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**LOAN AGREEMENT**

**(VISP: Vital Infrastructure Emergency Liquidity Loan)**

between

**REPUBLIC OF KOSOVO**

and

**EUROPEAN BANK  
FOR RECONSTRUCTION AND DEVELOPMENT**

Dated 17.08. 2020

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## LOAN AGREEMENT

AGREEMENT dated 17.08. 2020 between **REPUBLIC OF KOSOVO**, represented by the Ministry of Finance (the "Borrower") and **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT** (the "Bank").

### PREAMBLE

**WHEREAS**, the Bank has been established to provide financing for specific projects to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative in certain countries committed to and applying the principles of multiparty democracy, pluralism and market economics;

**WHEREAS**, the Borrower intends to implement the Project as described in Schedule 1 which is designed to assist the Borrower in providing emergency liquidity funding to vital infrastructure providers affected by the COVID-19 pandemic crisis;

**WHEREAS**, the Borrower has requested assistance from the Bank in financing the Project;

**WHEREAS**, the Bank has agreed to make available (i) technical cooperation funds for an amount of up to EUR 40,000 (forty thousand euros) on a grant basis for the scoping phase of the Project (a) in relation to an environmental and social capacity building programme for the Eligible Sub-Borrowers on good international practice; (b) to support the PIU in developing and implementing a monitoring system that satisfies the Bank standards for the duration of the Project; and (ii) is in the process of arranging technical cooperation funds (a) for an amount to be determined to assist the Borrower in the development of a state ownership policy for publicly-owned enterprises based on international best practices and (b) for an amount of EUR 75,000 (seventy five thousand euros) for the engagement of an independent auditor to assist the Bank to verify the use of proceeds' compliance with the Eligibility Criteria; subject to the terms and conditions to be set forth in an agreement(s) to be entered into between the Bank and the Borrower;

**WHEREAS**, the Bank has agreed on the basis of, *inter alia*, the foregoing to make a loan to the Borrower in the amount of EUR 30,000,000 (thirty million euros), subject to the terms and conditions set forth or referred to in this Agreement.

**NOW, THEREFORE**, the parties hereby agree as follows:

## ARTICLE I - STANDARD TERMS AND CONDITIONS; DEFINITIONS

### Section 1.01. Incorporation of Standard Terms and Conditions

All of the provisions of the Bank's Standard Terms and Conditions dated 1 October 2018 are hereby incorporated into and made applicable to this Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications (such provisions as so modified are hereinafter called the "Standard Terms and Conditions"):

(a) Section 3.01(a) of the Standard Terms and Conditions shall, for purposes of this Agreement, be modified to read as follows:

"(a) Last Availability Date

The Borrower's right to draw down from the Available Amount shall:

(1) become effective (i) with respect to Tranche 1, on the Effective Date; and (ii) with respect to Tranche 2, subject to Section 6.03 of the Loan Agreement, on the date on which the Bank has notified the Borrower that Tranche 2 has become effective pursuant to Section 2.01(c) of the Loan Agreement; and

(2) terminate on the Last Availability Date or such later date as the Bank may in its discretion establish after receipt of a prior written request from the Borrower. The Bank shall promptly notify the Borrower of any such later date."

(b) Section 3.05(a) of the Standard Terms and Conditions shall, for purposes of this Agreement, be modified to read as follows:

"(a) The Borrower shall pay to the Bank a Commitment Charge at the rate specified in the Loan Agreement payable on the Available Amount plus any amount of the Loan that is subject to a Reimbursement Commitment and is not yet drawn down, provided that the Commitment Charge payable on the amount of the Loan subject to an unconditional Reimbursement Commitment shall be 0.5% per annum greater than the rate of the Commitment Charge specified in the Loan Agreement. The Commitment Charge shall accrue:

(1) for Tranche 1, from the date falling sixty (60) days after the date of the Loan Agreement; and

(2) for Tranche 2, from the date falling fifteen (15) days after the Tranche 2 Availability Date; and

(3) in the case of Commitment Charge payable on the amount of the Loan subject to an unconditional Reimbursement Commitment, from the date of issuance of such unconditional Reimbursement Commitment;

provided that the Commitment Charge shall accrue and be calculated on the same basis as interest under Section 3.04(b)(ii). The Commitment Charge shall be payable on each Interest Payment Date (even though no interest may be payable

on such date) commencing on the first Interest Payment Date following the Effective Date."

(c) A new paragraph (e) shall be introduced in Section 3.01 of the Standard Terms and Conditions to read as follows:

"(e) All capitalised terms used in this Section 3.01 and which are not otherwise defined herein shall have the meaning ascribed to such terms in the Loan Agreement."

(d) A new paragraph (e) shall be introduced in Section 3.05 of the Standard Terms and Conditions to read as follows:

"(e) All capitalised terms used in this Section 3.05 and which are not otherwise defined herein shall have the meaning ascribed to such terms in the Loan Agreement."

## **Section 1.02. Definitions**

Wherever used in this Agreement (including the Preamble and Schedules), unless stated otherwise or the context otherwise requires, the terms defined in the Preamble have the respective meanings given to them therein, the terms defined in the Standard Terms and Conditions have the respective meanings given to them therein and the following terms have the following meanings:

"Authorisation" means any consent, registration, filing, agreement, notarisation, certificate, license, approval, permit, authority or exemption from, by or with any Governmental Authority, whether given or withheld by express action or deemed given or withheld by failure to act within any specified time period and all corporate, creditors' and shareholders' approvals or consents.

"Basic Integrity Checks" means the integrity checks to ensure that the relevant third parties are not debarred by the Bank under the Enforcement Policy and Procedures or on the United Nations Security Council Consolidated List under Chapter VII of the United Nations Charter and World-Check screenings (including for the "Politically Exposed Person" determination, criminal convictions and related matters) for each Non-Substantial Contractor.

"Borrower's Authorised Representative" means the Ministry of Finance of the Borrower.

"Designated Performance Requirements" means the Performance Requirements 1 through 8 and 10 (or, as the context may require, any one of such Performance Requirements) of the Performance

Requirements dated April 2019 and related to the Bank's Environmental and Social Policy dated April 2019.

"Draft Law on Publicly Owned Enterprises"

means the draft law on Publicly Owned Enterprise dated on 29 June 2018, publicly available at the website of the Office on Good Governance – Prime Minister's Office at: <https://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40415>.

"EBRD's Environmental and Social Policy"

means the EBRD's Environmental and Social Policy dated April 2019, as amended from time to time.

"Eligibility Criteria"

means the following criteria:

- a. The Loan must be on-lent in its entirety to the Eligible Sub-Borrowers and cannot be kept for budget purposes within the Borrower;
- b. All Eligible Sub-Borrowers must be able to demonstrate a loss of revenues due to the COVID-19 pandemic, and due to measures put in place by the Government of the Republic of Kosovo to respond to the crisis, and be confirmed as going concerns prior to the COVID-19 crisis;
- c. Evidence that, in the absence of liquidity support, there would be a significant risk of collapse in the infrastructure service provision by the Eligible Sub-Borrower;
- d. Each Sub-Loan per Eligible Sub-Borrower shall be capped at an amount EUR 5,000,000 (five million euros);
- e. The proceeds of the Loan must be used by the Eligible Sub-Borrowers to meet short-term obligations payable within 12 months from the date of the relevant Sub-Loan Agreement or, if paid prior to signing of the Sub-Loan Agreement, within 12 months from the date of when they were paid which shall be not earlier than 1 May 2020, to cover, *inter alia*, payments to suppliers, employees (in respect only of employees of Eligible Sub-Borrowers which are either state-owned enterprises providing vital infrastructure services or municipally owned companies providing vital infrastructure services), or payments to continue essential operations and maintenance under already locally procured contracts, to the exclusion of any payment of Taxes or payment of capital expenditure;

- f. The Bank shall assess each Eligible Sub-Borrower's integrity profile prior to any Drawdown in accordance with the Bank's internal integrity standards and shall have the sole discretion to deselect the relevant applicant;
- g. Each Eligible Sub-Borrower shall agree to the application of the Enforcement Policy and Procedures under Schedule 1 to the Sub-Loan Agreement;
- h. In the case that the proceeds of a Drawdown will be used by an Eligible Sub-Borrower, which is a municipality, municipally owned company, or a non-corporatized state-owned enterprise (as assessed by the Bank at its sole discretion) to make a Substantial Payment, the Bank shall assess and approve each such Substantial Contractor prior to any Drawdown in accordance with the Bank's internal integrity standards and such Substantial Contractor shall enter into the Form of Integrity Undertaking contemplated under the Subsidiary Loan Agreement with the Eligible Sub-Borrowers, whereby such Substantial Contractor agrees, as a condition to receiving the Loan funds, *inter alia*, to the application of the Enforcement Policy and Procedures, as well as to the Bank's access, audit and inspection rights; and
- i. In the case that the proceeds of a Drawdown will be used by an Eligible Sub-Borrower, which is a municipality, municipally owned company, or a non-corporatized state-owned enterprise (as assessed by the Bank at its sole discretion) to make a Non-Substantial Payment, the Bank shall conduct the Basic Integrity Checks for each Non-Substantial Contractor and shall confirm the eligibility of such Non-Substantial Contractor as a condition to receiving the Loan funds.

"Eligible Sub-Borrower"

means a state-owned enterprise providing vital infrastructure services, a municipally-owned company providing vital infrastructure services, or a municipality providing vital infrastructure services.

"Enforcement Policy and Procedures"

means the Bank's Enforcement Policy and Procedures dated 4 October 2017, as amended from time to time, and any policy or procedures adopted by EBRD as a successor to or replacement of such policy and procedures.

"Environmental and Social Client Disclosure Documentation"	means the written information furnished by or on behalf of the Borrower to the Bank containing information relating, inter alia, to Environmental and Social Matters and any amendment or supplement to such information which is accepted by the Bank.
"Environmental and Social Law"	means any applicable law in any relevant jurisdiction, concerning the protection of the environment, workers, communities or project affected people.
"Environmental and Social Matter"	means any matter that is the subject of any Environmental and Social Law or any Designated Performance Requirement.
"Fiscal Year"	means the Borrower's fiscal year commencing on 1 <sup>st</sup> of January of each year.
"Generally Accepted Accounting Principles"	means accounting principles generally accepted in the Republic of Kosovo and consistently applied.
"Governmental Authority"	means the government of the Borrower, or of any political subdivision thereof, whether state, regional or local, and any agency, authority, branch, department, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government or any subdivision thereof (including any supra-national bodies), and all officials, agents and representatives of each of the foregoing.
"Independent Environmental and Social Consultant"	means a firm of consultants as may be selected from time to time by the Bank.
"Non-Substantial Contractor"	means a third party (e.g. a contractor or sub-contractor) which may receive a Non-Substantial Payment from the Loan funds.
"Non-Substantial Payment"	means either (i) payments to a single contractor in the aggregate amount of EUR 75,000 (seventy five thousand euros) or below per annum provided that the annual contract value is of EUR 75,000 (seventy five thousand euros) or below, or (ii) payments to a single contractor in



the aggregate amount of EUR 75,000 (seventy five thousand euros) or below per annum in case the contract value is not determinable; to the exclusion of any Permitted Third Party Payment.

"Permitted Third Party Payments"

mean payments (i) to third parties for the procurement of (a) utility services including telecommunication service where such service provider is the only choice of supplier; (b) office consumables and incidental office equipment and services; (c) insurance cover; and (ii) to employees for the salaries and associated personnel expenses.

"Permitted Third Party Contractor"

means a party to which a Permitted Third Party Payment is made.

"PIU"

means the project implementation unit referred to in Section 3.02.

"Sub-Loan"

means a loan satisfying the Eligibility Criteria which is made or proposed to be made by the Borrower to an Eligible Sub-Borrower out of the proceeds of a Drawdown.

"Subsidiary Loan Agreement"

means the loan agreement(s) to be entered into between the Borrower and the Eligible Sub-Borrower(s) pursuant to Section 3.01(a), as such loan agreement(s) may be amended from time to time, which shall be in form and substance satisfactory to the Bank and substantially in the form of Schedule 4 (*Form of Subsidiary Loan Agreement*), and which shall include, amongst other:

- a. a minimum tenor of one year;
- b. the application of the Enforcement Policy and Procedures to ensure that the Bank's integrity standards are met and adhered to;
- c. compliance by each Eligible Sub-Borrower's integrity profile prior to any Drawdown with the Bank's internal integrity standards with a sole discretion of the Bank to deselect the relevant applicant;
- d. agreement by each Eligible Sub-Borrower to the application of the Enforcement Policy and Procedures under Schedule 1 to the Sub-Loan Agreement;
- e. in the case that the proceeds of a Drawdown will be used by an Eligible Sub-Borrower, which is a

municipality, municipally owned company, or a non-corporatized state-owned enterprise (as assessed by the Bank at its sole discretion), to make a Substantial Payment, the Eligible Sub-Borrower shall procure that the Bank has assessed and approved each such Substantial Contractor prior to any Drawdown in accordance with the Bank's internal integrity standards, and that such Substantial Contractor has entered into the Form of Integrity Undertaking contemplated under Schedule 2 to the Subsidiary Loan Agreement with the Eligible Sub-Borrowers, whereby such Substantial Contractor agrees, as a condition to receiving the Loan funds, *inter alia*, to the application of the Enforcement Policy and Procedures, as well as to the Bank's access, audit and inspection rights;

- f. in the case that the proceeds of a Drawdown will be used by an Eligible Sub-Borrower, which is a municipality, municipally owned company, or a non-corporatized state-owned enterprise (as assessed by the Bank at its sole discretion) to make a Non-Substantial Payment, the Eligible Sub-Borrower shall procure that the Bank has conducted the Basic Integrity Checks for each Non-Substantial Contractor and has confirmed the eligibility of such Non-Substantial Contractor as a condition to receiving the Loan funds;
- g. the provision by the Borrower to the Bank of a signed declaration from the Ministry of Finance of the Republic of Kosovo that the Eligibility Criteria have been met by the Eligible Sub-Borrowers by the time of disbursement of these funds under the Loan under Schedule 1 to the Subsidiary Loan Agreement;
- h. a requirement for the Eligible Sub-Borrowers to conduct their businesses in compliance with the national regulation related to environmental, health and safety and labour conditions;
- i. a requirement for the Eligible Sub-Borrowers to use the Loan funds in compliance with the Eligibility Criteria; and
- j. a requirement not to use the proceeds of the Loan to finance (i) any entity or individual debarred by the Bank under the Enforcement Policy and Procedures or on the United Nations Security Council Consolidated List under Chapter VII of the United Nations Charter or (ii) contracts with an entity that has a shareholder who is a "Politically Exposed Person" as defined by

the Financial Action Task Force, or who is a "related party" as defined by the International Accounting Standard 24, or where there is an actual or apparent conflict of interest between the contracting parties; for the avoidance of doubt, no Eligible Sub-Borrower, Substantial Contractor, Non-Substantial Contractor or Permitted Third Party Contractor, shall fall, for the purposes of the Sub-Loan, within the scope of limbs (i) or (ii).

"Substantial Contractor"

means a third party (e.g. a contractor or subcontractor) who (i) currently has a contract or a series of contracts with an Eligible Sub-Borrower that, in aggregate, have a total contract value in excess of EUR 75,000 (seventy five thousand euros); or (ii) whose actual and expected invoices and/or requests for payments to an Eligible Sub-Borrower in the current 12 (twelve) month accounting period, in aggregate, exceed or are expected to exceed EUR 75,000 (seventy five thousand euros).

"Substantial Payment"

means a payment or payments using the Loan funds to a Substantial Contractor; to the exclusion of any Permitted Third Party Payment.

"Tranche 1"

has the meaning given to it in Section 2.01(b)(1).

"Tranche 2"

has the meaning given to it in Section 2.01(b)(2).

"Tranche 2 Availability Date"

means the date as of which Tranche 2 has become committed and available for Drawdowns as notified by the Bank to the Borrower. Such decision shall be made at the Bank's discretion in accordance with Section 2.01(c).

### **Section 1.03. Interpretation**

In this Agreement, a reference to a specified Article, Section or Schedule shall, except where stated otherwise in this Agreement, be construed as a reference to that specified Article or Section of, or Schedule to, this Agreement.

## **ARTICLE II - PRINCIPAL TERMS OF THE LOAN**

### **Section 2.01. Amount and Currency**

(a) The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, the amount of EUR 30,000,000 (thirty million euros).

- (b) The Loan shall consist of two Tranches, as follows:
- (1) Tranche 1 in the amount of EUR 14,000,000 (fourteen million euros), to finance the Borrower's immediate emergency liquidity support to vital infrastructure providers ("Tranche 1"); and
  - (2) Tranche 2 in the amount of EUR 16,000,000 (sixteen million euros), to finance, as required, the Borrower's liquidity support to vital infrastructure providers until their revenues and collections are restored ("Tranche 2").
- (c) Notwithstanding anything to the contrary, expressed or implied, in this Agreement, Tranche 2 is uncommitted and will become committed only upon the Bank determining in its absolute discretion that it is prepared to make Tranche 2 available and notifying the Borrower in writing that Tranche 2 has been committed.

**Section 2.02. Other Financial Terms of the Loan**

- (a) There shall be a maximum of 1 (one) Drawdown in respect of each use of the Loan funds for each Eligible Sub-Borrower.
- (b) The Minimum Prepayment Amount shall be EUR 500,000 (five hundred thousand euros).
- (c) The Minimum Cancellation Amount shall be EUR 500,000 (five hundred thousand euros).
- (d) The Interest Payment Dates shall be 16 November and 16 May of each year.
- (e) (1) The Borrower shall repay the Loan in four equal (or as nearly equal as possible) semi-annual instalments on 16 November and 16 May of each year, with the first Loan Repayment Date being 16 November 2021 and the last Loan Repayment Date being 16 May 2023.
- (2) Notwithstanding the foregoing, in the event that (i) the Borrower does not draw down the entire Loan amount prior to the first Loan Repayment Date specified in this Section 2.02.(e), and (ii) the Bank extends the Last Availability Date specified in Section 2.02.(f) below to a date which falls after such first Loan Repayment Date, then the amount of each Drawdown made on or after the first Loan Repayment Date shall be allocated for repayment in equal amounts to the several Loan Repayment Dates which fall after the date of such Drawdown (with the Bank adjusting the amounts so allocated as necessary so as to achieve whole numbers in each case). The Bank shall, from time to time, notify the Borrower of such allocations.
- (f) The Last Availability Date shall be:
- (i) in respect of Tranche 1, the date falling 6 months after the date of this Agreement or such later date that the Bank may in its discretion establish and notify to the Borrower, and

(ii) in respect of Tranche 2, the earliest between (a) the date falling 6 months after the Tranche 2 Availability Date and (b) the date falling 12 months after the date of this Agreement, or such later date that the Bank may in its discretion establish and notify to the Borrower.

- (g) The rate of the Commitment Charge shall be 0.5% per annum.
- (h) The Loan is subject to a Variable Interest Rate, in accordance with the provisions of Section 3.04(b) of the Standard Terms and Conditions.

### **Section 2.03. Drawdowns**

The Available Amount may be drawn down from time to time in accordance with the provisions of Schedule 2 to finance (1) short-term obligations payable within 12 months from the date of the relevant Sub-Loan Agreement or, if paid prior to signing of the Sub-Loan Agreement, within 12 months from the date of when they were paid which shall be not earlier than 1 May 2020, to cover, *inter alia*, payments to suppliers, employees (in respect only of employees of Eligible Sub-Borrowers which are either state-owned enterprises providing vital infrastructure services or municipally owned companies providing vital infrastructure services), or payments to continue essential operations and maintenance under already locally procured contracts, to the exclusion of any payment of Taxes or payment of capital expenditures and (2) the Front-end Commission.

## **ARTICLE III - EXECUTION OF THE PROJECT**

### **Section 3.01. Other Affirmative Project Covenants**

In addition to the general undertakings set forth in Article IV of the Standard Terms and Conditions, the Borrower shall, unless the Bank otherwise agrees:

- (a) Make available to the Eligible Sub-Borrowers, pursuant to Subsidiary Loan Agreement(s) in form and substance satisfactory to the Bank, the proceeds of the Loan on terms and conditions acceptable to the Bank;
- (b) Seek to make the Loan available to all Eligible Sub-Borrowers on equal basis with the worst affected Eligible Sub-Borrowers receiving priority access to the Loan funds;
- (c) Exercise its rights under the Subsidiary Loan Agreement(s) in such manner as to protect the interests of the Borrower and the Bank, to comply with the provisions of this Agreement and to accomplish the purposes for which the Loan is made;
- (d) Not (and procure that the relevant Eligible Sub-Borrower does not), except as the Bank otherwise agrees, assign, amend, abrogate or waive any provision of the Subsidiary Loan Agreement(s);
- (e) Cause the relevant Eligible Sub-Borrower to perform all of its obligations under the Subsidiary Loan Agreement(s);

- (f) Maintain the corporate existence of the Eligible Sub-Borrowers in compliance with all applicable laws;
- (g) Not enter into any transaction or series of transactions (whether related or not and whether voluntary or involuntary) to directly or indirectly sell, transfer or otherwise dispose of its participation (or any part thereof) in the Eligible Sub-Borrowers' charter capital, including by way of privatisation or otherwise;
- (h) Procure the review by the Ministry of Economy and Environment of the Draft Law on Publicly Owned Enterprises and obtain parliamentary ratification for such revised law as soon as conditions allow, but not later than the last Loan Repayment Date;
- (i) With the support of the technical assistance provided by the Bank, develop and adopt during the life of the Loan a state ownership policy for publicly-owned enterprises based on international best practices;
- (j) Facilitate the technical assistance programme to be provided by the Bank for:
- (1) capacity building of the Eligible Sub-Borrowers on good international practices in relation to environmental and social issues in the relevant sector;
  - (2) supporting the PIU in developing and implementing a monitoring system that satisfies the Bank standards, for the duration of the Project; and
  - (3) the development of a state ownership policy for publicly-owned enterprises based on international best practices;
- (k) Not use the proceeds of the Loan to finance (i) any entity or individual debarred by the Bank under the Enforcement Policy and Procedures or on the United Nations Security Council Consolidated List under Chapter VII of the United Nations Charter or (ii) contracts with an entity that has a shareholder who is a "Politically Exposed Person" as defined by the Financial Action Task Force, or who is a "related party" as defined by the International Accounting Standard 24, or where there is an actual or apparent conflict of interest between the contracting parties; for the avoidance of doubt, no Eligible Sub-Borrower, Substantial Contractor, Non-Substantial Contractor or Permitted Third Party Contractor, shall fall, for the purposes of this Loan, within the scope of limbs (i) or (ii).

### **Section 3.02. Project Implementation Unit**

In order to coordinate, manage, monitor and evaluate all aspects of Project implementation, the Borrower shall, unless otherwise agreed with the Bank, organise and at all times during execution of the Project operate a project implementation unit which, for the avoidance of doubt, is established at and including, amongst others, staff from the monitoring unit for Publicly Owned Enterprises at the Ministry of Economy and Environment of the Republic of Kosovo.

### **Section 3.03. Procurement**

(a) For purposes of Section 4.03 of the Standard Terms and Conditions, the EBRD Procurement Rules shall not apply.

(b) Notwithstanding the provisions of paragraph (a) above, consultants to be employed by the Borrower to assist in carrying out Part B of the Project (including assistance to the PIU) shall be selected in accordance with the procedures set out in Section V of the EBRD Procurement Rules.

(c) Contracts for the purposes of Section 3.03(b) above shall be subject to the review procedures set out in the EBRD Procurement Rules and shall be subject to prior review by the Bank.

### **Section 3.04. Environmental and Social Compliance Covenants**

Without limiting the generality of Sections 4.02(a), 4.04(a)(iii), and 5.02(c)(iii) of the Standard Terms and Conditions, and unless the Bank otherwise agrees, the Borrower shall:

(a) Conduct its business in accordance with the Designated Performance Requirements;

(b) Conduct its business in accordance with all applicable national environmental, social and health and safety legislation and employment regulations and standards in effect in the Republic of Kosovo;

(c) Not use the proceeds of the Loan to finance any of the activities listed in Appendix 1 (*EBRD Environmental and Social Exclusion List*) to EBRD's Environmental and Social Policy; and

(d) Ensure that appropriate management and staff resources are assigned for the implementation of environmental and social monitoring procedures in relation to the Eligible Sub-Borrowers.

### **Section 3.05. Consultants**

(a) In order to assist in the implementation of the Project, the Borrower shall, unless otherwise agreed with the Bank, employ or cause to be employed, as required, and use consultants whose qualifications, experience and terms of reference are satisfactory to the Bank, including:

(1) consultants to assist in the implementation of Part B of the Project; and

(2) consultants to assist the PIU.

(b) The Borrower shall provide, without charge, to any consultants engaged to assist in matters relating to the Project or the operations of the Borrower all facilities and support necessary for the carrying out of their functions, including office space,

photocopying equipment and supplies, secretarial services and transportation, as well as all documents, materials and other information that may be relevant to their work.

### **Section 3.06. Reporting Frequency and Submission Requirements**

(a) Commencing from the Effective Date, until the full amount of the Loan has been repaid or cancelled, the Borrower shall submit to the Bank annual reports on Environmental and Social Matters arising in relation to the Borrower or the Project, as referred to in Section 5.02(c)(iii) of the Standard Terms and Conditions, within 90 days after the end of the year being reported on. Such reports shall include information on the following specific matters:

(1) information on compliance by the Borrower with the Designated Performance Requirements as described in Section 3.04(a);

(2) information on how the Borrower has monitored the compliance with the Designated Performance Requirements by any contractor engaged for the Project and a summary of any material non-compliance by such contractor with the Designated Performance Requirements and of any measures taken to remedy such non-compliance;

(3) information on implementation of the stakeholder engagement plan and grievance mechanism required by Designated Performance Requirement 10, including a summary of any grievances received and how such grievances were resolved;

(4) information on compliance by the Borrower with Environmental and Social Laws in relation to the Project, including a description of any claim, proceeding, order or investigation commenced or threatened against the Borrower, the status of any Authorisation required for the Project, the results of any inspection carried out by any regulatory authority, any violation of applicable laws, regulations or standards and any remedial action or fine relating to such violation, a summary of any material notice, report and other communication on Environmental and Social Matters relating to the Project submitted by the Borrower to any regulatory authority and any other circumstances giving rise to liability of the Borrower for any Environmental and Social Matter;

(5) information on occupational health and safety management and the occupational health and safety record of the Project including the rates of accidents, lost time incidents and near-misses, any preventive or mitigative measures taken or planned by the Borrower, any staff training on occupational health and safety and any other initiatives in relation to occupational health and safety management which have been implemented or planned by the Borrower;

(6) a summary of any change in Environmental and Social Laws which may have a material effect on the Project;

(7) copies of any information on Environmental and Social Matters periodically submitted by the Borrower to its shareholders or the general public;



(b) Commencing from the Effective Date, the Borrower shall, through the PIU, submit the periodic Project reports referred to in Section 4.04(a)(v) of the Standard Terms and Conditions semi-annually, within 60 days after the end of the period being reported on, until the Project has been completed. Such reports shall include the following specific features:

(1) Details on the use of proceeds of the Loan confirming, amongst other things, compliance with the Eligibility Criteria for the use of the Loan funds for every Sub-Loan allocated to an Eligible Sub-Borrower, including a summary of the decision to allocate such Sub-Loan, the outstanding amount of the Loan at the date of the reporting, and any other issues that may have arisen in connection with the use of the Loan funds and the respective Eligible Sub-Borrower;

(2) The following general information:

(A) key personnel changes in the staff of the PIU or the consultants;

(B) matters that may affect the cost of the Project; and

(C) any development or activity likely to affect the economic viability of any Part of the Project.

(3) Financial statements showing details of the expenditures incurred for the Loan proceeds during the period being reported on, together with a statement showing:

(A) original cost estimates;

(B) revised cost estimates, if any, with reasons for changes;

(C) original estimated expenditures and actual expenditures to date;

(D) reasons for variations of actual expenditures to date from original estimated expenditures to date; and

(E) estimated expenditures for the remaining quarters of the year.

(4) A brief statement of the status of compliance with each of the covenants contained in this Agreement.

(c) Immediately upon the occurrence of any incident or accident relating to the Borrower or the Project which has or is likely to have a significant adverse effect on the environment, workers, or on public or occupational health or safety, the Borrower shall inform the Bank and promptly thereafter give the Bank notice thereof specifying the nature of such incident or accident and any steps the Borrower is taking to remedy the same. Where an incident involves sensitive information in relation to a person or any risk of retaliation, the initial notice to the Bank shall not include any details of the identity of the persons involved. Without limiting the generality of the foregoing,

(1) an incident or accident relates to the Project if it occurs on any site used for the Project or, if it is caused by Project workers and/or facilities, equipment, vehicles or vessels used for or relating to the Project (whether or not being used

on any site of the Project and whether or not being used by authorised or unauthorised persons);

(2) an incident or accident is considered to have a significant adverse effect on the environment or on public or occupational health or safety if:

(A) any applicable law requires notification of such incident or accident to any governmental authority,

(B) such incident or accident involves fatality of any person (whether or not such person is employed by the Borrower),

(C) more than one person (whether or not such persons are employed by the Borrower) has received serious injury requiring hospitalisation,

(D) such incident involves violence and harassment, bullying, intimidation, and/or exploitation, including any form of gender-based violence;

(E) such incident involves forced and child labour relating to the Project; or

(F) such incident or accident has become, or is likely to become, public knowledge whether through media coverage or otherwise.

(d) The Borrower shall promptly notify the Bank of any significant protest or petition by workers or members of the public directed at or relating to the Borrower or the Project which might have a material adverse effect on the Borrower or the Project or which has become, or is likely to become, public knowledge through media coverage or otherwise. Within ten days following any such notification, the Borrower shall submit a report satisfactory to the Bank specifying the outcome of the Borrower's investigation into such protest, and any steps taken, or proposed to be taken, by the Borrower to resolve the issues raised in the protest or petition.

(e) The Borrower shall promptly notify the Bank of any proposal to amend, suspend or repeal any material provision of the Statutes of the Eligible Sub-Borrowers and advise the Bank of any material change to their corporate existence.

## ARTICLE IV - FINANCIAL COVENANTS

### Section 4.01. Financial Records and Reports

(a) The Borrower shall, in respect of the Eligible Sub-Borrowers, maintain procedures, records and accounts adequate to reflect, in accordance with Generally Accepted Accounting Principles, the operations, resources and expenditures relating to the Project and to monitor and record the progress of the Project (including its costs and the benefits to be derived from it).

(b) The Borrower shall:

- (1) have the records and accounts referred to in Section 4.01(a) for each Fiscal Year audited by independent auditors in accordance with Generally Accepted Accounting Principles;
- (2) furnish to the Bank as soon as available, but in any case not later than six months after the end of each Fiscal Year, the report of such audit by such auditors of such scope and in such detail as the Bank may reasonably request; and
- (3) permit representatives of the Bank to visit the premises where the business of the Borrower is conducted and furnish to the Bank such other information concerning the use of the Loan funds, such records and accounts for the use of Loan proceeds, and the audit thereof, as the Bank may from time to time reasonably request.

## **ARTICLE V - SUSPENSION; ACCELERATION**

### **Section 5.01. Suspension**

The following are specified for purposes of Section 7.01(a)(xvii) of the Standard Terms and Conditions:

- (a) the legislative and regulatory framework applicable to the Eligible Sub-Borrowers in the territory of the Borrower shall have been amended, suspended, abrogated, repealed or waived in a manner other than as approved by the Bank in writing;
- (b) the Statutes of the Eligible Sub-Borrowers shall have been amended, suspended, abrogated, repealed or waived, in a manner which would affect the Project or their ability to perform any of their obligations under the relevant Subsidiary Loan Agreement(s);
- (c) unless the Bank otherwise agrees, Control of the Eligible Sub-Borrowers shall have been transferred to a party other than the Borrower or to an entity ultimately controlled by the Borrower; or
- (d) The Eligible Sub-Borrower(s) shall have failed to perform any of its obligations under the relevant Subsidiary Loan Agreement(s).

### **Section 5.02. Acceleration of Maturity**

The following is specified for purposes of Section 7.06(f) of the Standard Terms and Conditions:

- (a) any event specified in Section 5.01 shall have occurred and shall have continued for sixty (60) days after notice thereof shall have been given by the Bank to the Borrower.

## ARTICLE VI - EFFECTIVENESS

### Section 6.01. Conditions Precedent to Effectiveness

The following is specified for purposes of Section 9.02(c) of the Standard Terms and Conditions as additional condition to the effectiveness of this Agreement:

(a) The Parliament of the Republic of Kosovo has duly ratified this Agreement, such ratification being published in the Official Gazette of the Republic of Kosovo and the Borrower has provided to the Bank satisfactory evidence thereof.

### Section 6.02. Conditions Precedent to All Drawdowns of Tranche 1

Without prejudice to the provisions of Section 6.01 of this Agreement and Sections 9.01, 9.02 and 9.03 of the Standard Terms and Conditions in relation to the effectiveness of this Agreement, the obligation of the Bank to make all Drawdowns in relation to Tranche 1 shall be subject to the prior fulfilment, in form and substance satisfactory to the Bank, or at the sole discretion of the Bank the waiver, whether in whole or part and whether subject to conditions or unconditional, of the following conditions precedent:

(a) the Subsidiary Loan Agreement(s) between the Borrower and the Eligible Sub-Borrower(s) in form and substance acceptable to the Bank shall have been signed for the relevant disbursement amount and copies thereof shall have been provided to the Bank;

(b) provision by the Borrower to the Bank of satisfactory supporting documentation evidencing compliance with the Eligibility Criteria for the use of the Loan funds by the Eligible Sub-Borrowers for the relevant disbursed amount; and

(c) in respect of the first Drawdown of Tranche 1 only, engagement by the Borrower of an independent auditor, satisfactory to the Bank, and under terms of reference acceptable to the Bank, to assess the Borrower's compliance with the Eligibility Criteria for the use of the Loan funds in respect of amounts of Tranche 1.

### Section 6.03. Conditions Precedent to the Availability and Drawdowns of Tranche 2

(a) Tranche 2 will be made available at the full discretion of the Bank. Such determination shall be subject, but not limited, to the following conditions precedent having been complied with to the satisfaction of the Bank:

- (1) at least 80% (eighty percent) of Tranche 1 shall have been drawn down;
- (2) satisfactory assessment by the Bank of the Borrower's compliance with the Eligibility Criteria for the use of Loan funds on allocating loans to the Eligible Sub-Borrowers under Tranche 1;
- (3) satisfactory assessment by the Bank of the Borrower's compliance with the Designated Performance Requirements in respect of Tranche 1;

- (4) approval by the Bank of the launch of a technical cooperation assignment for the development of a state ownership policy on publicly-owned enterprises; and
  - (5) engagement by the Borrower of an independent auditor, satisfactory to the Bank and under terms of reference acceptable to the Bank, to assess the Borrower's compliance with the Eligibility Criteria for the use of Loan funds in respect of amounts of Tranche 2 to be disbursed into dedicated bank accounts designated by each Eligible Sub-Borrower.
- (b) The obligation of the Bank to make Drawdowns in relation to Tranche 2 shall be subject to the prior fulfilment, in form and substance satisfactory to the Bank, or at the sole discretion of the Bank the waiver, whether in whole or part and whether subject to conditions or unconditional, of the following conditions precedent:
- (1) in respect of the first Drawdown only, the conditions listed under Section 6.03(a) above; and
  - (2) in respect of all Drawdowns, including the first Drawdown:
    - i. the Subsidiary Loan Agreement(s) between the Borrower and the Eligible Sub-Borrower(s) in form and substance acceptable to the Bank shall have been signed for the relevant disbursement amount and copies thereof shall be provided to the Bank; and
    - ii. the Borrower shall provide to the Bank satisfactory supporting documentation evidencing compliance with the Eligibility Criteria for the use of the Loan funds by the Eligible Sub-Borrowers for the relevant disbursed amount.

#### **Section 6.04. Legal Opinion**

For purposes of Section 9.03(a) of the Standard Terms and Conditions, the opinion or opinions of counsel shall be given on behalf of the Borrower by the head of the legal department of the Ministry of Finance of the Republic of Kosovo.

#### **Section 6.05. Termination for Failure to Become Effective**

The date 180 days after the date of this Agreement is specified for purposes of Section 9.04 of the Standard Terms and Conditions.

### **ARTICLE VII - MISCELLANEOUS**

#### **Section 7.01. Notices**

The following addresses are specified for purposes of Section 10.01 of the Standard Terms and Conditions:

For the Borrower:

Ministry of Finance  
Government of the Republic of Kosovo  
Bulevardi Nëna Terezë  
10000 Pristina  
Kosovo

Attention: Ministry of Finance  
Fax: +38138213113

For the Bank:

European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
United Kingdom

Attention: Operation Administration Department  
Email: [oad@ebrd.com](mailto:oad@ebrd.com)


IN WITNESS WHEREOF, the parties hereto, acting through their duly authorised representatives, have caused this Agreement to be signed in four copies and delivered at Pristina, Republic of Kosovo, as of the day and year first above written.

**REPUBLIC OF KOSOVO**

By:   
Name: HAKUJE AJRAMI  
Title: MINISTER



**EUROPEAN BANK  
FOR RECONSTRUCTION AND DEVELOPMENT**

By:   
Name: ARIANIT BLAKAJ  
Title: PRINCIPAL BANKER

## SCHEDULE 1 - DESCRIPTION OF THE PROJECT

1. The purpose of the Project is to assist the Borrower in providing emergency liquidity funding to vital infrastructure providers affected by the COVID-19 pandemic crisis.

2. The Project consists of the following Parts, subject to such modifications thereof as the Bank and the Borrower may agree upon from time to time:

**Part A:** Funding of short-term obligations payable within 12 months from the date of the relevant Sub-Loan Agreement or, if paid prior to signing of the Sub-Loan Agreement, within 12 months from the date of when they were paid which shall be not earlier than 1 May 2020, to cover, *inter alia*, payments to suppliers, employees (in respect only of employees of Eligible Sub-Borrowers which are either state-owned enterprises providing vital infrastructure services or municipally owned companies providing vital infrastructure services), or payments to continue essential operations and maintenance under already locally procured contracts, to the exclusion of any payment of Taxes or payment of capital expenditure;

**Part B:** (i) Environmental and social capacity building programme of the Eligible Sub-Borrowers on good international practice; (ii) support to the PIU in developing and implementing a monitoring system that satisfies the Bank standards, for the duration of the Project; and (iii) development of a state ownership policy for publicly-owned enterprises based on international best practices.

3. The Project is expected to be completed by 16 May 2023.



## SCHEDULE 2 - CATEGORIES AND DRAWDOWNS

1. The table attached to this Schedule sets forth the Categories, the amount of the Loan allocated to each Category and the percentage of expenditures to be financed in each Category.

2. Notwithstanding the provisions of paragraph 1 above, no Drawdown shall be made in respect of expenditures incurred prior to the date of the Subsidiary Loan Agreement, except that Drawdowns up to the aggregate amount of Tranche 1 and in respect of Tranche 1 only may be made for the purpose of funding payments by the Borrower to the Eligible Sub-Borrowers (in accordance with the provisions of this Agreement, including, without limitation, full satisfaction of the Eligibility Criteria) on account of expenditures paid prior to the date of the relevant Subsidiary Loan Agreement but after 1 May 2020.

Attachment to Schedule 2

Category	Amount of the Loan Allocated in the Loan Currency	Percentage of Expenditures to be Financed
(1) Part A	EUR 29,700,000	Up to 100% of expenditures excluding any Taxes
(2) Front-end Commission	EUR 300,000	100%
<b>Total</b>	<b>EUR 30,000,000</b>	

**SCHEDULE 3 - FORM OF SUBSIDIARY LOAN AGREEMENT**

**SUBSIDIARY LOAN AGREEMENT**  
**(VISP: Vital Infrastructure Emergency Liquidity Loan)**

between

**REPUBLIC OF KOSOVO**

and

*[Name of Eligible Sub-Borrower]*

Dated [ \_\_\_\_\_ ]

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## SUBSIDIARY LOAN AGREEMENT

AGREEMENT, dated \_\_\_\_\_ between REPUBLIC OF KOSOVO, represented by the Ministry of Finance (the "Republic of Kosovo") and [*Name of Eligible Sub-Borrower*] (the "Eligible Sub-Borrower").

### PREAMBLE

WHEREAS, by a loan agreement dated [•] 2020 (the "Loan Agreement") between the Republic of Kosovo as borrower and the European Bank for Reconstruction and Development as lender (the "Bank"), the Bank agreed to make available to the Borrower a loan (the "Loan") on the terms and conditions set forth in the Loan Agreement;

WHEREAS, by the Loan Agreement, the Bank has requested the Borrower to enter into a subsidiary loan agreement with the relevant Eligible Sub-Borrower;

WHEREAS, in consideration of the above, the Republic of Kosovo and the Eligible Sub-Borrower have agreed to enter into this Agreement, by which the proceeds of the Loan will be made available to the Eligible Sub-Borrower for the purposes of carrying out the Project directly and indirectly benefiting the Eligible Sub-Borrower.

NOW, THEREFORE, the parties hereby agree as follows:

## ARTICLE I – INTERPRETATION

### Section 1.01. Definitions

Wherever used in this Agreement or the Schedules hereto, except where stated otherwise and to the extent the context so permits, the capitalized terms defined in the Preamble have the respective meanings ascribed therein, the capitalized terms defined in the Loan Agreement have the respective meanings ascribed therein to the extent the context so permits, and the following capitalized terms have the following meaning:

"Affiliates"	has the meaning given to it in the Enforcement Policy and Procedures.
"Prohibited Practice"	has the meaning given to it in the Enforcement Policy and Procedures.
"Project"	has the meaning given to it in the Loan Agreement.
"Project Complaint Mechanism"	means the accountability mechanism of the Bank as set forth under the Project Complaint Mechanism (PCM) Rules of Procedure dated May 2014, as such rules may be amended, supplemented or replaced from time to time.
"Sub-Loan"	has the meaning given to it under Section 3.01 ( <i>Sub-Loan Amount</i> ).

### Section 1.02. Headings

The headings of Articles and Sections, as well as the Table of Contents, are inserted for convenience of reference only and shall not be used to interpret this Agreement.

### Section 1.03 Acknowledgement

The Eligible Sub-Borrower acknowledges having received a copy of the Loan Agreement.

## ARTICLE II - REPRESENTATIONS AND WARRANTIES

### Section 2.01. Representations as to this Agreement

The Eligible Sub-Borrower represents and warrants as follows:

- (a) it has the power to enter into this Agreement;

(b) this Agreement has been duly authorised and executed by the Eligible Sub-Borrower and constitutes a valid and legally binding obligation of the Eligible Sub-Borrower, enforceable in accordance with its terms;

(c) the making of this Agreement and the compliance with its terms will not result in violation of its statutes or any laws or any agreement or instrument to which it is a party;

(d) it is not, and shall not be at any time, an entity or an individual debarred by the Bank under the Enforcement Policy and Procedures or on the United Nations Security Council Consolidated List under Chapter VII of the United Nations Charter;

(e) the funds made available to it by the Republic of Kosovo under this Agreement will not finance (i) any entity or individual debarred by the Bank under the Enforcement Policy and Procedures or on the United Nations Security Council Consolidated List under Chapter VII of the United Nations Charter or (ii) contracts with an entity that has a shareholder who is a "Politically Exposed Person" as defined by the Financial Action Task Force, is a "related party" as defined by the International Accounting Standard 24, or where there is an actual or apparent conflict of interest between the contracting parties; for the avoidance of doubt, no Eligible Sub-Borrower, Substantial Contractor, Non-Substantial Contractor or Permitted Third Party Contractor, shall fall, for the purposes of this Agreement, within the scope of limbs (i) or (ii); and

(f) it is not in violation of any law applicable to it and currently in effect. It is in compliance with all applicable laws concerning money laundering or the financing of terrorism. Neither the Eligible Sub-Borrower nor any officers, directors, authorised employees, Affiliates, agents or representatives of the Eligible Sub-Borrower has committed or engaged in any Prohibited Practice with respect to the Project or any transactions contemplated by this Agreement.

### ARTICLE III - SUBSIDIARY LOAN

#### Section 3.01. Sub-Loan Amount

The Republic of Kosovo agrees to lend to the Eligible Sub-Borrower, on the terms and conditions set forth or referred to in this Agreement, a total amount of Euro [*insert amount in figures*] (€ [*insert amount in letters*])<sup>1</sup> (the "Sub-Loan").

#### Section 3.02. Allocation of Drawdowns

(a) Subject to Section 3.03 (*Use of Proceeds*), the available amount in respect of the Sub-Loan may be drawn down from time to time and allocated in accordance with the provisions of this Agreement for expenditures made or to be made for the purpose of implementing the Project, directly benefiting the Eligible Sub-Borrower or, as the case may be, a Substantial Contractor, a Non-Substantial Contractor or a Permitted Third

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<sup>1</sup> This should be in any case a maximum of EUR 5,000,000 to comply with the provisions of the Loan Agreement.



Party Contractor.

(b) Against each drawdown, the Ministry of Finance of the Republic of Kosovo and the Eligible Sub-Borrower shall deliver to the Bank an original receipt specifying, amongst others, the amount of the expenses to be financed out of each drawdown, in the form of Schedule 1 (*Form of Sub-Loan Disbursement Receipt, Declaration and Confirmation*) hereto and in substance satisfactory to the Republic of Kosovo and the Bank.

(c) In accordance with Section 6.03(a)(5) of the Loan Agreement, the Loan funds in respect of Tranche 2 shall be disbursed into dedicated bank accounts designated by each Eligible Sub-Borrower.

### **Section 3.03. Use of Proceeds**

The funds made available by the Republic of Kosovo to the Eligible Sub-Borrower under this Agreement shall be applied solely and exclusively to meet short-term obligations payable within 12 months from the date of this Agreement or, if paid prior to the date of this Agreement, within 12 months from the date of when they were paid which shall be not earlier than 1 May 2020, to cover, *inter alia*, payments to suppliers, employees (in respect only of employees of Eligible Sub-Borrowers which are either state-owned enterprises providing vital infrastructure services or municipally owned companies providing vital infrastructure services), or payments to continue essential operations and maintenance under already locally procured contracts, to the exclusion of any payment of Taxes or payment of capital expenditure, in full and strict compliance with the provisions of the Loan Agreement.

### **Section 3.0[\*]. [\*]**

*[Parties to this Agreement to introduce the relevant commercial terms agreed between themselves for the purpose of this Agreement, such as interest rate, loan repayment schedule<sup>2</sup>, fees,...]*

## **ARTICLE IV - EXECUTION OF THE PROJECT**

### **Section 4.01. Project Obligations**

The Republic of Kosovo shall cause the Eligible Sub-Borrower to carry out the Project in accordance with the provisions of the Loan Agreement. For this purpose:

(a) the Republic of Kosovo shall exercise its rights under this Agreement in such manner as to protect its interests and those of the Bank, to comply with the provisions of the Loan Agreement and to accomplish the purposes for which the Loan is made;

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<sup>2</sup> The tenor of the Sub-Loan should be in any case a minimum period of one year to comply with the provisions of the Loan Agreement.

(b) the Republic of Kosovo and the Eligible Sub-Borrower shall not, except as the Bank otherwise agrees, assign, amend, abrogate or waive any provision of this Agreement;

(c) the Eligible Sub-Borrower shall maintain its corporate existence in compliance with all applicable laws;

(d) the Eligible Sub-Borrower's integrity profile shall comply, prior to any drawdown, with the Bank's internal integrity standards, with a sole discretion of the Bank to deselect the relevant applicant;

(e) in the case that the proceeds of a Sub-Loan will be used by an Eligible Sub-Borrower, which is a municipality, municipally owned company, or a non-corporatized state-owned enterprise (as assessed by the Bank at its sole discretion), to make a Substantial Payment, the Eligible Sub-Borrower shall procure that the Bank has assessed and approved each such Substantial Contractor prior to any drawdown of the Sub-Loan in accordance with the Bank's internal integrity standards, and that such Substantial Contractor has entered the Form of Integrity Undertaking under Schedule 2 to this Agreement with the Eligible Sub-Borrowers, whereby such Substantial Contractor agrees, as a condition to receiving the Sub-Loan funds, *inter alia*, to the application of the Enforcement Policy and Procedures, as well as to the Bank's access, audit and inspection rights;

(f) in the case that the proceeds of a Sub-Loan will be used by an Eligible Sub-Borrower, which is a municipality, municipally owned company, or a non-corporatized state-owned enterprise (as assessed by the Bank at its sole discretion) to make a Non-Substantial Payment, the Eligible Sub-Borrower shall procure that the Bank has conducted the Basic Integrity Checks for each Non-Substantial Contractor and confirmed the eligibility of such Non-Substantial Contractor, prior to any drawdown of the Sub-Loan funds as a condition to receiving the Sub-Loan funds;

(g) the Eligible Sub-Borrower shall procure that the funds made available by the Republic of Kosovo to the Eligible Sub-Borrower under this Agreement shall not finance (i) any entity or individual debarred by the Bank under the Enforcement Policy and Procedures or on the United Nations Security Council Consolidated List under Chapter VII of the United Nations Charter or (ii) contracts with an entity that has a shareholder who is a "Politically Exposed Person" as defined by the Financial Action Task Force, or who is a "related party" as defined by the International Accounting Standard 24, or where there is an actual or apparent conflict of interest between the contracting parties; for the avoidance of doubt, no Eligible Sub-Borrower, Substantial Contractor, Non-Substantial Contractor or a Permitted Third Party Contractor, shall fall, for the purposes of this Sub-Loan, within the scope of limbs (i) or (ii);

(h) the Eligible Sub-Borrower shall conduct its businesses in compliance with the national regulation related to environmental, health and safety and labour conditions;

(i) the Eligible Sub-Borrower shall use the funds under the Sub-Loan in full and strict compliance with the Eligibility Criteria;

(j) the Eligible Sub-Borrower shall implement the capacity building programme under the technical assistance provided by the Bank on good international practices in

relation to environmental and social issues in the relevant sector;

(k) the Eligible Sub-Borrower shall promptly notify the Republic of Kosovo of any proposal to amend, suspend or repeal any material provision of its statutes and advise the Republic of Kosovo of any material change to its corporate existence;

(l) the Eligible Sub-Borrower shall promptly notify the Bank if it obtains any information regarding a violation of Section 2.01(c) or Section 2.01(f) or if any international financial institution has imposed any sanction on the Eligible Sub-Borrower for any Prohibited Practice. The Eligible Sub-Borrower shall cooperate in good faith with the Bank and its representatives in assessing whether such a violation has occurred and shall respond promptly and in reasonable detail to any request from the Bank regarding any such alleged violation and shall furnish documentary support for such response upon the Bank's request;

(m) the Eligible Sub-Borrower shall furnish promptly to the Bank such other information as the Bank may from time to time reasonably request and shall permit representatives of the Bank (including, any consultants engaged by the Bank) to visit the Project or any of the other premises where the business of the Eligible Sub-Borrower is conducted or where the Project is being carried out and to have access to the assets, books, accounts and records of the Eligible Sub-Borrower (including, in order (i) to facilitate the Bank's monitoring and evaluation of the Project and enable the Bank to examine and address any Project-related complaint made under the Project Complaint Mechanism and (ii) to assess whether a Prohibited Practice has occurred in relation to the Project or the transactions contemplated herein); and

(n) the Eligible Sub-Borrower shall not, and shall not authorize or permit any of its officers, directors, authorized employees, Affiliates, agents or representatives to, engage in any Prohibited Practice with respect to the Project or any transactions contemplated by this Agreement. Notwithstanding any other provision of this Agreement, the Eligible Sub-Borrower hereby acknowledges that Bank may invoke the Enforcement Policy and Procedures in respect of allegations of Prohibited Practices (including with respect to Section 2.01(f) in relation to the Project and the transactions contemplated by this Agreement.

## ARTICLE V - SUSPENSION

### Section 5.01. Suspension

(a) If the right of the Republic of Kosovo to make drawdowns under the Loan is suspended pursuant to Section 5.01 (*Suspension*) of the Loan Agreement, the right of the Eligible Sub-Borrower to make drawdowns may likewise and simultaneously be suspended by the Republic of Kosovo, as the case may be.

(b) Notwithstanding suspension, all the provisions of this Agreement shall continue in full force and effect except as specifically provided herein.

## ARTICLE VI - EFFECTIVENESS

### Section 6.01. Effective date

This Agreement shall become effective on the date of its signature by both parties hereof and subject to the Bank's approval.

### Section 6.02. Termination on Performance

When the entire principal amount of the Loan and the Sub-Loan shall have been repaid and the interest and all charges which shall have accrued on the Loan and the Sub-Loan shall have been paid, this Agreement and all obligations of the parties thereunder, shall forthwith terminate.

## ARTICLE VII - MISCELLANEOUS

### Section 7.01. Dispute Resolution

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled amicably by the parties if possible through the use of a mediator agreed to by the parties or failing which by arbitration in a manner agreed upon by the parties.

### Section 7.02. Authorised Persons

(a) The Ministry of Finance of the Republic of Kosovo or such other person or persons duly authorised in writing by the Minister of Finance of the Republic of Kosovo for this purpose may, in the name of the Republic of Kosovo, take any action or execute any document required or permitted by this Agreement.

(b) [*Title of authorised person of the Eligible Sub-Borrower*], or any person or persons duly authorised in writing by [*Title of authorised person of the Eligible Sub-Borrower*] for this purpose may, in the name of the Eligible Sub-Borrower, take any action or execute any document required or permitted by this Agreement, including, taking any action required or permitted to be taken under the provisions of Section 3.02(b).

### Section 7.03. Notices

Any notice, demand, or request required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been duly given or made when it shall be delivered by hand, mail or telefax, at the address of the person specified below or any other address as the person shall have specified in writing to the party giving the notice or making the request:

For the Republic of Kosovo:

Ministry of Finance  
Government of the Republic of Kosovo  
Bulevardi Nēna Terezē  
10000 Pristina  
Kosovo

Attention: Ministry of Finance  
Telefax: +38138213113

For [*Name of Eligible Sub-Borrower*]

[*Name of Eligible Sub-Borrower*]  
[*Address of Eligible Sub-Borrower*]

Attention: [•]

Telefax: [•]

#### **Section 7.04. Amendments**

No modification of this Agreement shall be effective unless such modification shall be in writing executed by the Republic of Kosovo and the Eligible Sub-Borrower and approved by the Bank in accordance with Section 3.01(d) of the Loan Agreement.

#### **Section 7.05. English Language**

Any document delivered to the Bank pursuant to this Agreement shall be in the English language. Documents in any other language shall be accompanied by an English translation thereof certified as being an approved translation, and such approved translation shall be conclusive.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorised, have caused this Agreement to be signed in [*insert number of copies*] copies and delivered in [*insert place of signature*], as of the date and year first above written.

**REPUBLIC OF KOSOVO**

By \_\_\_\_\_  
Name:  
Title:

[*Name of Eligible Sub-Borrower*]

By \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1 - FORM OF SUB-LOAN DISBURSEMENT RECEIPT,  
DECLARATION AND CONFIRMATION**

[insert date]

European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
United Kingdom  
Attention:       Operation Administration Department  
Email:           oad@ebrd.com

Subject:    Operation No. 52167

**Subject: Subsidiary Loan Agreement dated [ ] between the Republic of Kosovo and [Name of Eligible Sub-Borrower] (the "Subsidiary Loan Agreement").**

Sir:

Unless otherwise defined herein, defined terms shall have the meaning ascribed to them under the Subsidiary Loan Agreement.

We, the undersigned [Name of Eligible Sub-Borrower], hereby acknowledge having incurred the following expenses (the "Eligible Expenses"):

*[insert description of expenses incurred, amount... - note that in any case these should be short-term obligations payable within 12 months or, if paid prior to the date of the Sub-Loan Agreement, within 12 months from the date of when they were paid which shall be not earlier than 1 May 2020, from the date of the Sub-Loan Agreement to cover, inter alia, payments to suppliers, employees (in respect only of employees of Eligible Sub-Borrowers which are either state-owned enterprises providing vital infrastructure services or municipally owned companies providing vital infrastructure services), or payments to continue essential operations and maintenance under already locally procured contracts, to the exclusion of any payment of Taxes or payment of capital expenditure], evidence thereof are hereby attached (Evidence A), in full and strict compliance with the provisions of the Subsidiary Loan Agreement and of the Loan Agreement.*

We further confirm that:

- (a) we have faced a loss of revenues due to the COVID-19 pandemic crisis and consequently required an action from the Government of the Republic of Kosovo as per the attached evidence (Evidence B);
- (b) in the absence of liquidity support under the Sub-Loan, there would be a significant risk of collapse in the infrastructure service provided by ourselves as per the attached evidence (Evidence C);

- (c) we have met the Eligible Criteria for the purposes of the disbursement under the Subsidiary Loan Agreement, including for the avoidance of doubt, to the application of the Enforcement Policy and Procedures; and
- (d) the disbursement of the proceeds of the Sub-Loan will be used by ourselves, solely and exclusively to meet the Eligible Expenses.

Yours faithfully,

For and on behalf of [*Name of Eligible Sub-Borrower*]

By: \_\_\_\_\_

Name:

Title:

For confirmation:

REPUBLIC OF KOSOVO

By: \_\_\_\_\_

Name:

Title<sup>3</sup>:

Attachments:

- Evidence A
- Evidence B
- Evidence C

<sup>3</sup> Needs to be an authorized representative of the Ministry of Finance of the Republic of Kosovo in compliance with the provisions of the Loan Agreement.



## SCHEDULE 2 - FORM OF INTEGRITY UNDERTAKING

[insert date]

Ministry of Finance  
Government of the Republic of Kosovo  
Bulevardi Nëna Terezë  
10000 Pristina  
Kosovo

Attention: Ministry of Finance  
Fax: +38138213113

European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
United Kingdom

Attention: Operation Administration Department  
Email: oad@ebrd.com

Hereinafter, the "Bank"

Subject: Operation No. 52167

**Subject: Subsidiary Loan Agreement dated [ ] between the Republic of Kosovo and [Name of Eligible Sub-Borrower] (the "Subsidiary Loan Agreement").**

Sir:

Unless otherwise defined herein, defined terms shall have the meaning ascribed to them under the Subsidiary Loan Agreement.

In accordance with the provisions of Section [4.01(e)] of the Subsidiary Loan Agreement, we, the undersigned [Name of Substantial Contractor], hereby represent and warrant, and undertake, as a condition to receiving the Sub-Loan funds, the following:

- (a) neither [Name of Substantial Contractor] nor any officers, directors, authorised employees, Affiliates, agents or representatives of the [Name of Substantial Contractor] has committed or engaged in any Prohibited Practice with respect to the Project or any transactions contemplated by the Subsidiary Loan Agreement;
- (b) [Name of Substantial Contractor] shall not, and shall not authorise or permit any of its officers, directors, authorised employees, Affiliates, agents or

representatives to, engage in any Prohibited Practice with respect to the Project or any transactions contemplated by the Subsidiary Loan Agreement. Notwithstanding any other provision of the Subsidiary Loan Agreement, [Name of Substantial Contractor] hereby acknowledges that the Bank may invoke the Enforcement Policy and Procedures<sup>4</sup> in respect of allegations of Prohibited Practices (including with respect to Section 2.01(f) of the Subsidiary Loan Agreement, as applicable, *mutatis mutandis*, to [Name of Substantial Contractor]) in relation to the Project and the transactions contemplated by the Subsidiary Loan Agreement;

- (c) [Name of Substantial Contractor] shall promptly notify the Bank if [Name of Substantial Contractor] obtains any information regarding a violation of Section 2.01(f) or Section 4.01(n) of the Subsidiary Loan Agreement, as applicable, *mutatis mutandis*, to [Name of Substantial Contractor], or if any international financial institution has imposed any sanction on [Name of Substantial Contractor] for any Prohibited Practice. [Name of Substantial Contractor] shall cooperate in good faith with the Bank and its representatives in assessing whether such a violation has occurred and shall respond promptly and in reasonable detail to any request from the Bank regarding any such alleged violation and shall furnish documentary support for such response upon the Bank's request; and
- (d) [Name of Substantial Contractor] shall furnish promptly to the Bank such other information as the Bank may from time to time reasonably request and shall permit representatives of the Bank (including, any consultants engaged by the Bank) to visit the Project or any of the other premises where the business of [Name of Substantial Contractor] is conducted or where the Project is being carried out and to have access to the assets, books, accounts and records of [Name of Substantial Contractor] (including, in order (i) to facilitate the Bank's monitoring and evaluation of the Project and enable the Bank to examine and address any Project-related complaint made under the Project Complaint Mechanism and (ii) to assess whether a Prohibited Practice has occurred in relation to the Project or the transactions contemplated herein).

Yours faithfully,

For and on behalf of [Name of Substantial Contractor]

By: \_\_\_\_\_  
Name:  
Title:

For acknowledgement and confirmation:

[Name of Eligible Sub-Borrower]

<sup>4</sup> EBRD Enforcement Policy and Procedures of the European Bank for Reconstruction and Development ("EBRD") dated 4 October 2017 available under <https://www.ebrd.com/news/publications/policies/enforcement-policy-and-procedures.html>

By: \_\_\_\_\_

Name:

Title:

Attachments:

- Evidence A: evidence of Substantial Payment proposed to be funded by the Sub-Loan funds