

**Execution version**

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**INVESTMENT NUMBER 39970**

# **Loan Agreement**

**between**

**CAPITAL CITY OF PODGORICA**

**and**

**INTERNATIONAL FINANCE CORPORATION**

**Dated 19 December 2017**

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# LOAN AGREEMENT

LOAN AGREEMENT (the "Agreement") dated 19 December 2017 between CAPITAL CITY OF PODGORICA, the capital of Montenegro, with address at Njegoseva 13, 81000 Podgorica, Montenegro, organized and existing under the laws of Montenegro, established in accordance with the Law on Territorial Organization of Montenegro and Law on the Capital City (the "Borrower") and INTERNATIONAL FINANCE CORPORATION, an international organization established by Articles of Agreement among its member countries including Montenegro ("IFC").

## RECITALS

The Borrower is undertaking the construction, completion, ownership and operation of the Project;

The Borrower has requested IFC to provide the loans described in this Agreement to finance the construction, completion, ownership and initial operation of the Project and certain other costs and expenditures associated with the development of the Project; and

On or about the date hereof, the Borrower, IFC and certain other parties have entered into the Common Terms Agreement; and

IFC is willing to provide those loans upon the terms and conditions set forth in this Agreement and the Common Terms Agreement.

## ARTICLE I

### Definitions and Interpretation

Section 1.01. *Definitions.* Wherever used in this Agreement, and except as otherwise defined herein, terms defined in the Common Terms Agreement (as defined below) shall have the meaning ascribed to them therein, and the following terms have the meanings opposite them:

- |              |   |
|--------------|---|
| "CAO"        | Compliance Advisor Ombudsman, the independent accountability mechanism for IFC that impartially responds to environmental and social concerns of affected communities and aims to enhance outcomes; |
| "CAO's Role" | (i) to respond to complaints by persons who have been or are likely to be directly  |

affected by the social or environmental impacts of IFC projects; and

- (ii) to oversee audits of IFC's social and environmental performance, particularly in relation to sensitive projects, and to ensure compliance with IFC's social and environmental policies, guidelines, procedures and systems;

“Common Terms Agreement”	the agreement entitled “Common Terms Agreement” dated on or about the date hereof among the Borrower, Erste Bank AD Podgorica and International Finance Corporation;
“Disbursement”	any disbursement of the Loan;
“Interest Determination Date”	except as otherwise provided in Section 2.02 (d) (ii) ( <i>Interest</i> ), the second Business Day before the beginning of each Interest Period;
“Interest Rate”	for any Interest Period, the rate at which interest is payable on the Loan during that Interest Period, determined in accordance with Section 2.02 ( <i>Interest</i> );
“Loan”	the loan specified in Section 2.01( <i>The Loan</i> ) or, as the context requires, its principal amount from time to time outstanding;
“Payment Account”	account number 8643113 at Citibank, N.A., London, England, or such other bank or account in London as IFC from time to time designates.

Section 1.02. Financial Calculations; Interpretation; Business Day Adjustment. (a) This Agreement is the IFC Loan Agreement referred to in the Common Terms Agreement.

(b) Sections 1.02. (*Financial Calculations*), 1.03 (*Interpretation*) and 1.04 (*Business Day Adjustment*) of the Common Terms Agreement shall apply herein, mutatis mutandis, as if set out in this Agreement in full (and as if each reference therein to “each Senior Lender”, “any Senior Lender” or “the Senior Lenders” were a reference to IFC and each reference to “this Agreement”, “the



Financing Documents” or “the Transaction Documents” were a reference to this Agreement).

(c) In the context of this Agreement, and except as otherwise provided in this Agreement, a reference to a time of day is a reference to Washington, District of Columbia EST (UTC-05:00) time.

(d) In the context of this Agreement, and except as otherwise provided in this Agreement, any reference to “the date of this Agreement” or any similar reference, is a reference to the date of execution of this Agreement.

Section 1.03. *Conflict with Common Terms Agreement.* In the event of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement will prevail as between the parties to this Agreement.

## ARTICLE II

### The Loan

Section 2.01. *The Loan.* Subject to the provisions of this Agreement and the Common Terms Agreement (including Section 2.02 (*Disbursement Procedure*), Section 4.01 (*Conditions of First Disbursement*) and Section 4.02 (*Conditions of All Disbursements*) of the Common Terms Agreement), IFC agrees to make available the Loan in an aggregate principal amount of up to EUR 7,500,000.00 (seven million five hundred thousand Euro).

Section 2.02. *Interest.* (a) Subject to Section 2.04 (*Default Interest Rate*) of the Common Terms Agreement, the Borrower shall pay interest on the Loan in accordance with this Section 2.02 and Section 2.03 (*Interest; Market Disruption*) of the Common Terms Agreement.

(b) During each Interest Period, the Loan (or, with respect to the first Interest Period for each Disbursement, the amount of that Disbursement) shall bear interest at the applicable Interest Rate for that Interest Period.

(c) Interest on the Loan shall accrue from day to day, be prorated on the basis of a 360-day year for the actual number of days in the relevant Interest Period and be payable in arrears on the Interest Payment Date immediately following the end of that Interest Period; provided that with respect to any Disbursement made less than fifteen (15) days before an Interest Payment Date, interest on that Disbursement shall be payable commencing on the second Interest Payment Date following the date of that Disbursement.

(d) The Interest Rate for any Interest Period shall be the rate which is the sum of:

- (i) the Spread; and
- (ii) EURIBOR on the Interest Determination Date for that Interest Period for six (6) months (or, in the case of the first Interest Period for any Disbursement, for one (1) month, two (2) months, three (3) months or six (6) months, whichever period is closest to the duration of the relevant Interest Period (or, if two periods are equally close, the longer one)) rounded upward to the nearest three decimal places. The Interest Rate shall be determined as provided in Section 2.03 (*Interest; Market Disruption*) of the Common Terms Agreement.

(e) The Interest Rate shall be subject to adjustment upon the occurrence of a Market Disruption Event as provided in Section 2.03 of the Common Terms Agreement.

(f) The determination by IFC, from time to time, of the applicable Interest Rate shall be final and conclusive and bind the Borrower (unless the Borrower shows to IFC's satisfaction that the determination involves manifest error).

(g) For the avoidance of doubt, and notwithstanding other provisions of this Agreement and/or the Common Terms Agreement, the interest shall accrue during each Interest Period and shall be payable on each Interest Payment Date following the first Disbursement of the Loan.

Section 2.03. Repayment. (a) The Borrower shall repay the Loan in accordance with Section 2.05 (*Repayment*) of the Common Terms Agreement.

(b) Any principal amount of the Loan repaid under this Agreement may not be re-borrowed.

Section 2.04. Prepayment. (a) The Borrower may prepay the Loan in accordance with Section 2.06 (*Prepayment*) of the Common Terms Agreement.

(b) Amounts of principal prepaid under this Section 2.04 and Section 2.06 (*Prepayment*) of the Common Terms Agreement shall be applied by IFC to all the outstanding installments of principal of the Loan in inverse order of maturity.

Section 2.05. Fees and Other Payments. (a) The Borrower shall pay to IFC a commitment fee:

- (i) at the rate of one per cent (1%) per annum on that part of the Loan that from time to time has not been disbursed or canceled, beginning to accrue on the date of this Agreement;

- (ii) pro rated on the basis of a 360-day year for the actual number of days elapsed; and
  - (iii) payable semi-annually, in arrears, on each Interest Payment Date, the first such payment to be due on 15 April 2018.
- (b) The Borrower shall also pay to IFC:
- (i) a front-end fee on the Loan of EUR 75,000.00 to be paid on the earlier of (x) the date which is thirty (30) days after the date of this Agreement and (y) the date immediately preceding the date of the first Disbursement;
  - (ii) a portfolio supervision fee of EUR 5,000.00 per annum, payable upon receipt of a statement from IFC;
  - (iii) costs and expenses incurred by IFC, to syndicate and thereafter supervise the Erste Bank Loan in the amount of EUR 18,750.00 to be paid on the earlier of (x) the date which is thirty (30) days after the date of date of execution of Erste Bank Loan Agreement and (y) the date immediately preceding the date of the first Disbursement; and
  - (iv) if the Borrower and IFC agree to restructure all or part of the Loan, the Borrower and IFC shall negotiate in good faith an appropriate amount to compensate IFC for the additional work of IFC staff required in connection with such restructuring.

Section 2.06. Currency and Place of Payments. The Borrower shall make all payments of principal, interest, fees, and any other amount due to IFC under this Agreement and the other Financing Documents in accordance with Section 2.08 (Currency and Place of Payments) of the Common Terms Agreement.

Section 2.07. Suspension and Cancellation. (a) IFC may suspend the right of the Borrower to Disbursements or cancel the undisbursed portion of the Loan in whole or in part in accordance with Section 2.12 (Suspension or Cancellation by Senior Lenders) of the Common Terms Agreement.

(b) The Borrower may request that IFC cancel the undisbursed portion of the Loan in accordance with Section 2.13 (Cancellation by the Borrower) of the Common Terms Agreement.



## ARTICLE III

### Common Terms

Section 3.01. *Representations and Warranties*. (a) The representations and warranties set out in Section 3.01 (*Representations and Warranties*) of the Common Terms Agreement shall be made and are deemed to be made herein, mutatis mutandis, for the benefit of IFC as if set out in this Agreement in full.

(b) The Borrower acknowledges that IFC enters into this Agreement and the other Financing Documents on the basis of, and in full reliance on, each of the representations and warranties referred to in Section 3.01 (*Representations and Warranties*) of the Common Terms Agreement.

Section 3.02. *Conditions of First Disbursement*. The obligation of IFC to make the first Disbursement is subject to the fulfillment prior to and concurrently with the making of such Disbursement of the conditions set forth in Section 4.01 (*Conditions of First Disbursement*) and Section 4.02 (*Conditions of All Disbursements*) of the Common Terms Agreement and Section 3.03 (*Conditions to All Disbursements*).

Section 3.03. *Conditions of All Disbursements*. (a) The obligation of IFC to make any Disbursement is subject to the fulfillment prior to and concurrently with the making of such Disbursement of the conditions set forth in Section 4.01 (*Conditions of First Disbursement*) and Section 4.02 (*Conditions of All Disbursements*) of the Common Terms Agreement.

Section 3.04. *Covenants*. (a) So long as any amount of the Loan remains available for disbursement or any amount is outstanding under any of the Financing Documents, the covenants set out in Article V (*Particular Covenants*) of the Common Terms Agreement shall apply herein, mutatis mutandis, for the benefit of IFC as if set out in this Agreement in full.

(b) Unless IFC otherwise agrees, the Borrower shall, upon IFC's request, and with reasonable prior notice to the Borrower, permit representatives of the CAO, during normal office hours, to:

- (i) visit any of the sites and premises where the business of the Borrower is conducted;
- (ii) inspect any of the Borrower's sites, facilities, plants and equipment;
- (iii) have access to the Borrower's books of account and all records; and



- (iv) have access to those employees, agents, contractors and subcontractors of the Borrower who have or may have knowledge of matters with respect to which any Finance Party seeks information;

provided that (i) no such reasonable prior notice shall be necessary if an Event of Default or Potential Event of Default is continuing or if special circumstances so require and (ii) such access shall be for the purpose of carrying out the CAO's Role.

Section 3.05. *Events of Default*. (a) The Events of Default set out in Section 6.02 (*Events of Default*) of the Common Terms Agreement shall each constitute an event of default under this Agreement.

(b) If any Event of Default occurs and is continuing (whether it is voluntary or involuntary, or results from operation of law or otherwise), IFC may, by notice to the Borrower, require the Borrower to repay the Loan or such part of the Loan as is specified in that notice. On receipt of any such notice, the Borrower shall immediately repay the Loan (or that part of the Loan specified in that notice) and pay all interest accrued on it, the prepayment premium specified in Section 2.06 (b) (*Prepayment*) of the Common Terms Agreement on the amount of the Loan whose payment is accelerated and any other amounts then payable under this Agreement and the other Financing Documents. The Borrower waives any right it might have to further notice, presentment, demand or protest with respect to that demand for immediate payment.

(c) If the Borrower becomes insolvent or if is unable to pay its Liabilities as they become due or if a forced administration is imposed on it by the Montenegrin Government or another competent Authority, or an event analogous to such events occur, the Loan, all interest accrued on it and any other amounts payable under this Agreement and the other Financing Documents will become immediately due and payable without any presentment, demand, protest or notice of any kind, all of which the Borrower waives.

## ARTICLE IV

### Miscellaneous

Section 4.01. *Notices*. Any notice, request or other communication to be given or made under this Agreement shall be given in accordance with Section 7.02 (*Notices*) of the Common Terms Agreement.

Section 4.02. *Term of Agreement*. This Agreement shall continue in force until all monies payable under it have been fully paid in accordance with its provisions.

Section 4.03. Saving of Rights. Section 7.01 (*Saving of Rights*) of the Common Terms Agreement shall apply herein, mutatis mutandis, as if set out in this Agreement in full (and as if each reference therein to “each Senior Lender”, “any Senior Lender” or “the Senior Lenders” were a reference to IFC and each reference to “this Agreement” or “the Financing Documents” were a reference to this Agreement).

Section 4.04. Enforcement. (a) This Agreement, and all non-contractual obligations arising out of or in connection with it are governed by, and shall be construed in accordance with, the laws of England.

(b) Section 7.05 (a) through and including (j) (*Applicable Law and Jurisdiction*) of the Common Terms Agreement shall apply herein, mutatis mutandis, as if set out in this Agreement in full (and as if each reference therein to “each Senior Lender”, “any Senior Lender” or “the Senior Lenders” were a reference to IFC and each reference to “this Agreement”, “the Financing Documents” or “the Transaction Documents” were a reference to this Agreement).

Section 4.05. Successors and Assignees (a) This Agreement binds and benefits the respective successors and assignees of the parties. However, the Borrower may not assign or delegate any of its rights or obligations under this Agreement without the prior consent of IFC.

(b) IFC may sell, transfer, assign, novate or otherwise dispose of all or part of its rights or obligations under this Agreement.

Section 4.06. Disclosure of Information. Section 7.06 (*Disclosure of Information*) of the Common Terms Agreement shall apply herein, mutatis mutandis, as if set out in this Agreement in full (and as if each reference therein to “each Senior Lender”, “any Senior Lender” or “the Senior Lenders” were a reference to IFC and each reference to “this Agreement”, “the Financing Documents” or “the Transaction Documents” were a reference to this Agreement).

Section 4.07. Amendments, Waivers and Consent. Any amendment or waiver of, or any consent given under, any provision of this Agreement shall be in writing and, in the case of an amendment, signed by the parties to this Agreement.

Section 4.08. Counterparts. This Agreement may be executed in several counterparts, each of which is an original, but all of which together constitute one and the same agreement.

Section 4.09. English Language. (a) All documents to be provided or communications to be given or made under this Agreement shall be in the English language.

(b) To the extent that the original version of any document to be provided, or communication to be given or made, to IFC under this Agreement is in a language other than English, that document or communication shall be accompanied by an English translation certified by an Authorized Representative to be a true and correct translation of the original. IFC may, if it so requires, obtain an English translation of any document or communication received in a language other than English at the cost and expense of the Borrower. IFC may deem any such English translation to be the governing version between the Borrower and IFC.

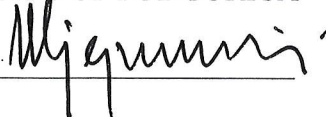
(c) This Agreement shall be executed in English and in Montenegrin language. In the case of discrepancy (whether in arbitral proceedings or otherwise) the English version shall prevail.

Section 4.10. Third Party Rights. 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 enjoy the benefit of any term of this Agreement.

*{Signature page follows}*

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed in their respective names as of the date first above written.

CAPITAL CITY OF PODGORICA

By: 

Name: Slavoljub Stijepović

Title: the Mayor

INTERNATIONAL FINANCE CORPORATION

By: 

Name: Thomas Lubeck

Title: Regional Manager for Central and South East  
Europe