c);
5. **"Borrower's Signatory"** means the person(s) authorised to sign on behalf of the Borrower regarding whom evidence has been provided to the Agent in respect of the Borrower in accordance with paragraph (1)‎(b) of ‎‎schedule 2 (Conditions Precedent to Initial Utilisation);
6. **"Break Costs"** means the amount (if any) by which:
   1. the interest, excluding the Margin, which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;
7. exceeds:
   1. the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period;
8. **"Business Day"** means:
   1. a day (other than a Saturday or Sunday) on which banks are open for general interbank business (other than operation only of payments, purchases and rate fixing in euros) in:
      1. London, Belgrade, Paris, Madrid, Washington, DC and the city where the principal office of the Agent is located; and
      2. in relation to a payment, purchase or rate fixing in or other matter relating to a currency (other than euros), the principal financial centre of the country of that currency; and
   2. in relation to a payment or rate fixing in euros, a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system (TARGET) is open for general business (including dealing in foreign exchange and foreign currency deposits);
9. **"Buyer"** means Koridori Srbije d.o.o. Beograd, a limited liability company incorporated and existing under the laws of the Republic of Serbia with registration number 20498153, having its registered address at Kralja Petra 21, Belgrade, Republic of Serbia;
10. **"CAO"** means Compliance Advisor Ombudsman, the independent accountability mechanism for MIGA, which is governed by the IFC/MIGA Independent Accountability Mechanism (CAO) Policy, dated July 1, 2021, as amended from time to time. Additional information about the CAO, including a copy of the IFC/MIGA Independent Accountability Mechanism (CAO) Policy, can be found at http://www.cao-ombudsman.org/;
11. **"Claim"** means an application submitted in writing by the facility agent under the MIGA Guarantee to MIGA for payment of compensation for a loss under the MIGA Guarantee;
12. **"Code"** means the US Internal Revenue Code of 1986;
13. **"Coercive Practice"** has the meaning given to it in ‎schedule 7 (MIGA's Anti-Corruption Guidelines);
14. **"Collusive Practice"** has the meaning given to it in ‎schedule 7 (MIGA's Anti-Corruption Guidelines);
15. **"Commitment"** means:
    1. in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in ‎‎schedule 1 (The Original Parties) and the amount of any other Commitment transferred to it under this Agreement; and
    2. in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,
16. to the extent not cancelled, reduced or transferred by it under this Agreement;
17. **"Confidential Information"** means all written information relating to the Borrower, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:
    1. the Borrower or any of its advisers; or
    2. another Finance Party, if the information was obtained by that Finance Party directly or indirectly from the Borrower or any of its advisers,
18. but excludes

(A) information that:

* + 1. is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of clause ‎‎33 (Confidential Information); or
    2. is identified in writing at the time of delivery as non-confidential by the Borrower, its government agencies or any of its advisers; or
    3. is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph ‎(i) or ‎(ii) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Borrower, its government agencies and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and

(B) any Funding Rate;

1. **"Confidentiality Undertaking"** means a confidentiality undertaking substantially in the form published by the LMA for the secondary trading of loans or in any other form agreed between the Borrower and the Agent;
2. **"Corrective Action Plan"** means a plan produced by the Borrower following the occurrence of a Significant E&S Event specifying in detail the corrective action (including the timings and responsibility for such action(s)) being taken or proposed to be taken in order to, remedy or mitigate all damage and adverse consequences caused by the Significant E&S Event, as may be amended or updated from time to time with the consent of the Agent;
3. **"Corrupt Practice"** has the meaning given to it in ‎schedule 7 (MIGA's Anti-Corruption Guidelines);
4. **"CP Satisfaction Notice"** has the meaning given in paragraph ‎(a)‎(iii) of clause ‎‎5.1 (Initial conditions precedent);
5. **"Default"** means an Event of Default or any event or circumstance specified in clause ‎‎20 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default;
6. **"Default Interest Rate"** means the rate of interest payable by the Borrower in accordance with paragraph ‎(a) of clause ‎‎9.3 (Default interest);
7. **"Development Effectiveness Indicators"** means the set of development metrics specified in ‎schedule 10 (Development Effectiveness Indicators);

**"Disruption Event"** means either or both of:

* 1. a material disruption to those payment or communications systems or to those 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 the Finance Documents to be carried out) which 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 systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
     1. from performing its payment obligations under the Finance Documents, or
     2. from communicating with other Parties in accordance with the terms of the Finance Documents,

1. and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted;
2. **"Effective Date"** means the date notified by the Agent to the Borrower as the "Effective Date", being the date upon which all of the conditions precedent listed in paragraph ‎(a) of clause ‎2.1 (Effective Date) have been met to the satisfaction of the Agent (acting on the instructions of all Lenders and MIGA);
3. "**E&S Management System**"or **"ESMS"** means an environmental, health, safety, and social management system implemented or to be implemented by the Borrower and the Implementing Entity and which enables or will enable the Borrower and the Implementing Entity to identify, assess, and manage environmental and social risks in respect of the Project on an ongoing basis, in compliance with MIGA Performance Standards, the E&S Standards and Applicable E&S Laws. Such system will include manuals and related documents, including policies, management programs and plans, procedures, requirements, performance indicators, technical and management capacity, responsibilities, training, and periodic audits and inspections with respect to environmental and social matters designed to identify, assess, and manage environmental, health, safety and social risks in respect of the Project on an ongoing basis in compliance with the MIGA Performance Standards, the E&S Standards and Applicable E&S Laws;
4. **"Environmental and Social Action Plan"** or **"ESAP"** means the action plan set out in ‎schedule 11 (Environmental and Social Action Plan), as amended from time to time by or with the consent of MIGA and the Lenders;
5. **"Environmental Claim"** means any claim, proceeding or investigation by any person in respect of any Applicable E&S Law or the E&S Standards;
6. **"Environmental Permit"** means any permit, licence, consent, approval and other authorisation and the filing of any notification, report or assessment required under any applicable environmental laws for the operation of the Project;
7. **"EURIBOR"** means, in relation to any Loan:
   1. the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of that Loan; or
   2. as otherwise determined pursuant to clause ‎‎10.1 (Unavailability of Screen Rate),
8. and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero;
9. **"Event of Default"** means any event or circumstance specified as such in clause ‎‎20 (Events of Default);
10. **"Excluded Assets"** has the meaning given to it in clause ‎‎17.21 (No immunity);
11. **"External Financial Indebtedness"** means:
    1. all Financial Indebtedness expressed or denominated or payable or which, at the option of the relevant creditor may be payable, in any currency other than the lawful currency of the Relevant Jurisdiction from time to time; or
    2. all Financial Indebtedness which is or may become payable to a person which is resident outside the Relevant Jurisdiction or has its registered office or principal place of business outside the Relevant Jurisdiction;
12. **"E&S Standards"** means the policies, guidance and standards set out, or referred to, in:
    1. the following performance standards on social and environmental sustainability published by the International Financial Corporation (IFC) on 1 January 2012:
       1. Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts;
       2. Performance Standard 2: Labour and Working Conditions;
       3. Performance Standard 3: Resource Efficiency and Pollution Prevention;
       4. Performance Standard 4: Community health, Safety and Security;
       5. Performance Standard 5: Land Acquisition and Involuntary Resettlement;
       6. Performance Standard 6: Biodiversity, Conservation and Sustainable Management of Living Natural Resources;
       7. Performance Standard 7: Indigenous People;
       8. Performance Standard 8: Cultural Heritage;
    2. World Bank Group Environmental, Health and Safety (EHS) General Guidelines (2007);
    3. IFC / World Bank Group EHS Guidelines for Toll Roads (2007);
    4. World Bank Group EHS Guidelines for Construction Materials and Extraction (2007);
    5. IFC / European Bank for Reconstruction and Development (EBRD) Guidance note on Workers' Accommodation: Processes and Standards (2009);
    6. Equator Principles 4 (2020), and
    7. OECD Common Approaches (2016);
13. **"Facility"** means the term loan facility made available under this Agreement as described in clause ‎‎3 (The Facility);
14. **"Facility Currency"** means EUR;
15. **"Facility Office"** means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement;
16. **"FATCA"** means:
    1. sections 1471 to 1474 of the Code or any associated regulations;
    2. any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph ‎(a) above; or
    3. any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph ‎(a) or ‎(b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;
17. **"FATCA Application Date"** means:
    1. in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
    2. in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph ‎(a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.
18. **"FATCA Deduction"** means a deduction or withholding from a payment under a Finance Document required by FATCA;
19. **"FATCA Exempt Party"** means a Party that is entitled to receive payments free from any FATCA Deduction;
20. **"Fee Letter"** means any letter or letters dated on or about the date of this Agreement between any Arranger and the Borrower (or the Agent and the Borrower) setting out any of the fees referred to in clause ‎‎11 (Fees);
21. **"Finance Document"** means this Agreement, the MIGA Guarantee, any Utilisation Request, any Fee Letter and any other document designated as such by the Agent and the Borrower;
22. **"Finance Party"** means the Agent, any Arranger or any Lender;
23. **"Financial Indebtedness"** means any indebtedness for or in respect of:
    1. moneys borrowed;
    2. any acceptance under any acceptance credit facility or dematerialised equivalent;
    3. any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
    4. the amount of any liability in respect of any lease or hire purchase contract which would be treated as a balance sheet liability;
    5. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
    6. any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
    7. any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that derivative transaction, that amount) shall be taken into account);
    8. any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; or
    9. the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs ‎(a) to ‎(h) above;

**"Financial Stability Board"** means the international body that monitors and makes recommendations about the global financial system;

1. **"First Repayment Date"** means the date falling 42 months from the date of this Agreement;
2. "**Fraudulent Practice**" has the meaning given to it in ‎schedule 7 (MIGA's Anti-Corruption Guidelines);
3. **"Funding Rate"** means any individual rate notified by a Lender to the Agent pursuant to paragraph ‎(a)‎(ii)‎ of clause ‎‎10.4 (Cost of funds);
4. **"Government Entity"** means:
   1. any national government or political subdivision of a national government;
   2. any banking or monetary authority of a national government or of a political subdivision of a national government;
   3. any local jurisdiction of a national government or of a political subdivision of a national government;
   4. the European Central Bank or the Council of Ministers of the European Union;
   5. any instrumentality, commission, board commission, authority, department, division, organ, court or agency of any of the foregoing, however constituted; or
   6. any association, organisation or institution of which any of the entities listed in the preceding paragraphs is a member (including, without limitation, any supranational body) or to whose jurisdiction any of them is subject or in whose activities any of them is a participant;
5. **"Guarantee Period"** has the meaning given to it in the MIGA Guarantee;

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary;

1. **"IBRD"** means the International Bank for Reconstruction and Development;
2. **"IDA"** means the International Development Association;
3. **"IFC"** means the International Finance Corporation;
4. **"IMF"** means the International Monetary Fund;
5. **"Impaired Agent"** means the Agent at any time when:
   1. it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
   2. the Agent otherwise rescinds or repudiates a Finance Document;
   3. an Insolvency Event has occurred and is continuing with respect to the Agent;
6. unless, in the case of paragraph ‎(a) above:
   * 1. its failure to pay is caused by:
        1. administrative or technical error; or
        2. a Disruption Event; and
     2. payment is made within three Business Days of its due date; or
     3. the Agent is disputing in good faith whether it is contractually obliged to make the payment in question;
7. **"Implementing Entity"** means:
   1. with respect to the development and construction phase of the Project, the Buyer;
   2. with respect to the operation phase of the Project, PE Roads of Serbia established pursuant to the Law on Public Roads (Official Gazette of the Republic of Serbia, No. 101/05); and
   3. with respect to river regulation works in relation to the Project, Serbia Public Water Management Company (PWMC) Srbijavode;
8. **"Increased Costs"** has the meaning given in paragraph ‎(b) of clause ‎‎13.1 (Increased costs);
9. **"Information"** has the meaning given under section 84 of the Freedom of Information Act 2000;
10. **"Insolvency Event"** in relation to an entity means that the entity:
    1. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
    2. becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
    3. makes a general assignment, arrangement or composition with or for the benefit of its creditors;
    4. institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
    5. has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph ‎(d) above and:
       1. results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
       2. is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
    6. has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
    7. seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
    8. has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
    9. causes or is subject to any event with respect to it which, under the applicable law of any jurisdiction, has an analogous effect to any of the events specified in paragraphs ‎(a) to ‎(h) above; or
    10. takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
11. **"Interest Payment Date"** means the last day of an Interest Period;
12. **"Interest Period"** means, in relation to a Loan, each period determined in accordance with clause ‎‎9.5 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with clause ‎‎9.3 (Default interest);
13. **"International Public Sector Accounting Standards"** means the set of accounting standards established and issued by the International Public Sector Accounting Standards Board (IPSASB), as amended from time to time;
14. **"Interpolated Screen Rate"** means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:
    1. the applicable Screen Rate for the longest period for which that Screen Rate is available which is less than the Interest Period of that Loan; and
    2. the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,
15. each as of the Specified Time for the Facility Currency;
16. **"Lender"** means:
    1. any Original Lender; and
    2. any bank, financial institution, trust, fund or other entity which has become a Party in accordance with clause ‎‎21 (Changes to the Lenders),
17. which in each case has not ceased to be a Party in accordance with the terms of this Agreement;
18. **"LMA"** means the Loan Market Association;
19. **"Loan"** means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan;
20. "**Loss**" means the failure of the Lenders to receive a scheduled payment on its due date hereunder, or a covered mandatory prepayment on its due date hereunder, which is due, in either case, to the failure of the Borrower to pay the Lenders such amounts;
21. **"Majority Lenders"** means a Lender or Lenders whose Commitments aggregate more than 66 2/3% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 2/3% of the Total Commitments immediately prior to the reduction);
22. **"Margin"** means zero point fifty five per cent. (0.55%) per annum;
23. **"Material Adverse Effect"** means a material adverse effect in the reasonable opinion of the Majority Lenders on:
    1. the economic condition of the Borrower or the Buyer;
    2. the ability of the Borrower or the Buyer to perform any of its obligations under the Transaction Documents; or
    3. the validity or enforceability of the Transaction Documents or the rights and remedies of any Finance Party under any of the Finance Documents;
24. **"MIGA"** means the Multilateral Investment Guarantee Agency;
25. **"MIGA Guarantee"** means the "Non-Honoring of a Sovereign Financial Obligation" guarantee provided by MIGA in favour of the Lenders covering 95% of the principal and interest entered into by MIGA and the Agent in connection with the financing provided for in this Agreement, in form and substance acceptable to the Agent (acting on the instructions of all the Lenders);
26. **"MIGA Guarantee Effective Date"** means the date on which the MIGA Guarantee becomes effective in accordance with its terms;
27. **"MIGA Mandatory Prepayment Event"** means each of the following events or circumstances:
    * 1. it is or becomes unlawful for MIGA to perform any of its obligations under the MIGA Guarantee or for a Finance Party to receive the benefit of the MIGA Guarantee;
      2. any obligation or obligations of MIGA under the MIGA Guarantee are not or cease to be legal, valid, binding or enforceable or the MIGA Guarantee is not or ceases to be in full force and effect; or
      3. MIGA avoids, rescinds, repudiates, suspends, cancels or terminates all or part of the MIGA Guarantee or evidences an intention to or purports to avoid, rescind, repudiate, suspend, cancel or terminate all or part of the MIGA Guarantee;
28. **"MIGA Performance Standards"** means, with respect to the Project and the Implementing Entity, the Performance Standards on Environmental and Social Sustainability listed in Annex 4A of the MIGA Guarantee, as in effect on the MIGA Guarantee Effective Date, which are set out hereto in ‎schedule 8 (MIGA's Performance Standards);
29. **"MIGA Premium"** means the insurance premium payable by the Borrower in euros to MIGA under the MIGA Guarantee and all other costs required in obtaining and maintaining the MIGA Guarantee as evidenced by the notice to be sent by MIGA;
30. "**Money Laundering**" means the acquisition, possession, use, conversion, transfer or concealment of the true nature of property of any description, and legal documents or instruments evidencing title to, or interest in, such property, knowing that such property is an economic advantage from criminal offences, for the purpose of:
    1. concealing or disguising the illicit origin of the property; or
    2. assisting any person who is involved in the commission of the criminal offence as a result of which such property is generated, to evade the legal consequences of such actions;
31. **"Morava Corridor Law"** means the Law on Determining Public Interest and Special Procedures for Implementation of the Project for Construction of Infrastructure Corridor E-761 Highway Section Pojate-Preljina enacted by the Republic of Serbia on 8 July 2019 (Zakon o utvrđivanju javnog interesa i posebnim postupcima radi realizacije projekta izgradnje infrastrukturnog koridora auto-puta E-761, deonica Pojate-Preljina, Official Gazette of the Republic of Serbia, no. 49/2019);
32. **"NBS"** means the National Bank of Serbia (*Narodna banka Srbije*);
33. **"New Lender"** has the meaning given to that term in clause ‎21.1 (Assignments and transfers by the Lenders);
34. **"Obstructive Practice"** has the meaning given to it in ‎schedule 7 (MIGA's Anti-Corruption Guidelines);
35. **"OFAC"** means the Department of the Treasury's Office of Foreign Assets Control of the United States of America;
36. **"Participating Member State"** means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;
37. **"Party"** means a party to this Agreement;
38. "**Potential Claim**" means a potential claim for payment under the MIGA Guarantee;
39. **"PRG"** means the Partial Risk Guarantee operations conducted by the Project Finance Group of IBRD;
40. **"Project"** means the development, construction, and operation of an approximately 112km motorway (Morava Corridor) linking the cities of Preljina and Pojate in central Serbia, including:
    1. above-ground structures and interchanges;
    2. bridges, culverts, over and under passes;
    3. rest areas and parking areas;
    4. buffer zones protection against flood and water based erosion;
    5. a telecommunication network to connect mobile phone base stations within the motorway, as well as manage traffic through various traffic control, monitoring and surveillance, and tolling systems; and
    6. river regulation works including bank protection, meander cut offs (straightened channelizations of the West Morava River) and reconstruction of existing flood embankments;
41. **"Project Contract"** the contract agreement between the Borrower, the Buyer and the Project Contractor dated 5 December 2019 for the construction of the Project;
42. **"Project Contractor"** means Bechtel Enka UK Limited,a private limited company incorporated in England with registered number 09623025 whose registered office is at 11 Pilgrim Street, London, United Kingdom, EC4V 6RN, operating in Serbia through Bechtel Enka UK Limited Ogranak Beograd, registered branch office Resavska 23, Belgrade, Serbia, with corporate identification number 29510300 and tax identification number 111763679;
43. **"Protected Party"** has the meaning given in paragraph ‎(a) of clause ‎‎12.1 (Tax definitions);
44. **"Public Assets"** means the whole or any part of present or future undertaking, assets, revenues and international monetary reserves (including gold, special drawing rights and foreign currency) held by the Borrower or its agencies, including the NBS and its successor(s);
45. **"Quasi-Security"** has the meaning given in clause ‎‎19.5 (Negative pledge);
46. **"Quotation Day"** means, in relation to any period for which an interest rate is to be determined, two (2) TARGET Days before the first day of that period unless market practice differs in the Relevant Market, in which case the Quotation Day will be determined by the Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days);
47. **"Recipient"** has the meaning given in paragraph ‎(b) of clause ‎12.6 (VAT);
48. **"Relevant Jurisdiction"** means the Republic of Serbia;
49. **"Relevant Market"** means the European interbank market;
50. **"Relevant Nominating Body"** means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board;
51. **"Relevant Party"** has the meaning given in paragraph ‎(b) of clause ‎12.6 (VAT);
52. **"Repayment Date"** means
    1. the First Repayment Date; and
    2. each date falling at six monthly intervals after the First Repayment Date;
53. **"Repeating Representations"** means each of the representations set out in clause ‎17 (Representations);
54. **"Replacement Benchmark"** means a benchmark rate which is:
    1. formally designated, nominated or recommended as the replacement for a Screen Rate by:
       1. the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
       2. any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph ‎(ii) above;

* 1. in the opinion of the Majority Lenders, the Borrower and MIGA, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
  2. in the opinion of the Majority Lenders, the Borrower and MIGA, an appropriate successor to a Screen Rate.

1. **"Representative"** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian;
2. **"Required Documents"** means the documents to be appended to the Utilisation Request in accordance with paragraph ‎7(c) of ‎‎schedule 3 (Utilisation Request);
3. **"Reserves"** of a state means the official external reserves of that state, by whoever and in whatever form owned, held, administered or controlled (including any not owned or not held or not administered or not controlled by that state but customarily regarded and held out as its official external reserves);
4. **"Sanctions Authority"** means:
   1. the United Nations Security Council;
   2. the European Union;
   3. the United States of America (including OFAC and the U.S. Department of State);
   4. each member state of the European Union;
   5. the UK;
   6. Switzerland;
   7. the Swiss State Secretariat for Economic Affairs (SECO); and
   8. the Directorate for Public International Law or Department of Justice of Switzerland;
5. **"Sanctions Laws and Regulations"** means any economic, financial or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctions Authority from time to time;
6. **"Sanctioned Country"** means, at any time, a country, region or territory which is itself the subject or target of any Sanctions Laws and Regulations (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria);
7. **"Sanctioned Person"** means, at any time, (a) any person listed in any Sanctions Laws and Regulations-related list of designated persons maintained by any of the Sanctions Authorities, (b) any person operating, organized or resident in a Sanctioned Country, (c) any person owned or controlled by any such person or persons described in the foregoing clauses (a) and (b), or (d) any Person otherwise the subject of any Sanctions Laws and Regulations;
8. **"Screen Rate"** means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrower;
9. **"Screen Rate Replacement Event"** means
   1. the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders, the Borrower and MIGA materially changed;
   2. (i)
      * 1. the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
        2. information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,

provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;

* + 1. the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
    2. the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
    3. the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
  1. in the opinion of the Majority Lenders, the Borrower and MIGA, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

1. **"Security"** means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;
2. **"Significant E&S Event"** means: (i) any significant social, labor, health and safety, security or environmental incident, accident, or circumstance relating to the Project, including explosions, spills, any workplace accidents that result in death, serious or multiple injury, material pollution, or any violent labor unrest or dispute between the Borrower, and the Implementing Entity or security forces (assigned to protect the Project) and local communities; or (ii) any other event or circumstance having, or which could reasonably be expected to have, a material adverse effect on the implementation or operation of the Project in accordance with MIGA Performance Standards;
3. **"Specified Time"** means a day or time determined in accordance with ‎‎schedule 6 (Timetables);
4. **"Subsidiary"** means a company or corporation:
   1. which is controlled, directly or indirectly, by a company or corporation or a government agency (a **"holding corporation"**);
   2. more than half the issued share capital of which is beneficially owned, directly or indirectly, by the holding corporation; or
   3. which is a Subsidiary of another Subsidiary of the holding corporation;
5. **"Supplier"** has the meaning given in paragraph ‎(b) of clause ‎12.6 (VAT);
6. **"TARGET2"** means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007;
7. **"TARGET Day"** means any day on which TARGET2 is open for the settlement of payments in euro;
8. **"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);
9. **"Tax Credit"** has the meaning given in paragraph ‎(a) of clause ‎‎12.1 (Tax definitions);
10. **"Tax Deduction"** has the meaning given in paragraph ‎(a) of clause ‎‎12.1 (Tax definitions);
11. **"Tax Payment"** has the meaning given in paragraph ‎(a) of clause ‎‎12.1 (Tax definitions);
12. **"Third Parties Act"** means the Contracts (Rights of Third Parties) Act 1999;
13. **"Total Commitments"** means the aggregate of the Commitments being EUR 400,000,000.00 at the date of this Agreement;
14. **"Transaction Documents"** means the Finance Documents and the Project Contract;
15. **"Transfer Certificate"** means a certificate substantially in the form set out in ‎schedule 4 (Form of Transfer Certificate) or any other form agreed between the Agent and the Borrower;
16. **"Transfer Date"** means, in relation to an assignment or a transfer, the later of:
    1. the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate, and
    2. the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate;
17. **"UK"** means the United Kingdom of Great Britain and Northern Ireland;
18. "**UKEF Facility**" means the up EUR 431,685,732.79 senior unsecured term loan facility guaranteed by UK Export Finance extended to the Borrower by, amongst others, JPMorgan Chase Bank, N.A., London Branch relating to the financing of the Project, including any refinancing or replacement of that facility from time to time;
19. **"Unpaid Sum"** means any sum due and payable but unpaid by the Borrower under the Finance Documents;
20. **"US"** means the United States of America;
21. **"Utilisation"** means a utilisation of the Facility;
22. **"Utilisation Date"** means the date of a Utilisation, being the date on which the relevant Loan is to be made;
23. **"Utilisation Request"** means a notice substantially in the form set out in ‎‎schedule 3 (Utilisation Request);
24. **"VAT"** means:
    1. value added tax as provided for in the Value Added Tax Act (Zakon o porezu na dodatu vrednost), Official Gazette of the Republic of Serbia, nos. 84/2004, 86/2004, 61/2005, 61/2007, 93/2012, 108/2013, 6/2014, 68/2014, 142/2014, 5/2015. 83/2015, 5/2016, 108/2016, 7/2017, 113/2017, 13/2018, 30/2018,4/2019, 72/19, 8/2020 and 153/2020
    2. any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112), and
    3. any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph ‎(a) above, or imposed elsewhere.
25. **"World Bank"** means the World Bank Group, including the International Bank for Reconstruction and Development, The International Development Association (IDA), The International Finance Corporation (IFC) and The Multilateral Investment Guarantee Agency (MIGA).
26. **"World Bank Group"** means IBRD, IDA, IFC and MIGA.
    1. **Construction**
       1. Unless a contrary indication appears, any reference in this Agreement to:
          1. the **"Agent"**, any **"Arranger"**, the **"Borrower"**, any **"Finance Party"**, any **"Lender"**, or any **"Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
          2. an **"agency"** shall be construed so as to include any governmental, intergovernmental or supranational agency, authority, body, central bank, commission, department, ministry, organisation, statutory corporation or tribunal (including any political sub-division, national, regional or municipal government and any administrative, fiscal, judicial, regulatory or self-regulatory body or person);
          3. a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Borrower and the Agent or, if not so agreed, is in the form specified by the Agent;
          4. **"assets"** includes present and future properties, revenues and rights of every description;
          5. for the purposes of the definition of **"Subsidiary"**, **"control"** means:
             1. the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the company; or

appoint or remove all, or the majority, of the directors or other equivalent officers of the company; or

give directions with respect to the operating and financial policies of the company or the Borrower, as applicable, which the directors or other equivalent officers of the company are obliged to comply with; or

* + - * 1. the holding of more than one-half of the issued share capital of the company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);
      1. a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
      2. a **"group of Lenders"** includes all the Lenders;
      3. **"guarantee"** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
      4. **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
      5. a **"person"** includes any individual, firm, company, limited liability company, limited joint venture, joint stock company, unincorporated organisation, trust or other judicial entity, corporation, government, ministry, department, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity or political subdivision thereof or any other entity (whether or not having separate legal personality);
      6. a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any agency;
      7. a provision of law is a reference to that provision as amended or re-enacted;
      8. a time of day is a reference to London, United Kingdom time;
    1. The determination of the extent to which a rate is **"for a period equal in length"** to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
    2. Section, clause and schedule headings are for ease of reference only.
    3. Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
    4. A Default (other than an Event of Default) is **"continuing"** if it has not been remedied or waived and an Event of Default is **"continuing"** if it has not been waived.
  1. **Currency symbols and definitions**

**"€"**, **"EUR"** and **"euro"** denote the single currency of the Participating Member States.

* 1. **Third party rights**
     1. Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement:
        1. clause ‎3.4 (MIGA override);
        2. clause ‎‎5.1 (Initial conditions precedent);
        3. clause ‎‎14.2 (Other Indemnities);
        4. clause ‎‎16 (Costs and expenses);
        5. clause ‎‎18.5 ("Know your customer" checks);
        6. clause ‎‎21.1 (Assignments and transfers by the Lenders);
        7. clause ‎23.13 (Replacement of the Agent);
        8. clause ‎26.3 (Distributions in respect of Utilisations);
        9. clause ‎‎33 (Confidential Information); and
        10. any other provision of any Finance Document which expressly confers rights on MIGA.
     2. Subject to paragraph ‎(a) above and clause ‎‎32.2 (All Lender matters), a person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. For the avoidance of doubt, this shall not in any way affect or exclude any rights of MIGA as provided for herein, including in clause ‎19.16 (MIGA Guarantee Covenants).
  2. **Role of the Implementing Entities**

The Borrower acknowledges and agrees that each Implementing Entity may act on its behalf with respect to the Finance Parties, MIGA and the Project Contractor in relation to the environmental and social requirements related to the Project. For the purposes any obligation in this Agreement related to environmental and social requirements, the Borrower shall procure that each Implementing Entity complies with such obligation as if it were a party to this Agreement.

1. EFFECTIVENESS
   1. **Effective Date**
      1. This Agreement shall take effect on the date on which the Agent notifies the Borrower of the satisfaction of the following conditions in form and substance satisfactory to the Agent (acting on the instructions of all Lenders and MIGA):
         1. publication of the Official Gazette of the Republic of Serbia in which the law on ratification of this Agreement by the National Assembly of the Republic of Serbia has been published; and
         2. delivery of a legal opinion of the Ministry of Justice of Serbia to the Finance Parties and MIGA in relation to the Finance Documents,
      2. For the avoidance of doubt, prior to the Effective Date, the Facility and the obligations of the Lenders are uncommitted and there is no obligation on any Finance Party to agree to any Utilisation Request or make any Utilisation available.
      3. The Agent shall promptly notify the Borrower in writing upon being so satisfied.
      4. Notwithstanding paragraph (a) above, the provisions of clause ‎2.2 (Longstop Date), ‎‎33 (Confidential Information) and clauses ‎38 (Governing law) – ‎40 (Service of process) (inclusive) shall take effect on the date of this Agreement.
   2. **Longstop Date**

If the Effective Date has not occurred by a date no later than 60 days from the date of this Agreement (or any later date which the Agent, acting on the instructions of all Lenders and MIGA, has notified to the Borrower), this Agreement shall not take effect and no Party shall have any rights or obligations hereunder, save to the extent contemplated in paragraph ‎(d) of clause ‎‎2.1 (Effective Date).

1. THE FACILITY
   1. **The Facility**

Subject to the terms of this Agreement, the Lenders make available to the Borrower a term loan facility in the Facility Currency in an aggregate amount equal to the Total Commitments for the purposes of financing goods and services provided by the Project Contractor under the Project Contract for the purpose of implementing the Project, in each case within the limits and under the conditions determined by MIGA.

* 1. **Finance Parties' rights and obligations**
     1. The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
     2. The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrower shall be a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph ‎(c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by the Borrower.
     3. A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.
  2. **Obligations of the Borrower**
     1. The obligations of the Borrower under this Agreement shall constitute absolute, unconditional and irrevocable financial obligations to the Finance Parties. Such obligations are independent and separate obligations regardless of any matter affecting the Project Contractor or the Project Contract including the performance, non-performance, frustration or invalidity of the Project Contract, or the destruction, non-completion, or non-functioning of any of the goods and/or services to be supplied under the Project Contract or the liquidation or bankruptcy of the Project Contractor or any other person.
     2. Without prejudice to the generality of paragraph ‎(a) above, the Borrower acknowledges that its liability to pay in full any sum payable by it under this Agreement on the due date for payment:
        1. is separate from the performance by the Project Contractor or any other person of their obligations under the Project Contract and any other agreement relating thereto; and
        2. shall not be affected in any way by reason of any claim, dispute or defence which the Borrower or the Buyer may have or may consider that it has against any Project Contractor or any other person.
  3. **MIGA override**
     1. If, in the opinion of any Finance Party, any provision of this Agreement contradicts or conflicts with any provision of the MIGA Guarantee (including, without limitation, as a result of any amendment of the MIGA Guarantee) or any direction of MIGA, that provision shall, upon written notice by the Agent to the Borrower and the other Parties, be deemed to be amended as specified by the Agent (being to the extent required by the Agent to ensure the validity of, and the compliance by this Agreement with the terms of, the MIGA Guarantee).
     2. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall oblige any Finance Party to act (or omit to act) in a manner that is inconsistent with any requirement of MIGA under or in connection with the MIGA Guarantee and, in particular:
        1. each Finance Party may take all such actions as it considers necessary to ensure that all requirements of MIGA under or in connection with the MIGA Guarantee are complied with; and
        2. no Finance Party shall be obliged to do anything if, in its reasonable opinion, to do so could (A) result in a breach of any requirements of MIGA under or in connection with the MIGA Guarantee, (B) affect the validity of the MIGA Guarantee or (C) otherwise result in a MIGA Mandatory Prepayment Event.

1. PURPOSE
   1. **Purpose**

The Borrower shall apply all amounts borrowed by it under the Facility towards the direct payment to the Project Contractor in respect of the Buyer's obligations under the Project Contract within the limits and under the conditions determined by MIGA, which shall be applied by the Agent directly to the Project Contractor.

* 1. **Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

1. CONDITIONS OF UTILISATION
   1. **Initial conditions precedent**
      1. The Agent shall not give effect to any Utilisation Request unless:
         1. the Effective Date has occurred;
         2. the Agent has received all of the documents and other evidence listed in ‎‎schedule 2 (Conditions Precedent to Initial Utilisation) in a form and substance satisfactory to the Agent (acting on the instructions of all Lenders) within 30 days of the Effective Date or by such later date as the Agent may notify the Borrower; and
         3. the Agent has notified the Borrower and the Lenders that the conditions precedent referred to in paragraphs ‎(i) and ‎(ii) above have been satisfied (the **"CP Satisfaction Notice"**).
      2. Other than to the extent that any Lender notifies the Agent in writing to the contrary before the Agent serves a CP Satisfaction Notice, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
      3. The conditions precedent described in ‎‎schedule 2 (Conditions Precedent to Initial Utilisation) are for the benefit of the Agent and the Lenders. The Agent may waive any or all of those conditions precedent in whole or in part and decide when and if each of those conditions precedent has been fulfilled to its satisfaction.
      4. If the conditions precedent referred to in paragraph ‎(a) above are not met within 30 days of the Effective Date or any later date as the Agent may agree, the Agent may notify the Borrower that the Commitments of the Lenders shall be cancellable on notice.
   2. **Further conditions precedent**

Subject to paragraph ‎(b) below, the Lenders shall only be obliged to comply with clause ‎‎6.3 (Lenders' participation) if on the date of the Utilisation Request and on the proposed Utilisation Date:

* + 1. no Default is continuing or would result from the proposed Loan;
    2. the Repeating Representations to be made by the Borrower are true;
    3. no External Financial Indebtedness is due and unpaid;
    4. the Project Contract is in full force and effect, and has not been terminated, suspended or amended (other than as permitted under this Agreement) and no action is proceeding which might lead to the termination or suspension thereof;
    5. unless otherwise agreed by all Lenders, the MIGA Guarantee Effective Date has occurred and the MIGA Guarantee is in full force and effect and has not been terminated or suspended, and any amounts owed to MIGA have been paid in full within the specified time, and the Agent is satisfied that the MIGA Guarantee provides cover, in accordance with its terms, in respect of the proposed Loan and related interest;
    6. unless otherwise agreed by all Lenders, there is no outstanding notice from MIGA which:
       1. terminates, repudiates, cancels or suspends the MIGA Guarantee; or
       2. requires any Lender to suspend the provision of the Loan or terminate the Commitments or accelerate the Facility;
    7. no Sanctions Laws and Regulations would apply to or otherwise affect the Buyer, the receipt by the Borrower, the Buyer or any Project Contractor (as the case may be) of proceeds from a proposed Loan and or the incurring of debt in relation to a proposed Loan;
    8. it would not be unlawful or contrary to any Sanctions Laws and Regulations applicable to a Lender for the proposed Loan to be made;
    9. the Borrower has provided copies of all relevant Authorisations relating to the proposed Loan including, without limitation, evidence of the inclusion of the proposed Loan in the relevant annual budget law of the Republic of Serbia; and
    10. there has been no event or circumstance that in the opinion of the Majority Lenders constitutes or may constitute a material adverse change in the Relevant Jurisdiction or in its international financial, economic or political or social conditions, including any sovereign risk downgrading of the Relevant Jurisdiction by an international agency and/or deterioration in financial sector of the Relevant Jurisdiction, war, civil war, revolution, uprising, acts of terrorism and/or sabotage, an extension of exchange controls or a debt moratorium, or a change in law or regulation or in the political, economic, financial, commercial, legal and fiscal environment of the Relevant Jurisdiction, and which in the opinion of the Majority Lenders would make it inadvisable to proceed with the Utilisations.

1. UTILISATION
   1. **Utilisation of the Facility**

The Borrower may utilise the Facility in respect of payment to the Project Contractor for the Project costs falling due to the Project Contractor by delivery by the Borrower to the Agent of a Utilisation Request duly completed to the Agent's satisfaction for that purpose not later than the Specified Time.

* 1. **Completion of the Utilisation Request**
     1. Each Utilisation Request is irrevocable and shall not be regarded as having been duly completed unless:
        1. it is delivered to the Agent not less than ten (10) Business Days before the last day of the Availability Period;
        2. the proposed Utilisation Date is a Business Day within the Availability Period;
        3. the currency of the Loan requested in the Utilisation Request is the Facility Currency;
        4. it has been signed by the Borrower's Signatory; and
        5. it has attached true copies of each of the Required Documents.
     2. Only one Loan may be requested in each Utilisation Request.
     3. The minimum amount for each Utilisation Request shall be EUR 3,725,000.
  2. **Lenders' participation**
     1. If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
     2. The amount of each Lender's participation in each Loan shall be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making such Loan.
  3. **Utilisation proceeds paid directly to the Project Contractor**

The Borrower acknowledges and agrees that the payment of the proceeds of any Utilisation directly to the Project Contractor (in satisfaction of Buyer's obligations to the Project Contractor under the Project Contract) shall constitute a Loan for the purposes of this Agreement as if the proceeds of that Loan had been paid to the Borrower.

* 1. **Financing of eligible goods and services under the UKEF Facility**

To the extent that any Project Contractor invoices which are the subject of a Utilisation Request under the Facility are eligible to be financed under the UKEF Facility, such invoices may, at the Agent's request, be recommended for financing under the UKEF Facility in preference to the Facility.

1. REPAYMENT
   1. **Repayment of Loans**
      1. Subject to paragraph ‎(b) below, the Borrower shall repay outstanding Loans in equal six monthly instalments of EUR 20,000,000 (being 1/20th of the amount that would be outstanding on the last day of the Availability Period if the entire Total Commitments were utilised during the Availability Period).
      2. The instalments referred to in paragraph ‎(a) above shall be payable as follows:
         1. the first such instalment shall become due and payable on the First Repayment Date; and
         2. the Borrower shall continue to pay further such instalments (or if less, the remainder of all outstanding Loans) on each succeeding Repayment Date until it has repaid all outstanding Loans.
   2. **Reborrowing**

The Borrower may not reborrow any part of the Facility which is repaid.

1. PREPAYMENT AND CANCELLATION
   1. **Illegality**

If, in any applicable jurisdiction, it is or becomes unlawful for any Lender (including, without limitation, as a result of Sanctions Laws and Regulations applicable to that Lender) to perform any of its obligations as contemplated by this Agreement or to fund or to maintain its participation in any Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

* + 1. that Lender shall promptly notify the Agent and MIGA upon becoming aware of that event;
    2. upon the Agent notifying the Borrower of that event, the Available Commitment of that Lender will be immediately cancelled; and
    3. to the extent that the Lender's participation has not been transferred pursuant to paragraph ‎(b) of clause ‎8.5 (Right of replacement in relation to a single Lender), the Borrower shall repay that Lender's participation in the Loans on the first Interest Payment Date occurring after the Agent has so notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent pursuant to paragraph ‎(a) above (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participations repaid.
  1. **MIGA Mandatory Prepayment Event**

If a MIGA Mandatory Prepayment Event occurs:

* + 1. the Agent shall promptly notify the Borrower and the Lenders upon becoming aware of that event;
    2. a Lender shall not be obliged to fund a Utilisation; and
    3. if a Lender so requires and notifies the Agent, the Agent shall, by not less than thirty (30) days' notice to the Borrower, cancel the Available Commitment of that Lender and declare the participation of that Lender in all Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents immediately due and payable, whereupon each such Available Commitment will be immediately cancelled, the Commitment of that Lender shall immediately cease to be available for further utilisation and all such Loans, accrued interest and other amounts shall become immediately due and payable.
  1. **Voluntary cancellation**

The Borrower may not cancel the whole or any part of the Available Facility, unless otherwise agreed by the Agent.

* 1. **Voluntary prepayment of Loans**
     1. Subject to paragraph ‎(b) below and MIGA's consent, the Borrower may, if it gives the Agent not less than thirty (30) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Loan but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of EUR 5,000,000.
     2. A Loan may only be prepaid after the last day of the Availability Period (or if earlier, the day on which the Available Facility is zero) and on the last day of an Interest Period.
     3. Any prepayments made under this clause ‎‎8.4 shall satisfy the Borrower's obligations under clause ‎‎7.1 (Repayment of Loans) in inverse chronological order of the Repayment Dates.
  2. **Right of replacement in relation to a single Lender**
     1. If:
        1. any sum payable to any Lender by the Borrower is required to be increased under paragraph ‎(c) of clause ‎‎12.2 (Tax gross up); or
        2. any Lender claims indemnification from the Borrower under clause ‎‎12.3 (Tax indemnity) or clause ‎‎13.1 (Increased costs),

the Borrower may, with the prior written consent of the Agent, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of its intention to replace that Lender in accordance with paragraph ‎(b) below.

* + 1. If:
       1. any of the circumstances set out in paragraph ‎(a) above apply to a Lender; or
       2. the Borrower becomes obliged to pay any amount in accordance with clause ‎‎8.1 (Illegality) to any Lender,

the Borrower may, on not less than thirty (30) Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to clause ‎‎21 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with clause ‎21 (Changes to the Lenders) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under clause ‎‎21.9 (Pro rata interest settlement)), Break Costs and other amounts payable in relation to such participation under the Finance Documents.

* + 1. The replacement of a Lender pursuant to paragraph ‎(b) above shall be subject to the following conditions:
       1. the Borrower shall have no right to replace the Agent;
       2. neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
       3. in no event shall the Lender replaced under paragraph ‎(b) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
       4. the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph ‎(b) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws in relation to that transfer.
    2. A Lender shall perform the checks described in paragraph ‎(c)‎‎(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph ‎(b) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.
  1. **Restrictions**
     1. Any notice of cancellation or prepayment given by any Party under this clause ‎8 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
     2. Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
     3. The Borrower may not reborrow any part of the Facility which is prepaid.
     4. The Borrower shall not repay or prepay all or any part of the Loans except at the times and in the manner expressly provided for in this Agreement.
     5. No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
     6. If the Agent receives a notice under this clause ‎‎8, it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
     7. If all or part of any Lender's participation in a Loan is repaid or prepaid an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) shall be deemed to be cancelled on the date of such repayment or prepayment.
  2. **Application of prepayments**

Any prepayment of a Loan pursuant to clause ‎‎8.4 (Voluntary prepayment of Loans) shall be applied pro rata to each Lender's participation in that Loan.

1. INTEREST
   1. **Calculation of interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

* + 1. Margin; and
    2. EURIBOR.
  1. **Payment of interest**

The Borrower shall pay accrued interest on each Loan on each Interest Payment Date.

* 1. **Default interest**
     1. If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph ‎(b) below, is two per cent. (2.00%) per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this clause ‎‎9.3 shall be immediately payable by the Borrower on demand by the Agent.
     2. If any overdue amount consists of all or part of a Loan which became due on a day which was not an Interest Payment Date:
        1. the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
        2. the rate of interest applying to the overdue amount during that first Interest Period shall be two per cent. (2.00%). per annum higher than the rate which would have applied if the overdue amount had not become due.
     3. Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
  2. **Notification of rates of interest**
     1. The Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
     2. The Agent shall promptly notify the Borrower of each Funding Rate relating to a Loan.
  3. **Interest Periods**
     1. The period for which each Loan is outstanding shall be divided into successive Interest Periods.
     2. The first day of an Interest Period for each Loan shall begin on:
        1. for the first Interest Period for that Loan, its Utilisation Date; and
        2. for each subsequent Interest Period, the preceding Interest Payment Date.
     3. The last day of an Interest Period for each Loan shall (subject to paragraph ‎(d) below) be the earlier of:
        1. the date falling six (6) months after the first day of that Interest Period;
        2. the Interest Payment Date of any other Loan; and
        3. the first Repayment Date falling after the first day of that Interest Period.
     4. If the Utilisation Date of any Loan is less than fifteen (15) days prior to an Interest Payment Date, the first Interest Period for that Loan shall end on the Interest Payment Date that next follows the Interest Payment Date immediately succeeding the Utilisation Date.
  4. **Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

* 1. **Amalgamation of Loans**

If two or more Interest Periods relate to Loans and end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

1. CHANGES TO THE CALCULATION OF INTEREST
   1. **Discontinuation of certain benchmarks**
      1. The interest rate on a Loan may be derived from an interest rate benchmark that is, or may in the future become, the subject of regulatory reform. Regulators have signalled the need to use alternative benchmark reference rates for some of these interest rate benchmarks and, as a result, such interest rate benchmarks (i) may cease to comply with applicable laws and regulations, (ii) may be permanently discontinued, and/or (iii) the basis on which they are calculated may change. LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. The interest rate on Loans denominated in euros is determined by reference to the Euro Interbank offered Rate ("EURIBOR"), which is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the European Union interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel any LIBOR panel bank, being a bank which contributes submissions to ICE LIBOR, to provide quotations to ICE Benchmark Administration Limited (together with any successor to ICE Benchmark Administration Limited, the "IBA") for the purposes of the IBA administering LIBOR after 2021. As a result, it is possible that, commencing in 2022, LIBOR may no longer be available or deemed an appropriate reference rate upon which to determine the interest rate on Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. Similar initiatives are already, or may in the future be, underway to identify new or alternative reference rates or, in some cases, adjust methodology for other interest rate benchmarks, such as EURIBOR. The Parties acknowledge that, as a result of the circumstances described above, a Screen Rate Replacement Event may occur.
      2. None of the Finance Parties warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to EURIBOR or another interest rate benchmark or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, any such alternative, successor or replacement rate implemented pursuant to clause ‎‎10.2 (Unavailability of Screen Rate), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, EURIBOR or such other interest rate benchmark or that it will have the same volume or liquidity as EURIBOR or such other interest rate benchmark did prior to its discontinuance or unavailability.
   2. **Unavailability of Screen Rate**
      1. If no Screen Rate is available for EURIBOR for the Interest Period of a Loan, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
      2. If paragraph ‎(a) above applies but there is no reasonably applicable EURIBOR for that Loan, then clause ‎10.4 (Cost of funds) shall apply to that Loan for that Interest Period.
   3. **Market disruption**

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed forty per cent. (40.00%) of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of EURIBOR then clause ‎‎10.4 (Cost of funds) shall apply to that Loan for the relevant Interest Period.

* 1. **Cost of funds**
     1. If this clause ‎‎10.4 applies, the rate of interest on the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
        1. the Margin; and
        2. the rate notified to the Agent by that Lender as soon as practicable and in any event before the date on which interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
     2. If this clause ‎‎10.4 applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest.
     3. Any alternative basis agreed pursuant to paragraph ‎(b) above shall, with the prior written consent of all the Lenders and the Borrower, be binding on all Parties.
  2. **Break Costs**
     1. The Borrower shall, within ten (10) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than an Interest Payment Date for that Loan or Unpaid Sum.
     2. Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

1. FEES
   1. **Commitment fee**
      1. The Borrower shall pay to the Agent (for the account of each Lender) a fee computed at the rate of forty per cent. (40%) of the applicable Margin per annum on each of that Lender's Available Commitments for the Availability Period.
      2. The accrued commitment fee under paragraph ‎(a) above is payable in arrears on:
         1. during the Availability Period, on each 31 March, 30 June, 30 September and 31 December;
         2. the last day of the Availability Period; and
         3. if cancelled in full after the occurrence of the Effective Date, the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
   2. **Arrangement fee**

The Borrower shall pay to the Initial Mandated Lead Arranger (for the account of the Arrangers) an arrangement fee in the amount and at the times agreed in a Fee Letter.

* 1. **Agency fee**

The Borrower shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

* 1. **MIGA Premium**
     1. The Borrower shall bear the cost of the MIGA Premium payable in respect of, or in connection with, the MIGA Guarantee.
     2. The MIGA Premium is due and payable in full on or before the earlier of: (i) the date which falls 15 days from the MIGA Guarantee Effective Date; and (ii) the first Utilisation Date.
     3. The Borrower acknowledges that the obligation to pay one hundred per cent (100%) of the MIGA Premium as and when it arises is absolute and unconditional.
     4. The Borrower acknowledges that (i) no Finance Party is in any way involved in the calculation of any part of the MIGA Premium; and that (ii) the MIGA Premium is calculated by MIGA and notified to the Agent.
     5. The Borrower shall not raise against any Lender any claim or defence in relation to the calculation or payment of (or the failure to pay) any part of the MIGA Premium.
     6. The Borrower acknowledges that it shall not be entitled to claim any credit or reimbursement of any part of the MIGA Premium, including in the event of an acceleration or a prepayment of any Loan under this Agreement.

1. TAX GROSS UP AND INDEMNITIES
   1. **Tax definitions**
      1. In this Agreement,

**"Protected Party"** means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document;

**"Tax Credit"** means a credit against, relief or remission for, or repayment of any Tax;

**"Tax Deduction"** means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction; and

**"Tax Payment"** means either the increase in a payment made by the Borrower to a Finance Party under clause ‎12.2 (Tax gross up) or a payment under clause ‎‎12.3 (Tax indemnity).

* + 1. Unless a contrary indication appears, in this clause ‎12 a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.
  1. **Tax gross up**
     1. The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
     2. The Borrower shall promptly upon becoming aware that the Borrower must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower.
     3. If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
     4. If the Borrower is required to make a Tax Deduction, that Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
     5. Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
  2. **Tax indemnity**
     1. The Borrower shall (within five (5) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
     2. Paragraph ‎(a) above shall not apply:
        1. with respect to any Tax assessed on a Finance Party:
           1. under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
           2. under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

* + - 1. to the extent a loss, liability or cost:
         1. is compensated for by an increased payment under clause ‎‎12.2 (Tax gross up); or
         2. relates to a FATCA Deduction required to be made by a Party.
    1. A Protected Party making, or intending to make a claim under paragraph ‎(a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
    2. A Protected Party shall, on receiving a payment from the Borrower under this clause ‎‎12.3, notify the Agent.
  1. **Tax Credit**

If the Borrower makes a Tax Payment and the relevant Finance Party determines that:

* + 1. a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
    2. that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Borrower which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

* 1. **Stamp taxes**

The Borrower shall pay and, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

* 1. **VAT**
     1. All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph ‎(b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
     2. If VAT is or becomes chargeable on any supply made by any Finance Party (the **"Supplier"**) to any other Finance Party (the **"Recipient"**) under a Finance Document, and any Party other than the Recipient (the **"Relevant Party"**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
        1. (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph ‎(i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
        2. (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
     3. Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
     4. Any reference in this clause ‎‎12.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).
     5. In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.
  2. **FATCA Information**
     1. Subject to paragraph ‎(c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:
        1. confirm to that other Party whether it is:
           1. a FATCA Exempt Party; or
           2. not a FATCA Exempt Party;
        2. supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
        3. supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
     2. If a Party confirms to another Party pursuant to paragraph ‎(a)‎‎(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
     3. Paragraph ‎(a) above shall not oblige any Finance Party to do anything, and paragraph ‎(a)‎‎(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
        1. any law or regulation;
        2. any fiduciary duty; or
        3. any duty of confidentiality.
     4. If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph ‎(a)‎‎(i) or ‎‎(a)‎(ii) above (including, for the avoidance of doubt, where paragraph ‎(c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
  3. **FATCA Deduction**
     1. Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
     2. Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Agent and the Agent shall notify the other Finance Parties.

1. INCREASED COSTS
   1. **Increased costs**
      1. Subject to clause ‎13.3 (Exceptions) the Borrower shall, within twenty (20) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
         1. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement;
         2. compliance with any law or regulation made after the date of this Agreement; or
         3. the implementation of or application of or compliance with Basel III or CRD IV or any other law or regulation which implements Basel III or CRD IV (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).
      2. In this Agreement:

**"Basel III"** means:

(a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee in December 2010, each as amended, supplemented or restated;

(b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended or restated; and

(c) any further guidance or standards published by the Basel Committee relating to "Basel III";

(d) **"Basel Committee"** means the Basel Committee on Banking Supervision;

**"CRD IV"** means:

(a) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU No 648/2012); and

(b) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and

**"Increased Costs"** means:

(a) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;

(b) an additional or increased cost; or

(c) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

* 1. **Increased cost claims**
     1. A Finance Party intending to make a claim pursuant to clause ‎‎13.1 (Increased costs) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
     2. Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.
  2. **Exceptions**

Clause ‎‎13.1 (Increased costs) does not apply to the extent any Increased Cost is:

* + 1. attributable to a Tax Deduction required by law to be made by the Borrower;
    2. attributable to a FATCA Deduction required to be made by a Party;
    3. compensated for by clause ‎‎12.3 (Tax indemnity) (or would have been compensated for under clause ‎12.3 (Tax indemnity) but was not so compensated solely because any of the exclusions in paragraph ‎(b) of clause ‎‎12.3 (Tax indemnity) applied); or
    4. attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

1. OTHER INDEMNITIES
   1. **Currency indemnity**
      1. If any sum due from the Borrower under the Finance Documents (a **"Sum"**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **"First Currency"**) in which that Sum is payable into another currency (the **"Second Currency"**) for the purpose of:
         1. making or filing a claim or proof against that Borrower; or
         2. obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

* + 1. The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.
  1. **Other indemnities**

The Borrower shall, within ten (10) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

* + 1. the occurrence of any Event of Default;
    2. a failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of clause ‎‎25 (Sharing among the Finance Parties);
    3. funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request or pursuant to clause ‎‎11.4 (MIGA Premium) but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
    4. a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.
  1. **Indemnity to the Agent**
     1. The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
        1. investigating any event which it reasonably believes is a Default;
        2. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
        3. instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.
     2. The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents.

1. MITIGATION BY THE LENDERS
   1. **Mitigation**
      1. Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of clause ‎8.1 (Illegality), clause ‎‎12 (Tax gross up and indemnities) or clause ‎‎13.1 (Increased costs) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
      2. Paragraph ‎(a) above does not in any way limit the obligations of the Borrower under the Finance Documents.
   2. **Limitation of liability**
      1. The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under clause ‎‎15.1 (Mitigation).
      2. A Finance Party is not obliged to take any steps under clause ‎‎15.1 (Mitigation) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.
2. COSTS AND EXPENSES
   1. **Transaction expenses**

The Borrower shall promptly on demand pay the Agent and the Arrangers the amount of all costs and expenses (including, without limitation, legal fees, environmental and social consultants' fees and expenses, travel and expenses together with any irrecoverable value-added-tax or similar taxes incurred on such costs and expenses) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and syndication of:

* + 1. the Finance Documents and any other documents referred to in the Finance Documents; and
    2. any other Finance Documents executed after the date of this Agreement.
  1. **Amendment costs**

If the Borrower requests an amendment, waiver or consent in respect of a Finance Document or an amendment is required pursuant to clause ‎‎26.11 (Change of currency), the Borrower shall, within three (3) Business Days of demand reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

* 1. **Enforcement costs**

The Borrower shall, within three (3) Business Days of demand, pay to the Agent the amount of all costs and expenses (including legal fees) incurred by the Agent or any Lender (for the account of the Agent or the relevant Lender, as appropriate), in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

* 1. **Agent's on-going costs**

If:

* + 1. a Default occurs;
    2. the Agent reasonably considers it necessary or expedient; or
    3. the Agent is requested by the Borrower or the Majority Lenders to undertake duties which the Agent and the Borrower agree to be of an exceptional nature or outside the scope of the normal duties of the Agent,

the Borrower must pay to the Agent any additional remuneration which may be agreed between them or, where the Borrower fails to agree any such amount, as otherwise determined by the Agent (acting reasonably and in good faith).

1. REPRESENTATIONS

The Borrower makes the representations and warranties set out in this clause ‎17 to each Finance Party on the date of this Agreement and on the Effective Date.

* 1. **Status**

Each of the Borrower and the Buyer has the power to own its assets and carry on its operations and activities as they are being conducted.

* 1. **Binding obligations**

The obligations expressed to be assumed by each of the Borrower and the Buyer in each Transaction Document are legal, valid, binding and enforceable obligations (subject only, in the case of the Borrower, in relation to the incurrence of indebtedness and the assumption of payment obligations by the Borrower under this Agreement, to the publication of the Official Gazette of the Republic of Serbia in which the law on ratification of this Agreement by the National Assembly of the Republic of Serbia has been published).

* 1. **Non-conflict with other obligations**

The entry into and performance by each of the Borrower and the Buyer of, and the transactions contemplated by, the Transaction Documents do not and will not conflict with:

* + 1. any Applicable Law;
    2. the constitution of the Relevant Jurisdiction or the constitutional documents of any of it and its government agencies; or
    3. any agreement, mortgage, bond, judgment, arbitral award or other instrument international agreement or treaty, including with the IMF or any other international institution, to which it or its government agencies are party or which is binding upon them or any of their assets or constitute a default or termination event (howsoever described) under any such agreement or instrument.
  1. **Authorisations**
     1. Each of the Borrower and the Buyer has full power to enter into, perform and deliver, and has taken all necessary actions to authorise the entry into and performance and delivery of, the relevant Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents (subject only, in the case of the Borrower, in relation to the incurrence of indebtedness and the assumption of payment obligations by the Borrower under this Agreement, to the publication of the Official Gazette of the Republic of Serbia in which the law on ratification of this Agreement by the National Assembly of the Republic of Serbia has been published).
     2. No limit on the powers of the Borrower will be exceeded as a result of the borrowing or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.
     3. All Authorisations and acts which are required or advisable in connection with the entry into, performance, legality, validity and enforceability of, and the transactions contemplated by, the relevant Transaction Documents have been obtained or performed (as appropriate) and are in full force and effect.
     4. It has the capacity to sue and be sued before any court and/or arbitration tribunal which may be competent pursuant to the Finance Documents.
  2. **Validity and admissibility in evidence**

All Authorisations and other acts, conditions and things required or desirable:

* + 1. to enable each of the Borrower and the Buyer lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
    2. to ensure that the obligations expressed to be assumed by each of the Borrower and the Buyer in the Transaction Documents are legal valid, binding and enforceable; and
    3. to make the Transaction Documents to which each of the Borrower and the Buyer is a party admissible in evidence in the Relevant Jurisdiction (subject to such Transaction Document being translated into Serbian language),

have been obtained or effected and are in full force and effect (other than, in the case of the Borrower, in relation to the incurrence of indebtedness and the assumption of payment obligations by the Borrower under this Agreement, to the publication of the Official Gazette of the Republic of Serbia in which the law on ratification of this Agreement by the National Assembly of the Republic of Serbia has been published).

* 1. **Governing law and enforcement**
     1. The choice of the law stated to be the governing law of each Finance Document and all non-contractual obligations arising from or connected with them will be recognised and enforced in its Relevant Jurisdiction.
     2. Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in the Relevant Jurisdiction.
     3. The agreement not to claim immunity in relation to a Finance Document to which the Borrower or its assets may be entitled will be recognised and enforced in the Relevant Jurisdiction.
     4. The submission to arbitration as specified in the Finance Documents will be recognised and enforced in the Relevant Jurisdiction.
  2. **Deduction of Tax**

Except for taxes imposed by way of withholding on interest paid to non-residents of the jurisdiction of the Borrower, it is not required to make any Tax Deduction for any payment it may make under the Finance Documents and it is obliged to pay any additional amounts payable pursuant to clause ‎‎12 (Tax Gross-Up and Indemnities).

* 1. **No filing or stamp taxes**

Under the law of the Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents, except that the Borrower is obliged to:

* + 1. report (and pay the reporting fee) to the NBS:
       1. this Agreement and any changes thereto;
       2. any changes to the Lenders; and
       3. each Utilisation and each repayment or prepayment under this Agreement,
    2. register the relevant information pertaining to this Agreement in the public debt records kept by the Public Debt Administration of the Ministry of Finance of the Republic of Serbia.
  1. **No Default**
     1. No Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Finance Document.
     2. No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject which has or might have a Material Adverse Effect.
  2. **No misleading information**
     1. All factual information provided by or on behalf of it (including by its advisers) to a Finance Party (including information provided in and in connection with its application for the MIGA Guarantee and in connection with each of the Lender's Application for Guarantee) in relation to the Facility was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.
     2. Nothing has occurred or been omitted and no information has been given or withheld that results in the information provided by or on behalf of the Borrower or any of its government agencies (including by their advisers) to the Finance Parties or to MIGA being untrue or misleading in any material respect.
  3. **Financial position**
     1. There has been no material adverse change in the Borrower's or the Buyer's economic condition since the date of this Agreement.
     2. Any budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.
  4. **Pari passu ranking**

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors in respect of External Financial Indebtedness, save for such obligations as may be preferred by provisions of law that are of mandatory application at the date hereof and, in the case of the Borrower, will be payable out of the public revenues and other assets of the Borrower.

* 1. **No proceedings pending or threatened**
     1. No litigation, arbitration or administrative proceedings or investigations of, or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it and its government agencies.
     2. No judgment or order of a court, arbitral tribunal or other tribunal or any order of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it and its government agencies or the Buyer.
  2. **No breach of laws**

It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

* 1. **MIGA representations and warranties**
     1. All information, representations, and warranties made in connection with the Project, as well as any written information provided by or on behalf of the Borrower or the Implementing Entity to MIGA, are true, correct, and complete in all material respects and do not contain any materially false or misleading statements or omissions.
     2. Neither the Borrower nor the Implementing Entity has engaged in any Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering in connection with the Project.
     3. The Borrower and the Implementing Entity are in compliance with the MIGA Performance Standards in connection with the Project.
  2. **Anti-corruption law**
     1. Each of the Borrower and the Buyer is in compliance with applicable Anti-Corruption Laws and has instituted and maintains policies and procedures designed to promote and achieve compliance with such laws.
     2. None of:
        1. the Borrower or the Buyer, (nor, to the best of their knowledge and belief (having made due and careful enquiry), any agent, director, employee or officer of any of the Borrower or the Buyer), nor
        2. (in any capacity in connection with the financing of the Project or in connection with the Project Contract,) any of the Borrower's government agencies, (nor, to the best of their knowledge and belief (having made due and careful enquiry), any agent, director, employee or officer of any of the Borrower's government agencies)

has made or received, or directed or authorised any other person to make or receive, any offer, payment or promise to pay, of any money, gift or other thing of value, directly or indirectly, to or for the use or benefit of any person, where this violates or would violate, or creates or would create liability for it or any other person under, any Anti-Corruption Laws.

* + 1. None of:
       1. the Borrower or the Buyer, (nor to the best of their knowledge and belief (having made due and careful enquiry), any agent, director, employee or officer of any of the Borrower or the Buyer), nor
       2. (in any capacity in connection with the financing of the Project or in connection with the Project Contract) any of the Borrower's government agencies (nor to the best of their knowledge and belief (having made due and careful enquiry) any agent, director, employee or officer of any of the Borrower's government agencies)

is being investigated by any agency, or party to any proceedings, in each case in relation to any Anti-Corruption Laws.

* 1. **Sanctions Laws and Regulations:**
     1. None of the Borrower or the Buyer and to the knowledge of the Borrower no minister, director, officer, employee or agent of the Borrower or the Buyer that will act in any capacity in connection with or benefit from the credit facility established by this Agreement, is a Sanctioned Person.
     2. No Utilisation, use of proceeds or other transaction contemplated by this Agreement will violate any applicable Sanctions Laws and Regulations and no dealing shall be made with a Sanctioned Person for the purpose of discharging amounts owing to any Party in respect of a Loan.
     3. The foregoing representations this clauses ‎‎17.17(a) and ‎‎17.17(b) above will not apply to any party hereto to which (i) Council Regulation (EC) 2271/96 (or any law or regulation implementing such Regulation in any member state of the European Union) or (ii) any similar law or regulation in the United Kingdom (the **"Blocking Law"**) applies, if and to the extent that such representations are or would be unenforceable by or in respect of that party pursuant to, or would otherwise result in a breach and/or violation of any provision of, the Blocking Law.
  2. **Environmental representations**
     1. **Environmental compliance**

The Borrower and each Implementing Entity have performed and observed in all material respects all Applicable E&S Law, E&S Standards, conditions of the ESAP, Environmental Permits and all other material covenants, conditions, restrictions or agreements directly or indirectly concerned with any contamination, pollution or waste or the release or discharge of any toxic or hazardous substance in connection with any real property which is or was at any time owned, leased or occupied in connection with the Project by the Borrower or each Implementing Entity or on which the Borrower or each Implementing Entity has conducted any activity in connection with the Project where failure to do so might reasonably be expected to have a Material Adverse Effect.

* + 1. **Environmental Claims**

No Environmental Claim has been commenced or (to the best of its knowledge and belief) is threatened against the Borrower in connection with the Project, where that claim would be reasonably likely, if determined against the Borrower, to have a Material Adverse Effect.

* + 1. **Significant E&S Event**

No Significant E&S Event has occurred.

* + 1. **Environmental and Social Management System**

The Project is in compliance with the Environmental and Social Management System.

* 1. **External Financial Indebtedness**

None of its External Financial Indebtedness is secured by any Security or Quasi-Security on or with respect to the Public Assets other than as permitted by this Agreement.

* 1. **Good title to assets**

Each of the Borrower and the Buyer has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on the Project.

* 1. **No Immunity**

In any proceedings taken in the Relevant Jurisdiction in relation to Finance Documents, it will not be entitled to claim for itself or any of its assets immunity from suit or other legal process, except for immunity from enforcement in respect of any present or future:

* + 1. "premises of the mission" as such term is defined in the Vienna Convention on Diplomatic Relations signed in 1961;
    2. "consular premises" as such term is defined in the Vienna Convention on Consular Relations signed in 1963;
    3. assets that cannot be in commerce;
    4. military property or military assets and buildings, weapons or equipment designated for defence, state and public security;
    5. receivables the assignment of which is restricted by law;
    6. 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;
    7. 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;
    8. 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, or
    9. movable or immovable assets of health institutions, unless a mortgage was established based on the Government’s decision; or
    10. other assets exempt from enforcement by law or international treaties,

the assets listed in paragraphs (a) – (j) above (inclusive) being **"Excluded Assets"**.

* 1. **Private and commercial acts**

Each of the Borrower's and the Buyer's execution of the Transaction Documents to which it is a party constitutes, and its exercise of its rights and performance of its obligations under those Transaction Documents will constitute, private and commercial acts done and performed for private and commercial purposes.

* 1. **IMF**

It is a member in good standing and eligible to use the resources of the IMF and the IBRD and is able to draw or make use of funds available to it under any IMF or IBRD funding programme and no such programme has been cancelled or suspended.

* 1. **Exchange controls**
     1. Under the laws of the Relevant Jurisdiction, all payments to be made under the Finance Documents may be freely transferred out of the Relevant Jurisdiction and may be paid in, or freely converted into, the Facility Currency.
     2. The Borrower has obtained all foreign exchange control approvals or such other Authorisations as are required to assure the availability of the Facility Currency to enable the Borrower to perform all of its obligations under the Finance Document to which it is a party.
     3. There are no restrictions or requirements currently in effect that limit the availability or transfer of foreign exchange which would restrict the ability of the Borrower to perform its obligations under any Finance Document.
  2. **Public procurement rules**

All public procurement rules in the Relevant Jurisdiction which are applicable to the entry into and the exercise of its rights and performance of each of the Borrower's and the Buyer's obligations under the Transaction Documents to which it is a party have been complied with.

* 1. **Budget and limits**
     1. The funds necessary for the payment of all of the obligations of the Borrower under the Finance Documents in respect of the relevant period have been provided for under the Law Approving the Budget of the Republic of Serbia for that year, (which for the year 2021 is *Zakon o budžetu Republike Srbije za 2021. godinu*, Official Gazette of the Republic of Serbia, no. 149/2020, 40/2021 and 100/2021).
     2. Its borrowings and guarantees are within any limits (if any) set by the IMF, the World Bank and applicable international treaties.
  2. **Reserves**

The Republic of Serbia and the NBS have full ownership, power, control and authority to use the Reserves. The Borrower has fully disposable to it part of the available Reserves for the satisfaction and discharge of its obligations under the Finance Documents and does not require any licence or any other Authorisation of any person or Government Entity or other agency to use such part of the Reserves. The Republic of Serbia is the beneficial owner of the Reserves. The NBS is the central bank and monetary authority of the Republic of Serbia that is empowered to hold and manage the Reserves, including the part of the Reserves that is fully disposable by the Borrower, in a manner that contributes to the due performance of the Republic of Serbia's foreign debt obligations, which will include the obligations under the Finance Documents.

* 1. **Repetition**
     1. The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request and each Interest Payment Date.
     2. The representations set out in this clause ‎17 shall be deemed to be repeated by the Borrower, by reference to the facts and circumstances then existing, on the MIGA Guarantee Effective Date.

1. INFORMATION UNDERTAKINGS

The undertakings in this clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

* 1. **Financial documents**

The Borrower shall deliver to the Agent and MIGA in a form acceptable to the Agent (in sufficient copies for all the Lenders) as soon as the same become available, but in any event within one hundred and eighty (180) days after the end of each of its financial years the law approving the budget of the Republic of Serbia (*Zakon o budžetu Republike Srbije*) for that calendar year.

* 1. **Information: miscellaneous**

The Borrower shall supply to the Agent (in sufficient copies for all the Lenders and MIGA, if the Agent so requests):

* + 1. all documents dispatched by the Borrower to its External Financial Indebtedness creditors generally at the same time as they are dispatched;
    2. promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower, and which might, if adversely determined, have a Material Adverse Effect;
    3. promptly such other financial, statistical and general information regarding the financial condition, assets, functions and operations about the Borrower as the Agent may reasonably request, including any requested amplification or explanation or projections or any requested amplification or explanation of other material provided by the Borrower under this Agreement;
    4. promptly upon delivery, monitoring and evaluation reports from MIGA and other relevant international financial institutions;
    5. promptly after having knowledge thereof, notice of any non-compliance, claim or complaint in any material respect relating to, in connection with the Project any Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices or Money Laundering;
    6. promptly a copy of any changes to:
       1. the constitutional documents of the Borrower that effect the status of it; and
       2. Public Debt Act (Zakon o javnom dugu, Official Gazette of the Republic of Serbia nos. 61/2005, 107/2009, 78/2011, 68/2015, 95/2018, 91/2019 and 149/2020), the Budget System Act (Zakon o budžetskom sistemu, Official Gazette of the Republic of Serbia nos. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013, 108/2013, 142/2014, 68/2015, 103/2015, 99/2016, 113/2017,5/2018, 31/2019, 72/2019 and 149/2020) and the Morava Corridor Law; and
    7. the Borrower must supply to the Agent in sufficient copies for all Lenders (and MIGA) promptly all documents or information provided to MIGA, at the same time anything was sent to MIGA.
  1. **Notification of default**
     1. The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
     2. Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by the Borrower's signatory on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).
  2. **Use of websites**
     1. The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the **"Website Lenders"**) who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (the **"Designated Website"**) if:
        1. the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
        2. both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
        3. the information is in a format previously agreed between the Borrower and the Agent.
     2. If any Lender (a **"Paper Form Lender"**) does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event, the Borrower shall supply the Agent with at least one copy in paper form of any information required to be provided by it.
     3. The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.
     4. The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:
        1. the Designated Website cannot be accessed due to technical failure;
        2. the password specifications for the Designated Website change;
        3. any new information which is required to be provided under this Agreement is posted onto the Designated Website;
        4. any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
        5. the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.
     5. If the Borrower notifies the Agent under paragraph ‎(d)‎(i) or paragraph ‎(d)‎(v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.
     6. Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten (10) Business Days.
  3. **"Know your customer" checks**
     1. If:
        1. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
        2. any change in the status of the Borrower after the date of this Agreement; or
        3. a proposed assignment or transfer by a Lender of any of its rights or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph ‎(iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph ‎(iii) above, on behalf of any prospective new Lender) in order for the Agent, such existing Lender or, in the case of the event described in paragraph ‎(iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws or regulations pursuant to the transactions contemplated in the Finance Documents.

* + 1. Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable law pursuant to the transactions contemplated in the Finance Documents.
    2. The Borrower will (not more than once in every financial year unless the Agent reasonably suspects a Default is continuing or may occur) permit the Agent and/or accountants or other professional advisers and contractors of the Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower to premises of relevant public offices and to meet with the necessary public officials so as to discuss and monitor the implementation and administration of the Finance Documents, the Project Contract and the parties' performance thereunder, including by procuring any necessary visas and ensuring security arrangements for the representatives of the Agent.

1. GENERAL UNDERTAKINGS

The undertakings in this clause ‎‎19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

* 1. **Authorisations**

The Borrower must (and shall ensure that, in respect of paragraph ‎(a) below, the Buyer will):

* + 1. maintain, comply with and do all that is necessary to maintain in full force and effect and (where applicable, and in such case as soon as practicable) obtain any Authorisation required under any Applicable Law in order to perform its obligations under, or for the legality, validity, enforceability or admissibility in evidence of the Transaction Documents (and supply certified copies to the Agent thereof) including, in respect of the Borrower only, any necessary Authorisation, if one is required, to ensure that the Borrower may fully dispose of any Reserves in order to perform its obligations under the Finance Documents; and
    2. ensure that all amounts which are scheduled to fall due under the Transaction Documents in each calendar year are included in the law approving the budget of the Republic of Serbia (*Zakon o budžetu Republike Srbije*) for that calendar year.
  1. **Compliance with laws**
     1. The Borrower shall (and shall ensure that the Buyer will) comply in all respects with the Applicable Law, if failure so to comply would materially impair the Borrower's ability to perform its obligations under the Finance Documents.
     2. The Borrower will (and shall ensure that the Buyer will) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, the Buyer, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws.
  2. **IMF**

The Borrower shall fulfil its obligations as a member of the IMF and IBRD (or any successor of the IMF or IBRD) at all times.

* 1. **MIGA Guarantee**

Upon notification by the Agent, the Borrower shall take (and shall not omit to take) any action necessary to maintain the MIGA Guarantee in full force and effect.

* 1. **Negative pledge**

In this clause ‎‎19.5, **"Quasi-Security"** means an arrangement or transaction described in paragraph ‎(d) below.

* + 1. The Borrower shall not, and shall ensure that each of its government agencies shall not, create or permit to subsist any Security over the Public Assets, owned or subsequently acquired, securing the payment of the Borrower's External Financial Indebtedness, unless at the same time or prior thereto, it or its agencies (as applicable) secure the Loans equally and rateably with such Security or provide such other arrangement (whether or not comprising Security) as is satisfactory to the Agent.
    2. The Borrower shall ensure that neither it nor the Buyer nor any of its government agencies will:
       1. create or permit to subsist any Security or Quasi-Security over any assets comprised within the Project or any of the Buyer's rights under the Project Contract; or
       2. sell, transfer or otherwise dispose of any assets comprised within the Project or any of the Buyer's rights under the Project Contract.
    3. The Borrower shall ensure that neither it nor any of its government agencies will:
       1. sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or its government agencies;
       2. sell, transfer or otherwise dispose of any of its receivables on recourse terms;
       3. enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
       4. enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising External Financial Indebtedness.

* + 1. Paragraphs (a), (b) and (c) above do not apply to any Security or (as the case may be) Quasi-Security, listed below:
       1. any netting or set-off arrangement entered into by the Borrower or any of its government agencies in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
       2. any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by the Borrower and its government agencies for the purpose of:
          1. hedging any risk to which any government agencies are exposed in their ordinary course of trading; or
          2. its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,

excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;

* + - 1. any lien arising by operation of law;
      2. any Security or Quasi Security upon property incurred solely for the purpose of financing the acquisition or construction of such property;
      3. any Security or Quasi Security existing on property at the time of its acquisition;
      4. any renewal or extension of any Security or Quasi Security of the kind described in paragraphs (i) to (v) above, provided that the principal amount of the External Financial Indebtedness secured is not increased and such renewal or extension is limited to the original property covered thereby; and
      5. in addition to the Security or Quasi Security described in paragraphs ‎(i) to ‎(vi) above, Security over Public Assets in any calendar year having a market value of EUR 1,000,000 or its equivalent in other currencies.
  1. **Disposals**

The Borrower shall not transfer or permit the transfer of any Public Assets to any separate agency, Government Entity or other legal entity controlled directly or indirectly by the Borrower or any of its agencies (i) for the purpose of avoiding the negative pledge in clause ‎‎19.5 (Negative Pledge) or (ii) if the transfer would impair its ability, or the Buyer's ability, to perform their obligations under the Transaction Documents, other than:

* + 1. disposals in the ordinary course of trading;
    2. disposals of assets (otherwise than in the ordinary course of business) for full cash consideration, provided that such disposal does not relate to or affect any assets comprised within the Project or any of the Buyer's rights under the Project Contract;
    3. disposals of assets in exchange for other assets comparable or superior as to type, value or quality;
    4. disposals of cash raised or borrowed for the purpose for which it was raised or borrowed;
    5. disposals with the prior written consent of the Agent; and
    6. any other disposal for full value of an asset unless such disposal might (in the opinion of the Majority Lenders) have a Material Adverse Effect.
  1. **Anti-corruption law**

The Borrower shall, and shall procure that the Buyer shall:

* + 1. comply with and conduct its functions and operations in compliance with applicable Anti-Corruption Laws; and
    2. not directly or indirectly use the proceeds of the Facility for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other Anti-Corruption Laws;
    3. maintain policies and procedures designed to promote and achieve compliance with Anti-Corruption Laws;
    4. not request any Loan, and shall not use, and shall procure that its officers, employees and agents shall not use, the proceeds of any Loan in furtherance of an offer, payment, promise to pay, or authorisation of the payment or giving of money, or anything else of value, to any person in violation of any Anti-Corruption Laws; and
    5. not directly or indirectly, authorise, offer, promise, or make payments of anything of value, including but not limited to cash, cheques, wire transfers, tangible and intangible gifts, favours, services, and those entertainment and travel expenses that go beyond what is reasonable and customary and of modest value to:
       1. an executive, official, employee or agent of a governmental department, agency or instrumentality,
       2. a director, officer, employee or agent of a wholly or partially government-owned or controlled company or business,
       3. a political party or official thereof, or candidate for political office,
       4. a Foreign Public Official, or
       5. any other person; while knowing or having a reasonable belief that all or some portion will be used for any the purpose of:
          1. influencing any act, decision or failure to act by any such person in his or her official capacity,
          2. inducing any such person to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity, or
    6. securing an unlawful advantage; in order to obtain, retain or direct business.
  1. **Sanctions Laws and Regulations**
     1. The Borrower will:
        1. not request any Utilisation, and the Borrower shall not use, and shall procure that the Buyer and its or their respective ministers, directors, officers, employees and agents shall not use, any of the proceeds of any Utilisation directly or indirectly (A) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (B) in any manner that would result in the violation of any Sanctions Laws and Regulations applicable to any party; and
        2. not fund and shall procure that the Buyer and its or their respective ministers, directors, officers, employees and agents shall not fund all or part of any payment under the Facility out of proceeds derived directly or indirectly from any activity or transaction with a Sanctioned Person or in any Sanctioned Country or which would otherwise cause any party to be in breach of any Sanctions Laws and Regulations applicable to any party.
     2. The foregoing undertaking in clause ‎‎‎19.8(a) will not apply to any party hereto to which (i) the Blocking Law applies, if and to the extent that such undertakings are or would be unenforceable by or in respect of that party pursuant to, or would otherwise result in a breach and/or violation of any provision of, the Blocking Law.
  2. **Environmental Compliance**
     1. The Borrower shall, or shall procure that each Implementing Entity, comply in all material respects with all Applicable E&S Law, the E&S Standards and the requirements of the ESAP and obtain and maintain any Environmental Permits and take all reasonable steps in anticipation of known or expected future changes to or obligations under the same.
     2. The Borrower will, or will procure that each Implementing Entity will, promptly following the occurrence of a Significant E&S Event, prepare a Corrective Action Plan acceptable to the Agent, the Lenders and MIGA, and will fully comply with the requirements of any Corrective Action Plan to the satisfaction of the Agent and the Lenders.
  3. **Environmental Claims**

The Borrower shall, in connection with the Project, inform the Agent in writing as soon as reasonably practicable upon becoming aware of:

* + 1. any Environmental Claim that has been commenced or (to the best of its knowledge and belief) is threatened against the Borrower in connection with the Project; or
    2. any facts or circumstances which will or are reasonably likely to result in any Environmental Claim being commenced or threatened against the Borrower in connection with the Project, where the claim would be reasonably likely, if determined against the Borrower, to have a Material Adverse Effect.
  1. **Insurance**

The Borrower shall:

* + 1. procure that any goods and/or services to be supplied under the Project Contract will be insured to the satisfaction of the Agent against the risk of loss or damage in accordance with normal commercial practice for similar contracts until final acceptance of those goods and/or services under the Project Contract; and
    2. produce to the Agent (from time to time at the Agent's request) evidence that such insurance has been effected and maintained.
  1. **Pari passu ranking**

The Borrower shall ensure that at all times all its unsecured and unsubordinated obligations to the Finance Parties (or any of them) against it under the Finance Documents rank at least *pari passu* with its obligations to all of its other unsecured and unsubordinated creditors save for such obligations as may be preferred by provisions of law that are of mandatory application at the date hereof and, in the case of the Borrower, will be payable out of the public revenues and other assets of the Borrower.

* 1. **Filing and reporting requirements**
     1. The Borrower shall register, promptly after the Initial Utilisation, the relevant details of this Agreement in the public debt records kept by the Public Debt Administration of the Ministry of Finance of the Republic of Serbia
     2. The Borrower shall comply with all of its reporting obligations to the NBS in connection with this Agreement pursuant to the Foreign Exchange Act (*Zakon o deviznom poslovanju*, Official Gazette of the Republic of Serbia nos. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018) and its implementing regulations, or any other legislation or regulation that may amend, supplement or replace the foregoing.
  2. **Budget and limits**
     1. The Borrower shall include all amounts due and payable or that will fall due and payable to the Finance Parties under the Finance Documents during a calendar year in its yearly finance law and its budget statements or other financial plans for that calendar year and shall ensure that there will at no time be any restriction on the ability of the Borrower to meet its obligations under the Finance Documents.
     2. The Borrower shall maintain the funds necessary for the repayment of all of its obligations under the Finance Documents that have been provided for under 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, 40/2021 and 100/2021).
     3. The Borrower shall ensure that, at all times, its borrowings and guarantees remain within any limit set by the IMF, the World Bank and the applicable international treaties.
  3. **Compliance with Project Contract**

The Borrower shall (and shall ensure that the Buyer will):

* + 1. comply in all material respects with its obligations under, and in the manner and at the times provided in the Project Contract; and
    2. not repudiate or evidence an intention to repudiate the Project Contract nor take nor omit to take any action that might result in any default on any of its payment or other material obligations under the Project Contract.
  1. **MIGA Guarantee covenants**
     1. The Borrower shall comply, and cause the Implementing Entity to comply, with the covenants set out in ‎schedule 7 (MIGA Anti-Corruption Guidelines) and ‎schedule 9 (MIGA Related Covenants), and will not make, or agree to make, any material change to the Project Contract before the last Repayment Date or while a Claim or Potential Claim under the MIGA Guarantee is pending.
     2. In the event that the Borrower becomes aware that the Implementing Entity has in connection with the Project engaged in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering, or violated the MIGA Performance Standards, the Borrower shall diligently enforce(s) its contractual remedies against the Implementing Entity.
     3. Prior to, and as a condition to the occurrence of, the making of the first Utilisation Request, the Borrower will make any amendments to this Agreement deemed reasonably necessary by the Agent in order to comply with the requirements of MIGA under the MIGA Guarantee, once issued.

1. EVENTS OF DEFAULT

Each of the events or circumstances set out in this clause ‎‎20 is an Event of Default (save for clause ‎‎20.16 (Acceleration)).

* 1. **Non-payment**

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

* + 1. its failure to pay is caused by:
       1. administrative or technical error; or
       2. a Disruption Event; and
    2. payment is made within three (3) Business Days of its due date.
  1. **Other obligations**
     1. The Borrower does not comply with any provision of the Finance Documents (other than those referred to in clause ‎20.1 (Non-payment) and clause ‎‎20.13 (Specific covenants)).
     2. No Event of Default under paragraph ‎(a) above will occur if the failure to comply is capable of remedy and is remedied within ten (10) Business Days of the earlier of:
        1. the Agent giving notice to the Borrower; and
        2. the Borrower becoming aware of the failure to comply.
  2. **Misrepresentation**

Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Transaction Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

* 1. **Cross default**
     1. Any External Financial Indebtedness of the Borrower is not paid when due or within any originally applicable grace period.
     2. As a result of an event of default (however described), any Financial Indebtedness of the Borrower or any of its government agencies is:
        1. declared to be or otherwise becomes due and payable prior to its specified maturity; or
        2. placed on demand.
     3. Any commitment for any External Financial Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
     4. No Event of Default will occur under this clause ‎‎20.4 if the aggregate amount of the External Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs ‎(a) to ‎(c) above is less than (EUR 50,000,000) (or its equivalent in any other currency or currencies as determined by the Agent).
  2. **Moratorium**

A moratorium is declared or de facto comes into effect on the payment of any External Financial Indebtedness of the Borrower or the Borrower commences negotiations with any one or more of its External Financial Indebtedness creditors with a view to the general readjustment or rescheduling of its indebtedness.

* 1. **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of the Borrower, the Buyer, or any government agencies having an aggregate value of EUR 5,000,000 and is not discharged within thirty (30) days.

* 1. **Unlawfulness**
     1. It is or becomes unlawful for the Borrower or the Buyer to perform any of its obligations under the Transaction Documents.
     2. Any obligation or obligations of the Borrower under any Finance Document are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
  2. **IMF**

The Borrower ceases to be a member in good standing or becomes ineligible to use the resources of the IMF or is unable for any reason to draw or make use of funds available to it under any IMF funding programme or any such programme is cancelled or suspended.

* 1. **Repudiation**

The Borrower or the Buyer repudiates a Transaction Document or evidences an intention to repudiate a Transaction Document.

* 1. **Exchange controls**

Any event or series of events occurs which limits the acquisition or the transfer of foreign exchange by the Borrower and such event or events has or is reasonably likely to affect the ability of the Borrower to perform its obligations under any Finance Document.

* 1. **Material adverse change**

Any circumstances arise which give reasonable grounds in the opinion of the Lender for belief that there has been a material adverse change in:

* + 1. the economic condition of the Borrower; or
    2. the ability of the Borrower to comply with any of its obligations under the Finance Documents.
  1. **Convertibility/Transferability**

Any foreign exchange law is amended, enacted or introduced in the Republic of Serbia or is reasonably likely to be amended, enacted or introduced in each case in the Republic of Serbia that (in the opinion of the Majority Lenders, acting reasonably):

* + 1. 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 any of the Finance Documents; or
    2. is materially prejudicial to the interests of the Finance Parties under or in connection with any of the Finance Documents.
  1. **Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened, or any judgment or order of a court, arbitral body or agency is made, in relation to the Finance Documents or the transactions contemplated in the Finance Documents, the Borrower, the Buyer or Borrower's assets which have or are reasonably likely to have a Material Adverse Effect.

* 1. **Specific covenants**

The Borrower fails duly to perform or comply with any of the obligations expressed to be assumed by it in clause ‎‎19.16 (MIGA Guarantee covenants) or any other provision of any Finance Document to which it is a party relating to MIGA or the MIGA Guarantee.

* 1. **Environmental compliance**
     1. **Environmental and Social Claims**

An Environmental Claim is brought against the Borrower or the Implementing Entity which individually or in the aggregate could reasonably be expected to result in a material impact on the implementation or operation of the Project in accordance with the Applicable E&S Law and the E&S Standards.

* + 1. **Significant E&S Events and Corrective Action Plans**
       1. A Significant E&S Event occurs and the Lenders (having consulted with an independent environmental and social consultant) deem such Significant E&S Event as incapable of remedy.
       2. A Significant E&S Event for which the Borrower or the Implementing Entity has provided a Corrective Action Plan occurs and either:
          1. the Lenders (having consulted with an independent environmental and social consultant) reject such Corrective Action Plan; or
          2. the Borrower does not comply with the actions set out in such Corrective Action Plan within the timeframes set out therein.
  1. **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:

* + 1. cancel the Total Commitments whereupon they shall immediately be cancelled;
    2. declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
    3. declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders.

1. CHANGES TO THE LENDERS
   1. **Assignments and transfers by the Lenders**

Subject to the consent of MIGA and this clause ‎‎21, a Lender (the **"Existing Lender"**) may:

* + 1. assign any of its rights; and/or
    2. transfer by novation any of its rights and obligations under the Finance Documents,

to another bank or financial institution or to a trust, fund or other entity regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets, MIGA, an Affiliate, insurers, reinsurers, any funding vehicle established and managed (or the assets of which are serviced or managed) by a Lender or any third party, for the purpose of securitizing or otherwise funding loans (the **"New Lender"**).

* 1. **Conditions of assignment or transfer**
     1. Any assignment (other than an assignment to MIGA) will only be effective on:
        1. receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
        2. performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
     2. A transfer will only be effective if the procedure set out in clause ‎‎21.5 (Procedure for transfer) is complied with.
     3. If:
        1. a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
        2. as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under clause ‎‎12 (Tax gross up and indemnities) or clause ‎‎13.1 (Increased costs),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph ‎(c) shall not apply in respect of an assignment or a transfer made in the ordinary course of the primary syndication of the Facility or an assignment or transfer to MIGA.

* + 1. Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.
    2. Any assignment or transfer is subject to the Agent confirming that the approval of MIGA to the intended transfer has been obtained or is not required.
    3. In order to become a party to the MIGA Guarantee, a New Lender shall (together with MIGA and the Agent) execute an amendment agreement to the MIGA Guarantee, in form and substance satisfactory to MIGA and the Agent. The entry into of any such amendment agreement, and any accession to the MIGA Guarantee by a New Lender, is subject to the prior consent of MIGA (in its sole and absolute discretion).
  1. **Assignment or transfer fee**

The New Lender shall, on or before the date upon which an assignment or a transfer takes effect (other than if the New Lender is MIGA or an Affiliate of a Lender), pay to the Agent (for its own account) a fee of EUR 5,000.

* 1. **Limitation of responsibility of Existing Lenders**
     1. Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
        1. the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
        2. the financial condition of the Borrower or MIGA;
        3. the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents, or the performance and observance by MIGA of its obligations under the MIGA Guarantee; or
        4. the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

* + 1. Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
       1. has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of MIGA or the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
       2. will continue to make its own independent appraisal of the creditworthiness of MIGA or the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
    2. Nothing in any Finance Document obliges an Existing Lender to:
       1. accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this clause ‎‎21; or
       2. support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise or of MIGA of its obligations under the MIGA Guarantee.
  1. **Procedure for transfer**
     1. Subject to the conditions set out in clause ‎‎21.2 (Conditions of assignment or transfer) a transfer is effected in accordance with paragraph ‎(c) below, when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender.
     2. The Agent shall, subject to paragraph ‎(c) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate. The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable law in relation to the transfer to such New Lender.
     3. Subject to clause ‎‎21.9 (Pro rata interest settlement), on the Transfer Date:
        1. to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents, the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the **"Discharged Rights and Obligations"**);
        2. the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
        3. the Agent, the Arrangers, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arrangers and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
        4. unless already a Lender, the New Lender shall become a Party as a **"Lender"**.
  2. **Procedure for assignment**
     1. Subject to the conditions set out in clause ‎‎21.2 (Conditions of assignment or transfer) an assignment may be effected in accordance with paragraph ‎(c)) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph ‎(b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
     2. The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
     3. Subject to clause ‎21.9 (Pro rata interest settlement), on the Transfer Date:
        1. the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
        2. the Existing Lender will be released by the Borrower and the other Finance Parties from the obligations owed by it (the **"Relevant Obligations"**) and expressed to be the subject of the release in the Assignment Agreement; and
        3. the New Lender shall become a Party as a **"Lender"** and will be bound by obligations equivalent to the Relevant Obligations.
     4. Lenders may utilise procedures other than those set out in this clause ‎‎21.6 to assign their rights under the Finance Documents (but not, without the consent of the Borrower or unless in accordance with clause ‎21.5 (Procedure for transfer), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in clause ‎21.2 (Conditions of assignment or transfer).
  3. **Copy of Transfer Certificate or Assignment Agreement to the Borrower and to NBS**
     1. The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.
     2. The Borrower shall, as soon as reasonably practicable after it has received a copy of the Transfer Certificate or Assignment Agreement, deliver to the NBS (copied to the Agent) a written statement:
        1. of acknowledgment of the transfer of the Lenders' rights under the Finance Documents, and
        2. (if applicable) consenting to the transfer of the Lenders' obligations under the Finance Documents for the purposes of reporting the change to the Lender.
  4. **Security over Lenders' rights**
     1. In addition to the other rights provided to Lenders under this clause ‎‎21 and without prejudice to the rights of MIGA under the MIGA Guarantee, each Lender may without consulting with or obtaining consent from the Borrower, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:
        1. any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
        2. in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,
        3. except that, without prejudice to the other provisions of this clause ‎21.8, no such charge, assignment or Security shall:
        4. release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for such Lender as a party to any of the Finance Documents; or
        5. require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.
     2. The limitations on assignments and transfers by a Lender set out in any Finance Document, in particular in clause ‎21.1 (Assignments and transfers by the Lenders), clause ‎21.2 (Conditions of assignment or transfer), clause ‎21.3 (Assignment or transfer fee), clause ‎21.5 (Procedure for transfer), clauses ‎21.6 (Procedure for assignment) and ‎21.7 (Copy of Transfer Certificate or Assignment Agreement to the Borrower and to NBS) shall not apply to the creation of Security pursuant to paragraph ‎(a) above.
     3. By virtue of the enforcement of any assignment, charge or Security created pursuant to paragraph ‎(a) above, subject to any applicable law, as from the date on which the Agent is notified by the beneficiary of such enforcement of any such assignment, charge or Security, such beneficiary shall be deemed to become a Party as a "Lender" in respect of the rights of the Lender which are subject to any such enforcement.
  5. **Pro rata interest settlement**
     1. If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders that have become Lenders then (in respect of any transfer pursuant to clause ‎‎21.5 (Procedure for transfer) or any assignment pursuant to clause ‎‎21.6 (Procedure for assignment) the Transfer Date of which, in each case, is after the date of such notification and is not an Interest Payment Date):
        1. any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (the "Accrued Amounts") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the next succeeding Interest Payment Date; and
        2. the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
           1. when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
           2. the amount payable to the New Lender that has become a Lender on that date will be the amount which would, but for the application of this clause ‎21.9, have been payable to it on that date, but after deduction of the Accrued Amounts.
     2. In this clause ‎‎21.9 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.
  6. **MIGA – transfer and subrogation**
     1. Each of the Lenders undertakes to the Agent and each other Lender that it will assign and transfer to MIGA any portion of its rights hereunder to MIGA, promptly upon the request of the Agent, to the extent that such assignment is required under the MIGA Guarantee as a condition of a payment by MIGA to the Agent on behalf of the Lenders and shall otherwise co-operate with the Agent and take all such steps requested by the Agent with respect to the satisfaction of any condition to any Claim or Potential Claim made or to be made by the Agent on behalf of any Lenders under the MIGA Guarantee.
     2. Notwithstanding anything to the contrary contained in this clause ‎21, the Borrower acknowledges and agrees that:
        1. without prejudice to MIGA's rights as subrogee, the relevant Lenders may utilise any procedures acceptable to MIGA, for the purposes of assigning any of their rights and/or transferring any of their rights in favour of MIGA as required under the terms of the MIGA Guarantee;
        2. upon payment of any amount by MIGA of amounts due and payable under the this Agreement, MIGA shall be subrogated to the rights of the relevant Lenders in accordance with the terms of the MIGA Guarantee and shall take an assignment of the relevant Lenders’ rights under this Agreement, which shall not be subject to any further consent by the Borrower; and
        3. subject to MIGA’s policy generally applied, following any such subrogation and/or assignment, MIGA shall have a several and independent right to enforce any of the rights or benefits (including the right to receive interest in respect thereof) to the extent of such subrogation and/or assignment but shall not have any duties or obligations of the relevant Lenders under, and in accordance with, the terms of the Finance Documents.
     3. For the purposes of this clause ‎21.10, the Borrower shall cooperate fully in the administration, preservation and protection of assets acquired by MIGA, and in the prosecution of any rights, claims, causes of action and other interest obtained by MIGA.
     4. For the avoidance of doubt, no Lender shall be obliged under this clause ‎21.10 to transfer or assign to MIGA, nor shall MIGA be subrogated to such Lender's rights to receive payment of any fee, cost or expense that is due but unpaid under this Agreement as of the applicable transfer or assignment date.

1. CHANGES TO THE BORROWER

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

1. ROLE OF THE AGENT AND THE ARRANGERs
   1. **Appointment of the Agent**
      1. Each of the Arrangers and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
      2. Each of the Arrangers and the Lenders authorises the Agent to:
         1. perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions;
         2. communicate with MIGA in connection with the Finance Documents and to act generally on its behalf in relation to MIGA and the MIGA Guarantee; and
         3. act on its behalf in relation to any claim, and to receive any payment, under the MIGA Guarantee.
      3. Each Lender irrevocably appoints the Agent to be its attorney for the purposes of:
         1. executing in the name and on behalf of the relevant Lenders the MIGA Guarantee, in each case in the form of such document as of the date of this Agreement; and
         2. performing the duties, obligations and responsibilities and exercising the rights, authorities, and discretions given to the Agent under the MIGA Guarantee in accordance with the terms thereof,

provided that nothing in this paragraph ‎(c) will permit the Agent to execute any document, consent, waiver and/or determination other than as expressly provided for in, or in accordance with, this Agreement or the MIGA Guarantee, as the case may be.

* + 1. The Agent shall, if instructed to do so by any Lender or Lenders, submit a Claim under the MIGA Guarantee on behalf of such Lender or Lenders promptly upon receiving such instructions. The Agent shall promptly give notice to any other Lenders that it has or intends to file such a Claim on behalf of the Lender or Lenders that have instructed it to do so provided that the Agent shall not require the consent of any such other Lenders to file such a Claim.
    2. Each of the Arrangers and the Lenders hereby exempts the Agent from the restrictions pursuant to section 181 Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible to such Finance Party. A Finance Party which cannot grant such exemption shall notify the Agent accordingly and, upon request of the Agent, either act in accordance with the terms of this Agreement and/or any other Finance Document as required pursuant to this Agreement and/or such other Finance Document or grant a special power of attorney to a party acting on its behalf, in a manner that is not prohibited pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and/or any other applicable laws.
  1. **Instructions**
     1. Without prejudice to the generality of clause ‎‎3.4 (MIGA override), the Agent shall:
        1. exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
           1. all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
           2. in all other cases, the Majority Lenders; and
        2. not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph ‎(i) above.
     2. The Agent shall be entitled to request instructions, or clarification of any instruction, from MIGA or the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
     3. Unless a contrary indication appears in the MIGA Guarantee, any instructions given to the Agent by the MIGA shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
     4. Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.
     5. The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss (excluding any management time and any direct or indirect loss of profit) or liability which it may incur in complying with those instructions.
     6. In the absence of instructions, the Agent may, acting reasonably, act (or refrain from acting) as it considers to be in the best interest of the Lenders.
     7. The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
  2. **Duties of the Agent**
     1. Subject to paragraph ‎(f) of clause ‎‎23.2 (Instructions), the Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
     2. Subject to paragraph ‎(c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
     3. Without prejudice to clause ‎21.7 (Copy of Transfer Certificate or Assignment Agreement to the Borrower), paragraph ‎(b) above shall not apply to any Transfer Certificate or Assignment Agreement.
     4. Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document which is delivered to it that it then forwards to another Party.
     5. If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
     6. If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or any Arranger) under this Agreement it shall promptly notify the other Finance Parties.
     7. The Agent shall have only those duties, obligations and responsibilities expressly specified in: (i) the Finance Documents to which it is expressed to be a party; and (ii) the MIGA Guarantee; and no others shall be implied.
     8. The Agent shall notify the Lenders and MIGA if it becomes aware that a prepayment or cancellation event under clause ‎‎8 (Prepayment and cancellation) has occurred.
  3. **Role of the Arrangers**

Except as specifically provided in the Finance Documents, no Arranger shall have any obligations of any kind to any other Party under or in connection with any Finance Document.

* 1. **No fiduciary duties**
     1. Nothing in any Finance Document constitutes the Agent or any Arranger as a trustee or fiduciary of any other person.
     2. Neither the Agent nor any Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.
  2. **Business with the Borrower**

The Agent and the Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower.

* 1. **Rights and discretions**
     1. The Agent may:
        1. rely on any representation, communication notice or document believed by it to be genuine, correct and appropriately authorised;
        2. assume that:
           1. any instructions received by it from the Majority Lenders, any Lender or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
           2. any instructions received by it from MIGA are duly given in accordance with the terms of the MIGA Guarantee, and

unless it has received notice of revocation, that those instructions have not been revoked; and

* + - 1. rely on a certificate from any person:
         1. as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
         2. to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph ‎(A) above, may assume the truth and accuracy of that certificate.

* + 1. The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders or from MIGA under the MIGA Guarantee) that:
       1. no Default has occurred (unless it has actual knowledge of a Default arising under clause ‎‎20.1 (Non-payment));
       2. any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
       3. any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of the Borrower.
    2. The Agent may, pursuant to the instructions of the Majority Lenders or MIGA, engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts for the benefit of the Lenders and MIGA.
    3. Without prejudice to the generality of paragraph ‎(c) above or paragraph ‎(e) below, the Agent may at any time engage at its own expense the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.
    4. The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts obtained by the Agent pursuant to the instructions of the Majority Lenders and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
    5. The Agent may act in relation to the Finance Documents through its officers, employees and agents.
    6. Unless a Finance Document expressly provides otherwise, the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
    7. Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
    8. Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
    9. The Borrower acknowledges and agrees that:
       1. the Agent, the Lenders or the Majority Lenders may be required to exercise or refrain from exercising their rights, powers, authorities and discretions under, or in connection with, the Finance Documents, in accordance with any instructions given to the Agent by MIGA in accordance with the provisions of the MIGA Guarantee;
       2. the Agent, the Lenders and/or the Majority Lenders will not be acting or making any determination unreasonably if such action or such determination is made in accordance with the MIGA Guarantee or any instructions given to the Agent by MIGA in accordance with the provisions of the MIGA Guarantee; and
       3. any reference in this Agreement to an action of the Agent shall be construed as a reference to the Agent acting in accordance with the provisions of this Agreement, the MIGA Guarantee and the Agent shall be conclusively presumed to be acting on behalf of and for the benefit of the Lenders and/or Majority Lenders with full and valid authority so to act or refrain from acting and the Borrower shall not have any right or obligation to make enquiries respecting such authority.
  1. **Responsibility for documentation**

Neither the Agent nor any Arranger is responsible or liable for:

* + 1. the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, any Arranger, the Borrower or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document other than information generated by itself; or
    2. the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
    3. any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.
  1. **No duty to monitor**

The Agent shall not be bound to enquire:

* + 1. whether or not any Default has occurred;
    2. as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
    3. whether any other event specified in any Finance Document has occurred.
  1. **Exclusion of liability**
     1. Without limiting paragraph ‎(b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable for:
        1. any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct;
        2. exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct; or
        3. without prejudice to the generality of paragraphs ‎(i) and ‎(ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (but not including any claim based on the fraud of the Agent) arising as a result of:
           1. any act, event or circumstance not reasonably within its control; or
           2. the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

* + 1. No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this paragraph ‎(b) subject to clause ‎1.4 (Third party rights) and the provisions of the Third Parties Act.
    2. The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
    3. Nothing in this Agreement shall oblige the Agent or any Arranger to carry out:
       1. any "know your customer" or other checks in relation to any person; or
       2. any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to the Agent and each Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or any Arranger.

* + 1. Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default). In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.
  1. **Lenders' indemnity to the Agent**
     1. Subject to paragraph ‎(d) of clause ‎‎23.7 (Rights and discretions), each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability whatsoever incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause ‎‎26.12 (Disruption to payment systems etc.), notwithstanding any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents or in acting as agent of the Lenders under the MIGA Guarantee (unless the Agent has been reimbursed by the Borrower pursuant to a Finance Document).
     2. Paragraph ‎(a) above shall not apply to any cost, loss or liability incurred by the Agent in respect of:
        1. any failure by the Borrower to make payment pursuant to clause ‎‎11.3 (Agency fee);
        2. any payment made by the Agent described in paragraph ‎(d) of clause ‎‎23.7 (Rights and discretions); and
        3. its management time.
     3. The Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph ‎(a) above.
  2. **Resignation of the Agent**
     1. The Agent may, with the prior written consent of MIGA, resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Borrower.
     2. Notwithstanding paragraph ‎(a) above, the Agent may, with the prior written consent of MIGA, resign by giving thirty (30) days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
     3. The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The Borrower shall, within three (3) Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
     4. The Agent's resignation notice shall only take effect upon the appointment of a successor.
     5. Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph ‎(c) above) but shall remain entitled to the benefit of clause ‎14.3 (Indemnity to the Agent) and this clause ‎‎23 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
     6. After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph ‎(b) above. In this event, the Agent shall resign in accordance with paragraph ‎(b) above.
     7. The Agent shall resign in accordance with paragraph ‎(b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph ‎(b) above) if on or after the date which is three (3) months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
        1. the Agent fails to respond to a request under clause ‎12.7 (FATCA Information) and the Borrower or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
        2. the information supplied by the Agent pursuant to clause ‎‎12.7 (FATCA Information) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
        3. the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party and that Lender, by notice to the Agent, requires it to resign. The consent of the Borrower is not required for an assignment or transfer of rights and/or obligations by the Agent.

* + 1. If at any time the Agent ceases to be eligible for coverage by MIGA under the MIGA Guarantee, the Agent shall resign its appointment hereunder by giving not less than 30 days' prior written notice to that effect (or such shorter period as may be required by the Lenders and MIGA) to each of the other Parties, provided that no such resignation shall be effective until a successor for the Agent is appointed in accordance with paragraph ‎(a) above.
  1. **Replacement of the Agent**
     1. After consultation with the Borrower and with the consent of MIGA, the Majority Lenders may, by giving thirty (30) days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent.
     2. The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
     3. The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent, subject to the execution by that successor of such documentation as may reasonably be required by MIGA in order to reflect the substitution of the successor as the beneficiary for all purposes under the MIGA Guarantee. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph ‎(b) above) but shall remain entitled to the benefit of clause ‎‎14.3 (Indemnity to the Agent) and this clause ‎‎23 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
     4. Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
  2. **Confidentiality**
     1. In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
     2. If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
  3. **Relationship with the Lenders**
     1. Subject to clause ‎21.9 (Pro rata interest settlement), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
        1. entitled to or liable for any payment due under any Finance Document on that day; and
        2. entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

* + 1. Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under clause ‎‎28.5 (Electronic communication)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Lender for the purposes of clause ‎28.2 (Contact details) and paragraph ‎(a)‎‎(i) of clause ‎‎28.5 (Electronic communication) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.
    2. Each Finance Party shall at all times act in compliance with MIGA’s instructions pursuant to the terms of the MIGA Guarantee.
    3. In the event that a Lender or the Agent becomes aware that the Borrower or any Implementing Entity has in connection with the Project engaged in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering, or violated the MIGA Performance Standards, the Lender or the Agent shall:
       1. immediately notify MIGA thereof; and
       2. diligently enforce their contractual remedies under the Facility Agreement and any related documentation against the Borrower, including if requested by MIGA cancellation of undrawn Commitments, acceleration of the Loans and/or enforcement of security.
  1. **Credit appraisal by the Lenders**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and each Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

* + 1. the financial condition, status and nature of the Borrower, each of its government agencies, the Buyer and MIGA;
    2. the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
    3. whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
    4. the adequacy, accuracy or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.
  1. **Agent's management time**

Any amount payable to the Agent under clause ‎‎14.3 (Indemnity to the Agent), clause ‎‎16 (Costs and expenses), clause ‎‎23.9 (No duty to monitor) (but excluding any amount payable under clause ‎23.11 (Lenders' indemnity to the Agent)) shall include the cost of utilising the Agent's management time or other resources, up to the amount of EUR 5,000, and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the Agent under clause ‎‎11 (Fees).

* 1. **Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

* 1. **Amounts paid in error**
     1. If the Agent pays an amount to another Party and the Agent notifies that Party that such payment was an Erroneous Payment then the Party to whom that amount was paid by the Agent shall on demand refund the same to the Agent.
     2. Neither:
        1. the obligations of any Party to the Agent; nor
        2. the remedies of the Agent, (whether arising under this clause ‎23.19 or otherwise) which relate to an Erroneous Payment will be affected by any act, omission, matter or thing which, but for this paragraph ‎(b), would reduce, release or prejudice any such obligation or remedy (whether or not known by the Agent or any other Party).
     3. All payments to be made by a Party to the Agent (whether made pursuant to this clause ‎23.19 or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
     4. In this Agreement, "**Erroneous Payment**" means a payment of an amount by the Agent to another Party which the Agent determines (in its sole discretion) was made in error.
  2. **Examination of documents**

Without prejudice to the obligations of the Agent under the MIGA Guarantee:

### the Agent's responsibility for the examination of any Utilisation Request, any Required Document or any other document received by it in connection with any Utilisation Request or Required Document shall be limited to ascertaining that such document appears on its face (or, if any such document is not only in English, the English translation or version of which appears on its face) to be in accordance with its description;

* + 1. no Finance Party shall be obliged to enquire as to, or be responsible for, the validity, truthfulness or genuineness of any Utilisation Request, any Required Document or any other document received by it in connection with any Utilisation Request or Required Document, or any of the statements set out therein;
    2. each Finance Party may rely on the accuracy of any statement contained in a Utilisation Request, Required Document or any other document received in connection with any Utilisation Request or Required Document; and
    3. no Finance Party shall be responsible for any delay in the making of any Loan resulting from a request for evidence or documentation by MIGA, or by a Finance Party in order to be satisfied that the MIGA Guarantee shall apply to that Loan.
  1. **MIGA Guarantee**

Each Lender confirms to the relevant Agent that:

* + 1. it has been provided with a copy of the MIGA Guarantee and has made (and shall continue to make) its own independent investigation and assessment of the MIGA Guarantee;
    2. the Agent entered into or will be entering into the MIGA Guarantee on behalf of the Lenders (and ratifies the acceptance on its behalf of the MIGA Guarantee already accepted by the Agent);
    3. the Agent and MIGA have been provided with all information requested from it by the Agent in order for the Agent to enter into the MIGA Guarantee;
    4. all information provided by it to the Agent in relation to the MIGA Guarantee is correct, complete and up to date and is not misleading;
    5. any representations and warranties made or to be made by the Agent (on its behalf) to MIGA in the MIGA Guarantee were or will be true in all material respects as at the date such representations or warranties were made, so far as that Lender is aware; and
    6. any communication between it and MIGA in connection with the MIGA Guarantee or any Finance Document shall be made through the Agent.

1. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

* + 1. interfere with the right of any Finance Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
    2. oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
    3. oblige any Finance Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

1. SHARING AMONG THE FINANCE PARTIES
   1. **Payments to Finance Parties**

If a Finance Party (a **"Recovering Finance Party"**) receives or recovers any amount from the Borrower other than in accordance with clause ‎‎26 (Payment mechanics) (a **"Recovered Amount"**) and applies that amount to a payment due under the Finance Documents then:

* + 1. the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
    2. the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with clause ‎26 (Payment mechanics), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
    3. the Recovering Finance Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the **"Sharing Payment"**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with clause ‎‎26.7 (Partial payments).
  1. **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) (the **"Sharing Finance Parties"**) in accordance with clause ‎‎26.7 (Partial payments)) towards the obligations of the Borrower.

* 1. **Recovering Finance Party's rights**

On a distribution by the Agent under clause ‎‎25.2 (Redistribution of payments) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.

* 1. **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

* + 1. each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the **"Redistributed Amount"**); and
    2. as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.
  1. **Exceptions**
     1. This clause ‎25 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this clause, have a valid and enforceable claim against the Borrower.
     2. A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
        1. it notified that other Finance Party of the legal or arbitration proceedings; and
        2. that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.
  2. **MIGA**

MIGA shall be exempt from this clause ‎25.6 and any other provisions of this Agreement regarding the sharing of recoveries.

1. PAYMENT MECHANICS
   1. **Payments to the Agent**
      1. On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
      2. Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.
   2. **Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to clause ‎26.4 (Distributions to the Borrower) and clause ‎26.5 (Clawback and pre-funding) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London), as specified by that Party.

* 1. **Distributions in respect of Utilisations**

The Borrower irrevocably and unconditionally authorises and directs the Agent to pay the proceeds of any Loans to be made to the Borrower pursuant to a Utilisation Request to the Project Contractor for direct payment of Project costs.

* 1. **Distributions to the Borrower**

The Agent may, with the consent of the Borrower or in accordance with clause ‎27 (Set-off), apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

* 1. **Clawback and pre-funding**
     1. Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
     2. Unless paragraph ‎(c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
     3. If the Agent is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to the Borrower:
        1. the Borrower shall on demand refund it to the Agent; and
        2. the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.
     4. If the Agent pays an amount to another Party and the Agent determines in its sole discretion that that amount was paid in error, then the Party to whom that amount was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.
  2. **Impaired Agent**
     1. If, at any time, the Agent becomes an Impaired Agent, the Borrower or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with clause ‎‎26.1 (Payments to the Agent) may instead pay that amount direct to the required recipient(s).
     2. A Party which has made a payment in accordance with this clause ‎‎26.6 shall be discharged of the relevant payment obligation under the Finance Documents.
  3. **Partial payments**
     1. If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
        1. **first**, in or towards payment pro rata of any unpaid amount owing to the Agent under the Finance Documents;
        2. **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
        3. **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
        4. **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
     2. The Agent shall, if so directed by the Majority Lenders or MIGA, vary the order set out in paragraph ‎(a) above.
     3. Paragraphs (a) and (b) above will override any appropriation made by the Borrower.
     4. This clause ‎26.7 will not apply to any payments by MIGA to the Agent under the MIGA Guarantee in relation to a Claim.
  4. **No set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

* 1. **Business Days**
     1. Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
     2. During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.
  2. **Currency of account**
     1. Subject to paragraphs ‎(b) and ‎(c) below, the Facility Currency is the currency of account and payment for any sum due from the Borrower under any Finance Document.
     2. Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
     3. Any amount expressed to be payable in a currency other than the Facility Currency shall be paid in that other currency.
  3. **Change of currency**
     1. Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
        1. any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
        2. any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
     2. If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.
  4. **Disruption to payment systems etc.**

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

* + 1. the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
    2. the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph ‎(a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
    3. the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph ‎(a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
    4. any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of clause ‎‎32 (Amendments and waivers);
    5. the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this clause ‎‎26.12; and
    6. the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph ‎(d) above.
  1. **Payments by MIGA to the Agent**

In the event that the Agent receives a payment from MIGA under the MIGA Guarantee in respect of a Claim submitted by the Agent, the Agent shall apply any part of the payment that relates to interest or principal, due but unpaid under this Agreement, solely to the Lender or Lenders on whose behalf such Claim was filed, provided that if such Claim was filed on behalf of more than one Lender, such payment shall be made to each relevant Lender in proportion to each such Lender's share in such unpaid interest or principal as set out in such Claim.

1. SET-OFF

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

1. NOTICES
   1. **Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

* 1. **Contact details**

The address and/or fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

* + 1. in the case of the Borrower, the Original Lenders and the Agent, those identified with its name on the signatories pages; and
    2. in the case of each Lender or any Borrower, that notified in writing to the Agent on or prior to the date on which it becomes a Party,

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change to its own contact details is made by the Agent) by not less than five (5) Business Days' notice.

* 1. **Delivery**
     1. Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
        1. if by way of fax, when received in legible form; or
        2. if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause ‎‎28.2 (Contact details), if addressed to that department or officer.

* + 1. Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature on the Agent's signature page (or any substitute department or officer as the Agent shall specify for this purpose).
    2. All notices from or to the Borrower shall be sent through the Agent.
    3. Any communication or document which becomes effective, in accordance with paragraphs ‎(a) to ‎(c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the next Business Day.
  1. **Notification of contact details**

Promptly upon changing its own address or fax number, the Agent shall notify the other Parties.

* 1. **Electronic communication**
     1. Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including without limitation, by way of posting to a secure website) if those two Parties:
        1. notify each other in writing of their electronic communication address and/or any other information required to enable the transmission of information by that means; and
        2. notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
     2. Any such electronic communication as specified in paragraph ‎(a) above to be made between the Borrower and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
     3. Any such electronic communication as specified in paragraph ‎(a) above made between any two Parties will be effective only when actually received (or made available) in readable form and, in the case of any electronic communication, made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
     4. Any electronic communication which becomes effective, in accordance with paragraph ‎(c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following Business Day.
     5. Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this clause ‎28.5.
  2. **English language**
     1. Any notice given under or in connection with any Finance Document must be in English.
     2. All other documents provided under or in connection with any Finance Document must be:
        1. in English; or
        2. if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

1. CALCULATIONS AND CERTIFICATES
   1. **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

* 1. **Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

* 1. **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

1. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

1. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

1. AMENDMENTS AND WAIVERS
   1. **Required consents**
      1. Subject to clause ‎3.4 (MIGA override), clause ‎‎32.2 (All Lender matters) and clause ‎‎32.3 (Other exceptions) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and (other than with respect to the MIGA Guarantee) the Borrower and any such amendment or waiver will be binding on all Parties.
      2. The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this clause ‎‎32.
      3. Without prejudice to the generality of paragraphs ‎(c), ‎(d) and ‎(e) of clause ‎23.7 (Rights and discretions), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
   2. **All Lender matters**

Subject to clause ‎‎32.4 (Replacement of Screen Rate) an amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

* + 1. the definition of "Majority Lenders" in clause ‎‎1.1 (Definitions);
    2. an extension to the date of payment of any amount under the Finance Documents;
    3. a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
    4. a change in currency of payment of any amount under the Finance Documents;
    5. an increase in any Commitment or the Total Commitments, an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
    6. a change to the Borrower;
    7. a release of or an amendment to the MIGA Guarantee;
    8. any provision of, or definition in, any Finance Document that relates to the MIGA Guarantee or that requires the consent of MIGA under the MIGA Guarantee;
    9. any provision which expressly requires the consent of all the Lenders;
    10. any provision relating to Sanctions Laws and Regulations or Anti-Corruption Laws; or
    11. clause ‎‎3.2 (Finance Parties' rights and obligations), clause ‎6.1 (Utilisation of the Facility), clause ‎‎8.1 (Illegality), clause ‎8.7 (Application of prepayments), clause ‎19.16 (MIGA Guarantee covenants), clause ‎‎21 (Changes to the Lenders), clause ‎‎25 (Sharing among the Finance Parties), this clause ‎32, clause ‎‎38 (Governing law), the governing law of any Finance Document, or clause ‎‎40 (Jurisdiction),

shall not be made without the prior consent of all the Lenders and, where applicable MIGA.

* 1. **Other exceptions**

An amendment or waiver which relates to the rights or obligations of the Agent or any Arranger (each in their capacity as such) may not be effected without the consent of the Agent, the relevant Arranger as the case may be.

* 1. **Replacement of Screen Rate**

Subject to clause ‎‎32.3 (Other exceptions), if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for a currency which can be selected for a Loan, any amendment or waiver which relates to:

* + 1. providing for the use of a Replacement Benchmark in relation to that currency in place of that Screen Rate; and
    2. (i) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
       1. enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
       2. implementing market conventions applicable to that Replacement Benchmark;
       3. providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
       4. adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders and the Borrower).

1. CONFIDENTIAL INFORMATION
   1. **Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by clause ‎‎33.2 (Disclosure of Confidential Information), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

* 1. **Disclosure of Confidential Information**

Any Finance Party may disclose:

* + 1. to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph ‎(a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
    2. to any person:
       1. to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent and, in each case, to any of that person's Affiliates, Representatives and professional advisers;
       2. with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and to any of that person's Affiliates, Representatives and professional advisers;
       3. appointed by any Finance Party or by a person to whom paragraph ‎(i) or ‎(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph ‎(b) of clause ‎‎23.15 (Relationship with the Lenders));
       4. who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph ‎(i) or ‎(ii) above;
       5. to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law;
       6. to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
       7. to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to clause ‎21.8 (Security over Lenders' rights);
       8. who is a Party;
       9. who is the Project Contractor; or
       10. with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

* + - * 1. in relation to paragraphs ‎(i), ‎(ii) and ‎(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
        2. in relation to paragraph ‎(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information; and
        3. in relation to paragraphs ‎(v), ‎(vi) and ‎(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances or if the recipient is subject to professional obligations to maintain the confidentiality of the Confidential Information;
    1. to any person appointed by that Finance Party or by a person to whom paragraph ‎(b)‎(i) or ‎(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph ‎(d) if the service provider to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking;
    2. to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information;
    3. to any entities compiling league tables and other credit market assessments (who may use it in such league tables and credit market assessments) and refer to it in marketing materials to actual or potential clients without the prior consent of the other Parties, provided that such information is limited to the identity of the Parties and the amount, maturity and purpose of the Facility;
    4. to MIGA, its directors, officers, employees, accountants, consultants, and counsel of MIGA, or of other members of the World Bank Group, and reinsurers, insurers under MIGA’s Cooperative Underwriting Program and brokers, agents and finders representing MIGA in connection with the Project, such Confidential Information as that recipient may require for the purpose of evaluating the Project; and
    5. to the Equator Principles secretariat, such Confidential Information as that Finance Party shall consider appropriate.
  1. **Disclosure to numbering service providers**
     1. Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or the Borrower the following information:
        1. name of the Borrower;
        2. country of domicile of the Borrower;
        3. place of incorporation of the Borrower;
        4. date of this Agreement;
        5. clause ‎‎38 (Governing law);
        6. the names of the Agent and the Arrangers;
        7. date of each amendment and restatement of this Agreement;
        8. amount of the Facility;
        9. amount of Total Commitments;
        10. currency of the Facility;
        11. type of the Facility;
        12. ranking of the Facility;
        13. scheduled final repayment date of the Facility;
        14. changes to any of the information previously supplied pursuant to paragraphs ‎(i) to ‎(xiii) above; and
        15. such other information agreed between such Finance Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

* + 1. The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
    2. The Borrower represents that none of the information set out in paragraphs ‎(a)‎(i) to ‎(xv) above is, nor will at any time be, unpublished price-sensitive information.
    3. The Agent shall notify the Borrower and the other Finance Parties of:
       1. the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and the Borrower; and
       2. the number or, as the case may be, numbers assigned to this Agreement, the Facility and the Borrower by such numbering service provider.
  1. **Disclosure to the Project Contractor**

Subject to Clause ‎33.2 (Disclosure of Confidential Information), each Party agrees that the Agent may disclose any terms of this Agreement for the sole purpose of enabling the Project Contractor to request a payment and for such payment to be made to the Project Contractor.

* 1. **Entire agreement**

This clause ‎‎33 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

* 1. **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

* 1. **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

* + 1. of the circumstances of any disclosure of Confidential Information made pursuant to paragraph ‎(b)‎(v) of clause ‎‎33.2 (Disclosure of Confidential Information) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory functions; and
    2. upon becoming aware that Confidential Information has been disclosed in breach of this clause ‎‎33.
  1. **Continuing obligations**

The obligations in this clause ‎33 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

* + 1. the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
    2. the date on which such Finance Party otherwise ceases to be a Finance Party.
  1. **Data Protection**
     1. In compliance with the provisions of the General Data Protection Regulation and the Spanish Organic Law on the Protection of Personal Data and the guarantee of digital rights, Banco Santander, S.A. (hereinafter, the "**Bank**") hereby informs the Borrower that, obliges itself to inform the data subjects that their personal data included in this Agreement will be processed by the Bank for the purpose of managing the contractual relationship, and of maintaining any relationship with the legal person, party to this agreement and to which the data subject represents. This processing is necessary and based on the Bank's legitimate interest and on compliance with legal obligations. Such personal data will not be disclosed to third parties unless there is a legal obligation to do so and will be kept for as long as the contractual relationship remains in effect and thereafter until any liabilities arising therefrom have expired. The data subjects may contact the Data Protection Officer of Banco Santander, S.A. at privacidad@gruposantander.es and exercise their rights of access, rectification, erasure, blocking, data portability and restriction of processing (or any other recognized by law) by email to scib.privacy@gruposantander.com. Data subjects may also submit any claims or requests relating to the protection of personal data to the Spanish Data Protection Agency at http://www.aepd.es.
     2. Additionally to the above, the Borrower hereby acknowledges the disclosure to other Santander Group companies of the information provided in the context of the due diligence process or "Know Your Customer", along with any relevant transactions-related information, that allows such companies to comply with (i) the Group’s Financial Crime Compliance internal policies, (ii) their legal obligations relating to the anti-money laundering and counter terrorism financing regulations and (iii) their regulatory reporting to the supervisory authorities. In this regard, the Borrower hereby guarantees that the data subjects of the personal data that may be included in the referred information have been duly informed of, and when required by applicable data protection regulation, have expressly consented to, the disclosure of their personal data to that effect.

1. CONFIDENTIALITY OF FUNDING RATES
   1. **Confidentiality and disclosure**
      1. The Agent and the Borrower agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs ‎(b) and ‎(c) below.
      2. The Agent may disclose:
         1. any Funding Rate to the Borrower pursuant to clause ‎‎9.4 (Notification of rates of interest); and
         2. any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a Confidentiality Undertaking.
      3. The Agent may disclose any Funding Rate, and the Borrower may disclose any Funding Rate, to:
         1. any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this paragraph ‎(i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
         2. any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances;
         3. any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances; and
         4. any person with the consent of the relevant Lender.
   2. **Related obligations**
      1. The Agent and the Borrower acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and the Borrower undertake not to use any Funding Rate for any unlawful purpose.
      2. The Agent and the Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender:
         1. of the circumstances of any disclosure made pursuant to paragraph ‎(c)‎(ii) of clause ‎34.1 (Confidentiality and disclosure) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
         2. upon becoming aware that any information has been disclosed in breach of this clause ‎‎34.
   3. **No Event of Default**

No Event of Default will occur under clause ‎‎20.2 (Other obligations) by reason only of the Borrower's failure to comply with this clause ‎‎34.

1. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

1. GOVERNING LANGUAGE

Although this Agreement may be translated into any other language than English, such non-English version of this Agreement is for information purposes only. In the event of any conflict or inconsistency between the English language version and such non-English version of this Agreement or any Dispute regarding the interpretation of any provision in the English language version or non-English version of this Agreement, the English language version of this Agreement shall prevail and questions of interpretation shall be addressed solely by reference to the English language version.

1. CONTRACTUAL RECOGNITION OF BAIL-IN

It is agreed that notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

* + 1. any Bail-In Action in relation to any such liability, including (without limitation):
       1. a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
       2. a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
       3. a cancellation of any such liability; and
    2. in this clause ‎‎37:
       1. **"Article 55 BRRD"** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.
       2. **"Bail-In Action"** means the exercise of any Write-down and Conversion Powers.
       3. **"Bail-In Legislation"** means:
          1. in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation schedule from time to time; and
          2. in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.
       4. **"EEA Member Country"** means any member state of the European Union, Iceland, Liechtenstein and Norway.
       5. **"EU Bail-In Legislation schedule"** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.
       6. **"Resolution Authority"** means any body which has authority to exercise any Write-down and Conversion Powers.
       7. **"UK Bail-In Legislation"** means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).
       8. **"Write-down and Conversion Powers"** means:
          1. in relation to any Bail-In Legislation described in the EU Bail-In Legislation schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation schedule;
          2. in relation to any other applicable Bail-In Legislation:

any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and

any similar or analogous powers under that Bail-In Legislation.

1. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

1. ARBITRATION
   * 1. **Arbitration**

Subject to paragraph ‎(e) (Agent's option), any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "Dispute") shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration (LCIA).

* + 1. **Formation of arbitral tribunal, seat and language of arbitration**
       1. The arbitral tribunal shall consist of three arbitrators. The claimant(s), irrespective of number, shall nominate jointly one arbitrator; the respondent(s), irrespective of number, shall nominate jointly the second arbitrator, and a third arbitrator (who shall act as presiding arbitrator) shall be nominated by the arbitrators nominated by or on behalf of the claimant(s) and respondent(s) or, in the absence of agreement on the third arbitrator within 30 days of the date of nomination of the later of the two party-nominated arbitrators to be nominated, he shall be chosen by the LCIA Court (as defined in the Arbitration Rules of the LCIA).
       2. The seat of arbitration shall be London, England.
       3. The language of the arbitration shall be English.
    2. **Recourse to courts**

For the purposes of arbitration pursuant to this clause ‎‎39 (Arbitration), the Parties waive any right of application to determine a preliminary point of law or appeal on a point of law under Sections 45 and 69 of the Arbitration Act 1996.

* + 1. **Consolidation of arbitrations**
       1. The following shall apply to any disputes arising out of or in connection with this Agreement and out of or in connection with any other Finance Document in respect of which a Request for Arbitration has been delivered (or, where impossible, effectively notified) to all other parties to the arbitration. In relation to any such disputes if, in the absolute discretion of the first arbitral tribunal to be appointed in any of the disputes, they are so closely connected that it is expedient for them to be resolved in the same proceedings, that arbitral tribunal shall have the power to order that the proceedings to resolve that dispute shall be consolidated with those to resolve any of the other disputes, provided that no date for the final hearing of the first arbitration has been fixed. If that arbitral tribunal so orders, the parties to each dispute which is a subject of its order shall be treated as having consented to that dispute being finally decided:
          1. by the arbitral tribunal that ordered the consolidation unless the LCIA decides that that arbitral tribunal would not be suitable or impartial; and
          2. in accordance with the procedure, at the seat and in the language specified in the relevant Finance Document under which the arbitral tribunal that ordered the consolidation was appointed, save as otherwise agreed by all parties to the consolidated proceedings or, in the absence of any such agreement, ordered by the arbitral tribunal in the consolidated proceedings.

Any dispute which is subject to a contractual option to litigate shall only be capable of consolidation pursuant to this paragraph ‎(i) if:

* + - * 1. exercise of the option to which the dispute is subject is no longer permitted pursuant to the terms upon which the option was granted; or
        2. the right of the option-holder to exercise the option has otherwise been validly waived.
      1. Paragraph ‎(i) above shall apply even where powers to consolidate proceedings exist under any applicable arbitration rules (including those of an arbitral institution) and, in such circumstances, the provisions of paragraph ‎(i) above shall apply in addition to those powers.
    1. **Agent's option**

Before the Finance Parties have delivered to the Registrar of the LCIA Court a Request for Arbitration or Response as defined in the Arbitration Rules of the LCIA (as the case may be), the Agent may (and shall, if so instructed by the Majority Lenders) by notice in writing to all other Parties require that all Disputes or a specific Dispute be heard by a court of law. If the Agent gives such notice, the Dispute to which such notice refers shall be determined in accordance with clause ‎‎40 (Jurisdiction).

1. JURISDICTION

If the Agent issues a notice pursuant to clause ‎‎39(e) (Agent's option), the provisions of this clause ‎‎40 (Jurisdiction) shall apply.

* + 1. The courts of England have exclusive jurisdiction to settle any Dispute.
    2. The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
    3. Notwithstanding paragraphs ‎(a) and ‎(b) above, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

1. SERVICE OF PROCESS
   * 1. Without prejudice to any other mode of service allowed under any relevant law, the Borrower:
        1. irrevocably appoints the Ambassador of the Republic of Serbia to the Court of St. James’s at 28 Belgrave Square, London SW1X 8QB as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
        2. agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.
     2. If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower must immediately (and in any event within fifteen (15) days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may, at the Borrower's cost, appoint another agent for this purpose.
     3. The Borrower expressly agrees and consents to the provisions of this clause ‎‎41 and clause ‎‎38 (Governing law).
   1. **Waiver of immunity**
      1. The Borrower irrevocably waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including, without limitation, immunity in respect of:
         1. jurisdiction of any court or tribunal;
         2. the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues;
         3. any process for execution of any award or judgment against its property;
         4. service of process; and
         5. the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action in rem, for the arrest, detention or sale of any of its assets and revenues,

and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Borrower irrevocably consents to the enforcement of any judgment or award and agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of the jurisdiction, subject to paragraph ‎(d) below.

* + 1. The Borrower agrees that in any proceedings in England this waiver shall have the fullest scope permitted by the English State Immunity Act 1978 and that this waiver is intended to be irrevocable for the purposes of the English State Immunity Act 1978.
    2. Without limitation to the obligations of the Borrower under paragraphs ‎(a) and ‎(b) above, in respect of any proceedings arising out of or in connection with the enforcement and/or execution of any award or judgment made against it, the Borrower hereby submits to the jurisdiction of any court in which any such proceedings are brought.
    3. Notwithstanding the provisions of clause ‎‎41.2 (Waiver of Immunity) ‎(a) to ‎(c) above, the Borrower does not waive any immunity from enforcement in respect of any Excluded Assets.

**THIS AGREEMENT** has been entered into on the date stated at the beginning of this Agreement.



The Original Parties

**THE ORIGINAL LENDERS**

| **Name of Original Lender** | **Commitment (EUR)** |
| --- | --- |
| Banco Santander, S.A. | 70,000,000 |
| CaixaBank, S.A. | 50,000,000 |
| Credit Agricole Corporate and Investment Bank | 70,000,000 |
| JPMorgan Chase Bank, N.A., London Branch | 90,000,000 |
| Raiffeisen Bank International AG | 70,000,000 |
| UBS Switzerland AG | 50,000,000 |



Conditions Precedent to Initial Utilisation

1. Borrower Authorisations
   * 1. Copies of all relevant laws, regulations and/or Authorisations relating to the power and authority of the Borrower, the Ministry of Finance, the Minister of Finance and/or the Acting Minister of Finance (as applicable) and the performance of the Borrower's obligations under the Finance Documents, including but not limited to.
        1. the constitution of the Republic of Serbia; and
        2. Public Debt Act (Zakon o javnom dugu, Official Gazette of the Republic of Serbia nos. 61/2005, 107/2009, 78/2011, 68/2015, 95/2018, 91/2019 and 149/2020), the Budget System Act (Zakon o budžetskom sistemu, Official Gazette of the Republic of Serbia nos. 54/2009, 73/2010, 101/2010, 101/2011, 93/2012, 62/2013, 63/2013, 108/2013, 142/2014, 68/2015, 103/2015, 99/2016, 113/2017,5/2018, 31/2019, 72/2019 and 149/2020) and the Morava Corridor Law.
     2. A certified copy of a decision of the Government of the Republic of Serbia: (i) approving the borrowing by the Borrower under this Agreement and the Finance Documents; (ii) authorizing the Minister of Finance of the Republic of Serbia to execute the Finance Documents on behalf of the Republic of Serbia.
     3. An evidence of the enactment by the National Assembly of the Republic of Serbia of the law approving 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).
     4. A certified copy of KZ forms (in Serbian: "KZ obrasci") evidencing that this Agreement has been duly reported to the NBS;
     5. A certificate of an authorised signatory of the Borrower:
        1. certifying that each copy document specified in this schedule is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement; and
        2. confirming that the borrowing of the full amount of the Facility would not cause any borrowing, guaranteeing or similar limit binding on the Borrower or the Republic of Serbia to be breached.
     6. A specimen of the signature of each person authorised by the documents referred to in paragraphs (a) and (b).
2. PROJECT CONTRACT

A certified copy of the Project Contract.

1. Finance Documents
   * 1. An original of each Finance Document duly entered into by the parties to it.
     2. Evidence that each such Finance Document has been duly authorised, executed and delivered by each party thereto and in full force and effect, with, if applicable, evidence that any stamp duties have been duly paid in relation to each such Finance Document and that such Finance Document has been registered with the appropriate authorities in the Republic of Serbia.
     3. A certified Serbian translation of each Finance Document.
2. MIGA GUarantee
   * 1. Evidence of receipt of the host country approval by MIGA for the Republic of Serbia.
     2. An original copy of the MIGA Guarantee, duly executed by each of the parties to it.
     3. Confirmation from MIGA that the MIGA Guarantee Effective Date has occurred.
3. Legal opinions
   * 1. A legal opinion of Ashurst LLP, legal advisers to the Finance Parties in England, in the form and substance acceptable to MIGA and the Agent and distributed to, and capable of being relied on by, the Original Lenders and MIGA prior to signing this Agreement.
     2. A legal opinion of BDK Advokati, legal advisers to the Finance Parties in the Republic of Serbia, in the form and substance acceptable to MIGA and the Agent and distributed to, and capable of being relied on by, the Original Lenders and MIGA prior to signing this Agreement.
     3. A legal opinion from the Ministry of Justice of the Republic of Serbia.
     4. Any other legal opinion requested by any Finance Party.
4. Other documents and evidence
   * 1. Evidence that any process agent referred to in clause ‎‎41 (Service of process) has accepted its appointment.
     2. Evidence that all fees, costs and expenses (including the fees payable to MIGA) due and payable by the Borrower in respect of this Agreement have been paid in full (or will be paid from the proceeds of the first Loan).
     3. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by the Finance Documents or for the validity and enforceability of any Finance Document.
     4. Evidence that the fees, costs and expenses due from the Borrower pursuant to clause ‎‎11 (Fees) and clause ‎‎16 (Costs and expenses) have been paid or will be paid on or before the first Utilisation Date.
     5. The Borrower has made any amendments to this Agreement deemed reasonably necessary by the Agent (if any) in order to comply with the requirements of MIGA under the MIGA Guarantee, once issued.
     6. Evidence that each Original Lender's "know your customer" and client adoption requirements have been completed.
     7. Evidence in form and substance satisfactory to the Agent that the relevant actions have been undertaken by the timeline prescribed in the ESAP.

Utilisation Request

From: [***Borrower]***

To: [***Agent***]

Dated: []

Dear [insert the name of Agent],

**Utilisation Request No. []**

1. We refer to the facility agreement dated [] and made between, inter alia, [Borrower] (the "**Borrower**"), the financial institutions listed therein as original lenders and [Agent] (the "**Agent**") as amended from time to time (the "**Facility Agreement**").
2. This is a **"Utilisation Request"** as defined in the Facility Agreement.
3. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
4. We would like to borrow by way of Loan the amount set out below on the date set out below:

|  |  |
| --- | --- |
| Proposed Utilisation Date: | [] (or, if that is not a Business Day, the next Business Day) |
| Amount: | [] EUR |

1. This Utilisation Request is irrevocable.
2. The proceeds of the Loan are to be remitted by the Agent to the Project Contractor for direct payment of Project costs to the Project Contractor.
3. We hereby represent and warrant that on the date of this Utilisation Request and the relevant Utilisation Date:
   * 1. each condition specified in clause ‎5.2 (Further conditions precedent) of the Facility Agreement is satisfied;
     2. the amount requested under paragraph 4 above does not, when added to any Loans made under the Facility Agreement, exceed the Available Facility;
     3. the copies of the documents attached to this Utilisation Request are true copies of the original documents; and
     4. the information contained in the documents mentioned in paragraph ‎(c) above is true and accurate and has not been amended or superseded at the date of this Utilisation Request.
4. The payment of the amount requested under paragraph 4 above should be made into the following bank account: [account].
5. We undertake to provide any other documentation reasonably requested by the Agent from time to time in connection with this Utilisation Request.

Yours faithfully,

For and on behalf of [***Borrower***]

|  |  |
| --- | --- |
| Signature:\* |  |
| Name: |  |
| Position: |  |
| Date: |  |

\*Signature of Borrower's Signatory



Form of Transfer Certificate

To: [] as Agent

From: [The Existing Lender] (the **"Existing Lender"**) and [The New Lender] (the **"New Lender"**)

Dated:

**Facility agreement dated [] and made between, inter alia, [Borrower] as borrower, the financial institutions listed therein as original lenders and [Agent] as agent, as amended from time to time (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is a Transfer Certificate. Terms defined in the Facility Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to clause ‎‎21.5 (Procedure for transfer) of the Facility Agreement:
   * 1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with clause ‎‎21.5 (Procedure for transfer) of the Facility Agreement, all of the Existing Lender's rights and obligations under the Facility Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Facility Agreement as specified in the schedule to this Transfer Certificate (the **"schedule"**).
     2. The proposed Transfer Date is [].
     3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause ‎‎28.2 (Contact details) of the Facility Agreement are set out in the schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph ‎(c) of clause ‎21.4 (Limitation of responsibility of Existing Lenders) of the Facility Agreement.
4. [The New Lender expressly confirms that it [can/cannot] exempt the Agent from the restrictions pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law as provided for in paragraph [c] of clause [‎23.1] (Appointment of the Agent).]
5. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
6. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
7. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

[*insert relevant details] [Facility Office address, fax number and attention details for notices and account details for payments*,]

|  |  |
| --- | --- |
| [**Existing Lender**] | [**New Lender**] |
| By: | By: |

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [].

[**Agent**]

By:



Form of Assignment Agreement

To: [] as Agent and [] as Borrower

From: [the Existing Lender] (the **"Existing Lender"**) and [the New Lender] (the **"New Lender"**)

Dated:

**Facility agreement dated [] and made between, inter alia, [Borrower] as borrower, the financial institutions listed therein as original lenders and [Agent] as agent, as amended from time to time (the "Facility Agreement")**

1. We refer to the Facility Agreement. This is an Assignment Agreement. Terms defined in the Facility Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to clause ‎21.6 (Procedure for assignment) of the Facility Agreement:
   * 1. The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Facility Agreement as specified in the schedule to this Assignment Agreement (the **"schedule"**).
     2. The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment and participations in Loans under the Facility Agreement specified in the schedule.
     3. The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph ‎(b) above.
3. The proposed Transfer Date is [].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause ‎‎28.2 (Contact details) of the Facility Agreement are set out in the schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph ‎(c) of clause ‎‎21.4 (Limitation of responsibility of Existing Lenders) of the Facility Agreement.
7. [The New Lender expressly confirms that it [can/cannot] exempt the Agent from the restrictions pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law as provided for in paragraph [c] of clause [‎23.1] (Appointment of the Agent).]
8. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with clause ‎21.6 (Procedure for assignment) of the Facility Agreement, to the Borrower of the assignment referred to in this Assignment Agreement.
9. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
10. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
11. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

**THE SCHEDULE**

**Rights to be assigned and obligations to be released and undertaken**

[*insert relevant details*]

[*Facility office address, fax number and attention details for notices and account details for payments*]

|  |  |
| --- | --- |
| [**Existing Lender**] | [**New Lender**] |
| By: | By: |

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [].

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[**Agent**]

By:



Timetables

|  |  |  |
| --- | --- | --- |
| **Clause** | **Description** | **Specified Time** |
| Clause ‎‎6.1 (Utilisation of the Facility) | Delivery of a Utilisation Request duly completed to the Agent's satisfaction | 11.00 a.m. on the day that is 10 Business Days prior to the proposed Utilisation Date |
| Clause ‎6.3 (Lenders' participation) | Agent notifies the Lenders of the Loan | 11.00 a.m. on the day that is 7 Business Days prior to the proposed Utilisation Date |
| Definition of "EURIBOR" | Fixing of EURIBOR or Interpolated Screen Rate | Quotation Day as of 11.00 a.m. Brussels time |
| Definition of "Interpolated Screen Rate" | Fixing of Interpolated Screen Rate | Quotation Day as of 11.00 a.m. |



MIGA's Anti-Corruption Guidelines

The purpose of these Guidelines is to clarify the meaning of the terms "**Corrupt** **Practices**", "**Fraudulent Practices**", "**Coercive Practices**", "**Collusive Practices**" and "**Obstructive Practices**" in the context of MIGA operations.

1. CORRUPT PRACTICES

A "**Corrupt Practice"** is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

* 1. **Interpretation**
     1. Corrupt Practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of Corrupt Practices.
     2. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor's books and records. Similarly, an investor will not be held liable for Corrupt or Fraudulent Practices committed by entities that administer bona fide social development funds or charitable contributions.
     3. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute Corrupt Practices unless the action violates applicable law.
     4. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.
     5. The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of "**Corrupt Practices**"relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

1. FRAUDULENT PRACTICES

A "**Fraudulent Practice"** is any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation.

* 1. **Interpretation**
     1. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a "**Fraudulent Practice**" for purposes of World Bank Group sanctions.
     2. Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in IFC, MIGA, or PRG operations. Similarly, other illegal behavior is not condoned but will not be sanctioned as a Fraudulent Practice under the World Bank sanctions program as applicable to IFC, MIGA and PRG operations.

1. COERCIVE PRACTICES

A "**Coercive Practice**" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party.

* 1. **Interpretation**
     1. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.
     2. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognisable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

1. COLLUSIVE PRACTICES

A "**Collusive Practice**"is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

* 1. **Interpretation**

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

1. OBSTRUCTIVE PRACTICES

An "**Obstructive Practice**" is: (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede the exercise of MIGA's access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice.

* 1. **Interpretation**

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

1. GENERAL INTERPRETATION

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.



MIGA's Performance Standards

MIGA Performance Standards as set out in Annex [4A] of the MIGA Guarantee, are set out below.

**Performance Standards**

Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts

Performance Standard 2: Labor and Working Conditions

Performance Standard 3: Resource Efficiency and Pollution Prevention

Performance Standard 4: Community Health, Safety and Security

Performance Standard 5: Land Acquisition and Involuntary Resettlement

Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources

Performance Standard 7: Indigenous Peoples

Performance Standard 8: Cultural Heritage

MIGA’s Performance Standards on Environmental and Social Sustainability may be found at: https://www.miga.org/Documents/MIGA\_Performance\_Standards\_October\_2013.pdf



MIGA Related Covenants

The Borrower shall, and where applicable shall cause the Implementing Entity to:

1. maintain audited accounts prepared in accordance with the International Public Sector Accounting Standards;
2. retain any other material information relating to the Loans and the Project;
3. obtain and maintain all required registrations, filings, declarations, authorizations, approvals, permits, consents, concessions and licenses required for the Loan and the Project in the Republic of Serbia;
4. promptly furnish MIGA with such accounts and information as MIGA may reasonably request from time to time and permit any duly authorized representatives of MIGA or CAO to examine and make copies of audits, accounts, books, financial statements, records, and any other material information relating to the Implementing Entity or the Project whenever required or wherever located;
5. within 30 days of MIGA’s request, submit all material evidence reasonably available to it as MIGA may reasonably request from time to time to evaluate and process a Claim;
6. comply with and abide by all laws and regulations of the Republic of Serbia in implementing and operating the Project, including Applicable E&S Laws and those that protect core labor standards, and comply with all of its obligations to the Republic of Serbia in connection with the Project;
   * 1. implement and operate the Project in compliance with the requirements of the MIGA Performance Standards, and in furtherance of the foregoing, carry out the actions and deliver to MIGA the documents specified in the ESAP, in each case, within the required time periods set forth therein and in form and substance satisfactory to MIGA;
     2. 1. within two days after its occurrence, notify MIGA of any Significant E&S Event, specifying in each case the nature of the incident, accident, or circumstance and any effect or impact (whether on-site or off-site) resulting or likely to result therefrom;
        2. as soon as practicable, but no later than 30 days after such Significant E&S Event, provide MIGA with a more detailed summary report that includes a description of such Significant E&S Event, and the measures that the Borrower and the Implementing Entity are taking or plans to take to address such Significant E&S Event and to prevent any future similar event; and
        3. subsequently keep MIGA informed of the on-going implementation of those measures and plans;
     3. within 90 days after the end of each fiscal year, deliver to MIGA the Annual Monitoring Report, in form and substance satisfactory to MIGA; and
        1. retain an independent environmental and social consultant to (i) conduct an environmental and social monitoring of the Project and (ii) review design and integration of the motorway and river regulation works, and
        2. quarterly during construction and every six months during construction and annually for the first two years of operations of the Project or 12 months following completion of the offset programme per the biodiversity offset management plan, whichever is the later, provide to MIGA the reports prepared by such independent environmental and social consultant within 5 days of receipt of the draft and final reports;
7. refrain from, in connection with the Project, engaging in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices, or Money Laundering;
8. apply the proceeds of the Loans towards the Project, and to refrain from making any material changes to the Project without the Lenders' consent as long as the Loans is outstanding;
9. use all reasonable efforts to preserve and protect the Project;
10. refrain from waiving any right, claim, cause of action or other remedy or accepting any offer of compensation in respect of any Loss;
11. at MIGA’s reasonable expense, cooperate fully with MIGA in the administration, preservation and protection of assets acquired by MIGA, and in the prosecution of any rights, claims, causes of action and other interests obtained by MIGA, pursuant to the terms of the MIGA Guarantee;
12. upon reasonable prior notice, permit MIGA or the Lenders, or any duly authorized representative of MIGA or the Lenders or any oversight or accountability unit of MIGA within the World Bank Group (including CAO), to visit and inspect the Project and any associated facilities, including to conduct environmental, social and developmental monitoring of the Project, the Borrower and, if applicable, any associated facilities; and
13. provide MIGA with the Development Effectiveness Indicators annually during the Guarantee Period, to be delivered to MIGA by March 31 of each calendar year; and
14. the Borrower shall send the items described in this schedule 9 (MIGA Related Covenants) at the following address:

**Multilateral Investment Guarantee Agency**

1818 H Street, NW

Washington, DC 20433

United States of America

Attention: Operations Department, Portfolio Management Unit (Infrastructure)

1. Development Effectiveness Indicators

As a member of the World Bank Group, MIGA tracks development outcomes of projects supported. This Schedule serves as a means for updating data estimates that were previously provided by the Lenders to MIGA during the underwriting process. MIGA requires that the following indicators be submitted annually in order to monitor and track the development outcomes of the Project during the Guarantee Period.

The Borrower is to complete the table below. Indicator definitions are included for reference purposes and best estimates are acceptable. All financial values should be clearly denominated in either Euros or Local Currency.

|  |  |  |
| --- | --- | --- |
| **INDICATOR** | **[*CALENDAR YEAR*] (January 1 to  December 31)** | |
| **Direct Employment – Operations and Maintenance (FTEs)** | Total: |  |
| Female: |  |
| **Direct Employment – Construction**  **(FTEs)** | Total: |  |
| Female: |  |
| **Payments to Government [(Guarantee Currency or Local Currency)]** | Total: |  |
| **Domestic Purchases [(Guarantee**  **Currency or Local Currency)]** | Total: |  |
| **E&S Management System** | [yes/no] |  |
| **Road Traffic** | Total:  Of which, Passenger car: |  |

**Definitions:**

**Direct Employment – Operations and Maintenance (FTEs) (Total/Female)**: Number of total, female and male full-time equivalent (FTE) employees as per local definition working for the Governing Authority or the Implementing Entity in connection with the Project at the end of the calendar year. This includes directly hired individuals and individuals hired through third party agencies as long as those individuals provide on-site services related to the operations and maintenance of the Project. Also, this includes full-time equivalent work by seasonal, contractual and part-time employees. Part-time jobs are converted to full-time equivalents on a pro-rata basis, according to the local definition (for example, if according to the local definition a working week equals 40 hours, a 24 hour/week job will be reported as a 0.6 FTE employee). If more detailed information is not available, a part-time job will be reported as a 0.5 employee. Seasonal or short-term jobs are pro-rated on the basis of the portion of the reporting period that was worked (for example, a full-time position for three months will be reported as a 0.25 FTE employee). *NOTE: Employment for the purpose of construction of the Governing Authority’s or the Operator’s hard assets in connection with the Project is not to be included in this indicator. For such jobs, please use the indicator Direct Employment – Construction.*

**Direct Employment – Construction (FTEs) (Total/Female):** Number of total, female and male full-time equivalent (FTE) construction workers employed for the construction of the Governing Authority’s or the Implementing Entity's hard assets in connection with the Project during the calendar year. Part-time jobs for construction are converted to full-time equivalents on a pro-rata basis, according to the local definition (for example, if according to the local definition a working week equals 40 hours, a 24 hour/week construction job will be reported as a 0.6 FTE construction worker). If more detailed information is not available, a part-time construction job will be reported as a 0.5 employee. Seasonal or short-term construction jobs are pro-rated on the basis of the portion of the reporting period that was worked (for example, a full-time construction job for three months will be reported as a 0.25 FTE construction worker). *NOTE: Employment for the Governing Authority or the Operator in connection with the Project’s operations and maintenance is not to be included in this indicator. For such jobs, please use the indicator Direct Employment – Operations and Maintenance.*

**Payments to Government:** All payments made by the Governing Authority or the Implementing Entity to all levels of the Host Government during the calendar year, minus direct subsidies received by the Governing Authority or the Implementing Entity during the calendar year. Payments to the Host Government include: (i) corporate taxes and/or profit taxes, (ii) sales taxes, (iii) net VAT, (iv) royalties, (v) dividends and related taxes, (vi) management and/or concession fees, (vii) license and permit fees, (viii) tax on payment of interest, and (ix) any other material payments. Total amount to be specified in Guarantee Currency or Local Currency.

**Domestic Purchases:** Monetary value of all goods and services purchased by the Governing Authority or the Implementing Entity from domestic suppliers during the calendar year. This includes raw materials, engineering and installation, security, gardening, maintenance, cleaning, and marketing and research from local companies). This excludes payments made to the Host Government, including government-provided services, and imports handled through a local facilitating agent. Total amount to be specified in Guarantee Currency or Local Currency.

**E&S Management System:** The indicator refers to the Governing Authority's or the Implementing Entity's E&S Management System and tracks whether the Governing Authority or the Implementing Entity is compliant with Performance Standard 1 and has an E&S Management System active and in place.

**Road Traffic:** Average annual daily traffic for the new motorway following construction, including all types of vehicle, such as passenger car, bus and light/medium/heavy/articulated truck.

SCHEDULE 11  
  
Environmental and Social Action Plan

Note: The ESAP also contains technical requirements (ESAP Actions 19-22). To be read in conjunction with the Facility Agreement.

| **ID** | **Performance Standard** | **Action** | **Completion Indicator 1** | **Completion Milestone** |
| --- | --- | --- | --- | --- |
| 1 | PS1 | Develop and implement an overarching Project Environmental and Social Management System (ESMS) for the lifecycle of the Project (construction and operations) which shall include:   1. A Project-specific Environmental and Social (E&S) Policy signed by each Project sponsor, i.e. Corridors of Serbia (CoS), Roads of Serbia (RoS) and Public Water Management Company (PWMC) Srbijavode; 2. Demonstrate the Project E&S governance structure supported by a detailed organogram of project management roles and responsibilities, describing the interfaces between CoS, RoS, PWMC, the Engineering, Procurement and Construction (EPC) Contractor and subcontractors; 3. An ESMS Handbook or Manual, and supporting documentation that addresses identification of risks and impacts; management programs; emergency preparedness and response, stakeholder engagement, and monitoring and review. 4. Project-specific Environmental Social Monitoring Management Plans (ESMMPs) (refer to ESAP Actions 4, 5, 8 and 9). | 1. Submit and implement Project Environmental and Social (E&S) Policy. 2. Project E&S governance structure. 3. ESMS Handbook/Manual and supporting documentation. 4. Project-specific ESMMPs (refer to ESAP Actions 4, 5, 8 and 9). | 1. Completed. 2. Within 30 days of CoG effective date. . 3. Within 30 days of CoG effective date. 4. Refer to ESAP Actions 4, 5, 8 and 9. |
| 2 | PS1 | The Project shall develop and maintain an Environmental and Social (E&S) Aspects and Impacts Register, based on the ESIA and Supplementary E&S Assessments, for:   1. Construction phase, and 2. Operations phase.   The Project shall update the register on a regular basis, and in the event of any changes to Project design or execution methods that are not assessed in existing E&S documentation. Updates to the register shall be supported by detailed supplementary impact assessments where required (e.g. changes to the telecommunications corridor, changes to downstream impacts following completion of 2D hydrological and hydraulic modelling). Additional mitigation, management and monitoring measures shall be developed as required, and be incorporated into the Construction Environmental and Social Monitoring and Management Plan (CESMMP) or Operations Environmental and Social Management and Monitoring Plan (OESMMP). | 1. E&S Aspects and Impacts Register for the construction phase. 2. E&S Aspects and Impacts Register for the operations phase. | 1. Completed. 2. Prior to the start of operations. |
| 3 | PS1 | The Project shall complete hydraulic and hydrological assessments, including:   1. Complete the 2D hydrological and hydraulic modelling in accordance with the Inception Report (JCWI, March 2021), including:    1. Assessment of impacts on sensitive receptors within the Project area and downstream of the extent of the 2D modelling domain, including potential for transboundary impacts;    2. Incorporation of appropriate climate change scenarios to the input hydrographs for the modelling;    3. Model runs with flood return periods of 1 in 1,000 (0.1%); 1 in 100 (1%); 1 in 50 (2%), 1 in 20 (5%), 1 in 10 (10%) 1 in 2 (50%); and 1 in 1.25 (80%);    4. Appropriate sensitivity testing; and    5. Independent verification/review of the modelling outputs; 2. Check and update the river regulation and motorway design to incorporate findings from the 2D hydrological and hydraulic modelling, including: 3. The design shall demonstrate that there is no change to the flood risk downstream as a result of changes to peak flow rates during all return periods; 4. The design shall demonstrate that post-development predicted flood levels should not be increased by more than 50 mm at any location within or downstream of the Project area. Should this not be possible, then mitigation measures should be implemented (e.g. flood defences) or compensation should be provided to any properties affected by increases in flood levels greater than 50 mm in accordance with the Applicable Standards; 5. The design shall demonstrate that any changes to predicted flood levels resulting from the Project have been accommodated by the motorway design; 6. Conduct a European Union Water Framework Directive (EU WFD) assessment of the chemical and ecological status of waterbodies affected by the Project, or other similar assessment; 7. Update the E&S Aspects and Impacts Registers and relevant CESMMPs and OESMMPs with the outcomes of the 2D hydrological and hydraulic modelling; 8. Liaise with local authorities in the development of a River Basin / Catchment Management Plan that sets out how organisations, stakeholders and communities will work together to improve the water environment. The plan shall include objectives and actions required to protect and improve the water environment, including integrated management of water and land resources and links to land-use planning, flood risk management plans and other relevant and other strategies; and 9. Design and implement an environmental monitoring programme in accordance with the EU WFD or other similar mechanism that enables ongoing evaluation of the chemical and ecological status of the West Morava River. | 1. 2D hydrological and hydraulic modelling outputs. 2. Revised river regulation design and , if required, flood mitigation or compensation measures. 3. WFD or similar assessment with any relevant recommendations incorporated in the river basin/ catchment plan and environmental monitoring program. 4. Updated E&S Aspects and Impacts Register and CESMMP / OESMMP. 5. River Basin / Catchment Management Plan. 6. Environmental monitoring programme for the chemical and ecological status of the West Morava River. | 1. i. Completed   ii to v. Prior to Completed.   1. Prior to the start of construction of river regulation structures. 2. Prior to the start of construction of river regulation structures. 3. Prior to the start of construction of river regulation structures. 4. Six (6) months following completion of relevant studies. 5. Three (3) months following completion of relevant studies. |
| 4 | PS1, PS2, PS3, PS6, PS8 | The Project shall develop and implement:   1. A Project Construction Environmental and Social Management and Monitoring Plan (CESMMP) with implementation measures that link to the Project ESMS, including stakeholder mapping, clear roles and responsibilities, evidence of engagement with third parties, and E&S capacity for CoS, the Jaroslav Cerni Water Institute (JCWI), the EPC Contractor and other stakeholders; 2. EPC Contractor CESMMP; and 3. Supporting policies, plans, procedures and checklists within the Project and/or EPC Contractor CESMMP, including but not be limited to: 4. Environmental and Social Policies (refer to ESAP Action 1); 5. Environmental Management Plan; 6. Environmental and Social Monitoring Plan, including monitoring locations, frequencies and standard operating procedures; 7. Occupational Health and Safety Management Plan; 8. Emergency Response and Incident Management Plan; 9. Pandemic Preparedness and Response Plan (supported by a COVID-19 risk assessment); 10. Grievance Redress Mechanism; 11. Spill Response Plan; 12. Water Quality Management Plan (including stormwater management); 13. Soil Erosion, Reinstatement and Landscape Management Plan; 14. Waste Management Plan; 15. Wastewater Management Plan; 16. Hazardous Materials Management Plan; 17. Social Management Plan (including community health and safety management and including cross-referencing to supporting plans); 18. Traffic Management Plan; 19. Biodiversity Management Plan; 20. Invasive Species Management Plan; 21. Security Management Plan (supported by a security risk assessment); 22. Camp Operation Plan (cross referencing pandemic preparedness and response measures); 23. Stakeholder Engagement Plan; 24. Cultural Heritage Management Plan (refer to ESAP Action #20); and 25. Management of Change Procedure. 26. Quarry Management Plan; | 1. Project CESMMP framework with implementation Plan. 2. EPC Contractor CESMMP. 3. Individual plans with supporting policies, methods, procedures, checklists. 4. Quarry Management Plan. | 1. Final within 30 days of CoG effective date, or substantially advanced and evidence of implementation demonstrated. 2. Final within 30 days of CoG effective date, or substantially advanced and evidence of implementation demonstrated. 3. Final within 30 days of CoG effective date, or substantially advanced and evidence of implementation demonstrated. 4. Final one month prior to commencement of quarry operations. |
| 5 | PS1, PS2, PS3, PS6, PS8 | The Project will develop and implement Operations Environmental and Social Management and Monitoring Plans (OESMMP) for the operation and maintenance of:   1. The motorway; and 2. The river regulation works.   The OESMMPs shall link to the Project ESMS and include supporting policies, plans, procedures and checklists, including but not limited to:   1. Environmental and Social Policies (refer to ESAP Action #1); 2. Environmental Management Plan; 3. Environmental and Social Monitoring Plan, including monitoring locations, frequencies and standard operating procedures; 4. Occupational Health and Safety Plan; 5. Emergency Preparedness and Response Plan; 6. Pandemic Preparedness and Response Plan; 7. Grievance Redress Mechanism; 8. Noise and Vibration Management Plan (specific to RoS); 9. Spill Response Plan; 10. Water Quality Management Plan (including stormwater management); 11. Soil Erosion, Reinstatement and Landscape Management Plan; 12. Waste Management Plan; 13. Wastewater Management Plan; 14. Hazardous Materials Management Plan; 15. Integrated Vegetation Management Plan (giving preference to biological, mechanical, and thermal vegetation control measures where practical and avoid the use of chemical herbicides); 16. Community Health and Safety Management Plan (including cross-referencing to supporting plans); 17. Traffic Management Plan; 18. Security Management Plan (specific to RoS); 19. Stakeholder Engagement Plan; 20. Biodiversity Management Plan; 21. Biodiversity Offset Management Plan and Biodiversity Monitoring and Evaluation Program (refer to ESAP Action #18); 22. Cultural Heritage Management Plan (refer to ESAP Action #20); and 23. Management of Change Procedure. | 1. OESMMP for the motorway. 2. OESMMP for the river regulation works. | 1. Six (6) months prior to the start of operations. 2. Six (6) months prior to the start of operations. |
| 6 | PS1, PS2, PS3, PS6 | The Project shall engage and/or retain E&S personnel required to deliver the Project in accordance with the Applicable Standards and provisions of this ESAP for:   1. The construction phase, including but not limited to: 2. CoS Environmental, Safety and Health Manager; 3. EPC Contractor Environmental, Safety and Health Manager; 4. EPC Contractor Deputy Environmental, Safety and Health Manager; 5. EPC Contractor Licensed Safety Engineer; 6. EPC Contractor Environmental Lead; 7. EPC Contractor Environmental, Safety and Health Specialists; 8. EPC Contractor Community Relations, Sustainability and Public Relations Manager; 9. EPC Contractor Community Relations, Sustainability and Public Relations Lead; 10. EPC Contractor Human Resources / Labour Relations Manager; 11. EPC Contractor Camp Manager; 12. EPC Contractor Community Relations Officers, including at least one female CRO; 13. EPC Contractor competent biologist; and 14. CoS competent archaeologist/cultural heritage specialist. 15. The operations phase, including but not limited to: 16. Environmental, Safety and Health Manager; 17. Environmental, Safety and Health Specialists; 18. Worker Welfare Specialists; and 19. Community Relations Officers, including at least one female CRO. | 1. For Construction: 2. Organogram and reporting structure; 3. Job descriptions; 4. Short profiles or curricula vitae; and 5. Signed contracts. 6. For Operations: 7. Organogram and reporting structure; 8. Job descriptions; 9. Short profiles or curricula vitae; and 10. Signed contracts. | 1. Completed. 2. Prior to the start of operations. |
| 7 | PS2 | The Project shall develop and implement a set of human resource (HR) policies and procedures for construction in line with the labour laws of Serbia and MIGA/IFC Performance Standard 2 requirements, including but not limited to:   1. Overarching HR Policy that is owned by CoS and is cascaded down to the EPC Contractor and subcontractors, including key commitments to non-discrimination, equal opportunity, prohibition of child and forced labour, and respect for the right to organise and collective bargaining; 2. Recruitment Plan; 3. Workers’ Code of Conduct, taking into account gender-based violence (GBV) and community health, safety and security; 4. Right of workers to unionize; 5. Demobilization Plan following completion of construction; 6. Workers’ Grievance Mechanism, including contractors and subcontractors (taking into account mechanism and training to receive GBV related complaints); 7. Worker accommodation monitoring plan and procedures in accordance with the Workers’ Accommodation: Processes and Standards Guidance Note (IFC/EBRD, 2009), to include provision for pre-occupancy audit, regular inspections and periodic audits; and 8. HR Monitoring Plan to verify compliance with the HR policies and procedures, including by contractors and subcontractors. | HR policies and procedures for construction. | Completed. |
| 8 | PS2 | The Project shall develop and implement a set of human resource (HR) policies and procedures in line with the labour laws of Serbia and MIGA/IFC Performance Standard 2 requirements, for operation as it relates to contractors and sub-contractors performing maintenance activities of:   1. The motorway; and 2. The river regulation works.   The HR policies and procedures shall include but not be limited to:   1. Overarching HR policy, including key commitments to non-discrimination, equal opportunity, prohibition of child and forced labour, and respect for the right to organise and collective bargaining; 2. Workers’ Code of Conduct (taking into account gender-based violence (GBV) and community health, safety and security); 3. Retrenchment Policy; and 4. Workers’ Grievance Mechanism. | HR policies and procedures for operations. | Six (6) months prior to the start of operations. |
| 9 | PS2 | The Project shall undertake a labour audit of each subcontractor semi-annually during construction. The labour audits will be conducted by the Labour Inspectorate of the Republic of Serbia, in accordance with the Project ESMS/ESMPs. | Labour audit report. | Every six months during construction. |
| 10 | PS3 | The Project shall prepare a Summary Design Report (of the final, detailed design) demonstrating compliance with the Applicable Standards (e.g. MIGA/IFC PS and WBG EHS Guidelines) for:   1. Sector 1; and 2. Sectors 2 and 3.   The Summary Design Reports should include but not be limited to:   1. Resource efficiency commitments (as well as alternative options to reduce greenhouse gas emissions); 2. Community safety considerations (e.g. use of lighting for pedestrians where required in underpasses); 3. Measures related to pedestrian safety (e.g. separation, crossings, use of fencing in consultation with project affected people); 4. Traffic safety (e.g. installation and maintenance of all signs, signals, markings, and other devices used to regulate traffic); 5. Interface management between the motorway and river regulation design and other third-party activities. | Summary Design Reports and copies of check certificates as evidence of the ongoing development of a compliant and safe design. | 1. For Sector 1: Terms of Reference within 30 days of CoG effective date, final within 60 days of CoG effective date. 2. Linked to the Project design schedule, but no later than three (3) months prior to the start of construction of Sectors 2 and 3. |
| 11 | PS3 | The Project shall conduct a Water Balance Study for the Project demonstrating sustainable water use prior to any water abstraction. This must demonstrate that that proposed groundwater abstraction does not impact community water availability and ecological systems. | Water Balance Study. | Three (3) months prior to any water abstraction. |
| 12 | PS3 | The Project shall prepare Materials Management Plan (MMP) covering excavation, processing, transport and disposal of construction materials. The MMP should include an earthworks strategy, cut and fill analysis, detailed sources and volumes of construction materials, alternative sources where there is any risk these might be insufficient, mass haulage strategy, processing approach, placement strategy, opportunities for beneficial reuse of materials, and take into account environmental and social aspects associated with borrow pit, quarry and unsuitable soil deposit site selection. Disposal and waste management approaches should be linked to the Construction Waste Management Plan. | Materials Management Plan. | 1. Over-arching MMP and details for Sector 1: Final within 30 days of CoG effective date, or substantially advanced and evidence of implementation demonstrated. 2. Sector 3: One (1) month prior to construction or substantially advanced and evidence of implementation demonstrated. 3. Sectors 2: Three (3) months prior to the start of construction. |
| 13 | PS3 | The Project shall:   1. Undertake a Stormwater Drainage Risk Assessment to confirm that temporary and permanent stormwater drainage infrastructure is adequately designed and has sufficient capacity to mitigate adverse impacts on land use, surface water and sensitive ecological sites; and 2. Incorporate any additional mitigation and management measures derived from the Stormwater Drainage Risk Assessment in the CESMMP and OESMMP. | 1. Stormwater Drainage Risk Assessment for: 2. Sector 1; and 3. Sectors 2 and 3. 4. Update of management plans for construction and operations: 5. CESMMP; and 6. OESMMP. | 1. i. Final within 30 days of CoG effective date, or substantially advanced and evidence of implementation demonstrated.   ii. Three (3) months prior to the start of construction of Sectors 2 and 3.   1. i. Prior to FC; and   ii. Six (6) months prior to the start of operations. |
| 14 | PS5 | The Project shall:   1. Implement the Resettlement Action Plan (RAP) for Sector 1; 2. Implement the RAP for Sector 3; 3. Finalize, disclose and implement the RAP for Sector 2; and 4. Update the RAPs for each Sector as required to take into account residual impacts post construction. | 1. RAP for Sector 1. 2. RAP for Sector 3. 3. RAP for Sector 2. 4. Updated RAPs as required. | 1. Completed 2. Prior to the start of construction of Sector 3. 3. Prior to the start of construction of Sector 2. 4. Post construction. |
| 15 | PS5 | The Project shall:   1. Undertake a Resettlement Completion Audit by an independent third party for each section of the motorway. The provision for these audits shall be included in the Project ESMS (refer ESAP Action #1); and 2. If required, develop a Resettlement Corrective Action Plan which includes a timeline, budget and resource allocation based on the findings of the Audit. | 1. Resettlement Completion Audits for Sector 1, Sector 2 and Sector 3. 2. Resettlement Corrective Action Plan. | 1. No later than 12 months following completion of the land acquisition process or livelihood restoration measures, whichever is later. 2. Within 60 days of Resettlement Completion Audit completion for each Sector. |
| 16 | PS6 | The Project shall implement the Biodiversity Management Plan (TBC, 2021). The BMP should be updated to include but not be limited to a clear schedule, roles and responsibilities, investment programme and progress reporting details. | Updated BMP. | Within 30 days of CoG effective date. |
| 17 | PS6 | The Project shall:   1. Undertake an assessment to assess the feasibility of the options identified in the Biodiversity Offset Strategy (TBC, 2021). The assessment will address both the technical and financial (and if relevant, political and social) feasibility of the options and identify who will implement the offset program; and 2. Develop and implement a Biodiversity Offset Management Plan (BOMP) identifying roles and responsibilities for the offset program, commitments from third parties, and detailed budget and financing. The BOMP should include a Biodiversity Monitoring and Evaluation Program (BMEP) that will set out requirements for monitoring, evaluation and adaptive management of the offset program. | 1. Feasibility assessment of the options identified in the Biodiversity Offset Strategy. 2. BOMP and BEMP. | 1. [Final within 60 days of CoG effective date;] 2. As per agreed programme agreed with Lenders and Project stakeholders. |
| 18 | PS6 | The Project shall incorporate mitigation measures identified in the ecosystem services assessment in the:   1. Construction phase E&S Aspects & Impacts Register and CESMMP; and 2. Operations phase E&S Aspects & Impacts Register and OESMMP. | 1. Updated Construction E&S Aspects & Impacts Register and CESMMP for: 2. Sector 1; and 3. Sectors 2 and 3. 4. Updated Operations E&S Aspects & Impacts Register and OESMMP. | 1. i. Completed.   ii. Three (3) months prior to the start of construction of Sectors 2 and 3.   1. Six (6) months prior to the start of operations. |
| 19 | PS8 | The Project shall:   1. Develop a and implement construction phase Cultural Heritage Management Plan (CHMP) that incorporates mitigation measures identified in the Cultural Heritage Impact Assessment (RINA, 2021). The construction phase CHMP shall be incorporated into the CESMMP (refer ESAP Action #5), with clear decision making process and roles and responsibilities for all relevant stakeholders, and should include but not be limited to: 2. A process for investigation of known cultural heritage sites likely to be affected by the Project and determine the detailed mitigation for the management of those sites using best available technique in compliance with PS8; 3. Timing for IPCM pre-construction surveys and links to the Project programme; 4. Scope and techniques to be used in pre-construction surveys; 5. Scope and approach for archaeological supervision during construction activities within cultural heritage sites; 6. Standards for protection of cultural heritage features within construction areas; 7. Protocol for recording the process demonstrating compliance with IPCM requirements and PS8 (including appropriate oversight by an appropriately experienced specialist); and 8. Notifications required throughout the cultural heritage management process: CoS, BEJV, IPCM, Lenders, and others as appropriate; 9. Appoint a dedicated archaeological supervisor to monitor earthworks activities; 10. Develop and implement a Chance Find Procedure; and 11. Develop and implement an operations phase CHMP and incorporate it into the OESMMP (refer ESAP Action #6). The operations phase CHMP shall set out roles and responsibilities for management and monitoring of any impacts to cultural heritage sites associated with Project operations. | 1. Construction phase CHMP. 2. Organogram and reporting structure, job description; short profile or curriculum vitae, and signed contract. 3. Chance Find Procedure. 4. Operations phase CHMP. | 1. Completed. 2. Completed. 3. Completed. 4. Six (6) months prior to the start of operations. |
| 20 | Technical / PS 3 | The Project shall provide evidence of compliance with national and international road safety and design standards, including but not limited to alignment standards, earthworks designs, drainage designs, pavement designs, structure designs and associated ancillary equipment (e.g. lines, signs, lighting, tolling, barriers and fencing). Compliance shall be demonstrated through provision of Check Certificates for Construction Designs and MoCTI Construction Permits for each Sector/Section. Certification by the Independent Checker (Energoprojekt) should make specific reference to the design accommodating the impacts of climate change where appropriate | Provision of Independent Check Certificates for Construction Designs and MoCTI Construction Permit. | One month prior to construction of each Sector/Section/work package. |
| 21 | Technical/ PS 3 | The Project shall demonstrate that the motorway and river regulation designs are aligned and integrated, and that they fully reflect the outcomes of the 2D hydrologic and hydraulic modelling. See also ESAP Action 3. | Provision of relevant design information for the motorway and river regulation to demonstrate alignment and compliance. | 1. For Sector 1: In Self-Monitoring reports to the Lenders. 2. Three (3) months prior to the start of construction of Sectors 2 and 3, and in Self-Monitoring reports to the Lenders. |
| 22 | Technical/ PS 3 | The Project shall provide regular updates regarding design, engineering, procurement and construction progress, including but not limited to programme progress, interfaces, critical path, staffing, budget progress, supplier control, design oversight, change management, built quality control, risk review, claims and contingency. An assessment of the accuracy of forecasting on all of the above shall be provided. | Design, Engineering, Procurement and Construction Progress Reports. | Quarterly throughout the construction period. |
| 23 | Technical/ PS 3 | The Project shall develop Operations and Maintenance (O&M) Manuals for the:   1. Motorway; and 2. River regulation.   The O&M Manuals shall include:   1. Plans for the maintenance required for the lifetime of the assets; 2. As-built drawings for the assets; 3. Design calculations for the assets; 4. Details of the materials used in the construction, including test results and certificates; 5. The names, addresses, and other contact information for all parties that helped design the assets; 6. The names, addresses, and other contact information for all contractors, sub-contractors, and materials and component suppliers that contributed to the construction of the assets; 7. Details of any problems encountered during construction that may have a long-term effect on the assets; 8. Any special access arrangements that would be required for future maintenance, including indicative budgets for maintenance activities; 9. Any special arrangements or precautions that would apply should the assets be demolished or removed; 10. For any reinforced concrete structures, as-built reinforcement drawings, bar bending schedules, and cover meter survey results; 11. Provision for management of climate change risks; and 12. Training requirements for operation of the assets.   The O&M Manuals shall include all features that are to be adopted as part of the motorway and river regulation, including but not limited to:   1. Attenuation or balancing ponds; 2. Drainage flow control devices; 3. Ground gas monitoring, venting, and control systems; 4. Ground improvement or land remediation measures; 5. Headwall and tailwall trash screens and security screens; 6. Infiltration ponds; 7. Significant earthworks, such as bank protection, embankments, channels and back-filled meanders; 8. Soakaways; 9. Structures, including bridges and culverts; 10. Swales; 11. Traffic signal controlled junctions; 12. Toll plazas; 13. Communications corridor; 14. Fences; and 15. Utilities. | Operations and Maintenance (O&M) Manuals for the:   1. Motorway; and 2. River regulation. | 1. One month prior to operations. 2. One month prior to operations. |

Notes: 1. All actions to be submitted and implemented to the satisfaction of the Lenders.

**SIGNATORIES**

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| For and on behalf of **REPUBLIC OF SERBIA** as Borrower Represented by the Government of the Republic of Serbia, acting by and through the Ministry of Finance | ) ) ) ) |  |

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