

LOAN AGREEMENT

between

S.C. COMPANIA DE APA ORADEA S.A.

and

**EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT**

Dated _____ 2013

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LOAN AGREEMENT

LOAN AGREEMENT (this "**Agreement**") dated _____ 2013 between **S.C. COMPANIA DE APA ORADEA S.A.**, a joint stock company (in Romanian *societate pe actiuni*) organised and existing under the laws of Romania, headquartered at 3 Duiliu Zamfirescu Street, 3700, Oradea, Bihor County, Romania, registered with the Bihor Commercial Registry under No. J05/14/1991, having the sole registration code (CUI) 54760 (the "**Borrower**") and the **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**, an international organisation formed by the Agreement Establishing the European Bank for Reconstruction and Development ("**EBRD**"), ratified by Romania by Law No. 24 of 24 October 1990.

ARTICLE I - DEFINITIONS

Section 1.01. Definitions

Wherever used in this Agreement (including the Exhibits and the Schedules), unless the context otherwise requires, the following terms have the following meanings:

- "Affiliate" means, with respect to any person, any other person, directly or indirectly, controlling, controlled by, or under common control with, such person.
- "ANRSC" means the Romanian Regulatory Body of Local Public Services (in Romanian *Autoritatea Nationala de Reglementare pentru Servicii Comunitare de Utilitati Publice*).
- "ARA" means the Romanian Water Association (in Romanian *Asociatia Romana a Apei*).
- "Audited Financial Statements" means the Borrower's Financial Statements prepared in accordance with the IFRS for a given Financial Year, together with:
- (a) a report of the Auditors thereon; and
 - (b) a letter from the Auditors to the Shareholders of the Borrower commenting on, among other matters, the adequacy of the Borrower's financial control procedures, accounting systems, and other systems,
- all in form satisfactory to EBRD.

"Auditors"	means such firm of independent accountants as the Borrower may from time to time appoint as its auditors in accordance with Section 5.05.
"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.
"Business Day"	means a day on which commercial banks are open for the transaction of general business (including dealings in foreign exchange and foreign currency deposits) in London, England, and which is a TARGET Day.
"City"	means the City of Oradea.
"Charter"	means, in respect of any company, corporation, partnership, enterprise or other entity, its charter, founding act, articles of incorporation and bylaws, memorandum and articles of association, statutes or similar instrument.
"Coercive Practice"	means the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.
"Cohesion Funds Agreement"	means the financing agreement No. 121230 of 18 April 2011 entered into between the Borrower and the Romanian Ministry of Environment and Forests regarding the non-refundable financing for the implementation of the project " <i>Extension and modernisation of the water and wastewater infrastructure in the County of Bihor</i> ", as amended by the Amendment No. 1 of 9 September 2011.
"Collusive Practice"	means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.
"Commitment Period"	means the period commencing on the date of this Agreement and terminating on the fourth anniversary of the date of this Agreement.
"Corrupt Practice"	means the offering, giving, receiving or soliciting, directly

or indirectly, anything of value to influence improperly the actions of another party, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.

- "Country of Operation" means Romania.
- "County" means the County of Bihor;
- "Debt" means, with respect to any person, all obligations of such person, whether incurred as principal or surety and whether present, future, actual or contingent, for the payment or repayment of money, including:
- (a) any amounts payable by such person under leases or similar arrangements over their respective periods;
 - (b) any credit to such person from a supplier of goods or under any instalment purchase or other similar arrangement; and
 - (c) any liabilities and obligations of third parties to the extent that they are guaranteed by such person or such person has otherwise assumed or become liable for the payment of such liabilities or obligations or to the extent that they are secured by any Lien upon property owned by such person whether or not such person has assumed or become liable for the payment of such liabilities or obligations.
- "Debt Service Coverage Ratio" means the ratio provided under Section 5.11 (a) of this Agreement.
- "Debt Service Reserve Account" means the bank account denominated in EUR contemplated by the Debt Service Reserve Account Agreement wherein the Borrower, on the first Disbursement date and at all times thereafter, shall maintain an amount which is no less than an amount equal to six months debt service (including repayment of principal amounts and interest) payable in the period of the next six months under this Agreement.
- "Debt Service Reserve Account Agreement" means the debt service reserve account agreement to be entered into among, *inter alios*, the Borrower, EBRD and the Project Bank regulating the funding, management and control of the Debt Service Reserve Account, as such agreement may be amended from time to time in

accordance with the provisions thereof in order to cover the debt service obligations of the Borrower hereunder, which agreement shall be in form and substance satisfactory to EBRD.

"Default" means any Event of Default or any event which, with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would become an Event of Default.

"Default Interest Determination Date" means the date two Business Days prior to the first day of the relevant Default Interest Period (or, at EBRD's option, the first day of such Default Interest Period).

"Default Interest Period" means, with respect to any amount overdue under this Agreement, a period commencing on the day on which such payment becomes due or, as the case may be, on the last day of the previous Default Interest Period with respect to such overdue amount, and ending on a Business Day selected by EBRD.

"Delegation Contract" means the delegation contract No. 19666 dated 11 September 2009 between 12 territorial-administrative units, including, among others, the City, acting through IDA, as awarding authority, and the Borrower, as regional operator.

"Designated Performance Requirements" means Performance Requirements 1 through 8 and 10 (or, as the context may require, any one of such Performance Requirements) of the Performance Requirements dated May 2008 and related to EBRD's Environmental and Social Policy dated May 2008.

"Disbursement" means the disbursement of any portion of the Loan from time to time pursuant to Section 3.02 or, as the context may require, the principal amount thereof from time to time outstanding.

"EBRD Anti-Corruption Guidelines" means EBRD's Definitions and Guidelines for Private Sector Operations (Fraud and Corruption) attached hereto as Schedule 1.

"EBRD Project" means any activity or project which EBRD has financed or committed to finance.

"Environmental and Social Action Plan"

means the plan of environmental and social mitigation and improvement measures, a copy of which is attached hereto as Schedule 2 of this Agreement.

"Environmental and Social Law"

means any applicable law or regulation which relates to:

- (a) pollution or protection of the environment, including related laws or regulations relating to public access to information and participation in decision-making;
- (b) labour and employment conditions;
- (c) occupational health and safety;
- (d) public health, safety and security;
- (e) indigenous peoples;
- (f) cultural heritage; or
- (g) resettlement or economic displacement of persons.

"Environmental and Social Matter"

means any matter that is the subject of any Environmental and Social Law, any Designated Performance Requirement or the Environmental and Social Action Plan.

"Euro" or "EUR"

means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty Establishing the European Community, as amended by the Treaty on European Union and the Treaty of Amsterdam.

"Existing Loan Agreements" means:

- (a) the loan agreement dated 6 July 2007 between EBRD and the Borrower, as amended pursuant to the amendment agreement No. 1 dated 25 August 2010 and further amended and/or restated from time to time; and
- (b) the loan agreement dated 16 March 2004 between EBRD and the Borrower, as amended and restated pursuant to the amendment and restatement agreement dated 6 July 2007, amended by the letter dated 8 September 2009 and further amended and/or restated from time to time.

"Event of Default"	means any one of the events or occurrences specified in Section 7.01.
"Financial Debt"	<p>means, with respect to any person, any Debt of such person for or in respect of:</p> <ul style="list-style-type: none"> (a) moneys borrowed; (b) any amount raised by acceptance under any acceptance credit facility; (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument; (d) the amount of any liability in respect of any lease or hire purchase contract which would in accordance with IFRS, be treated as a finance or capital lease, but excluding any concession liabilities provided under the Delegation Contract; (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis); (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of borrowing; (g) 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 shall be taken into account); (h) 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; and (i) 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 Statements"	means the financial statements (including balance sheet, income statement, statement of changes in equity, cash flow statement and notes, comprising a summary of significant accounting policies and other explanatory notes) of the Borrower prepared in accordance with: (i) IFRS (for each Financial Year) with respect to the Audited

Financial Statements; and (ii) Romanian GAAP (for each quarter of each Financial Year).

"Financial Year" means the period commencing each year on 1 January and ending on the following 31 December, or such other period as the Borrower may, with EBRD's consent, from time to time designate as the accounting year of the Borrower.

"Financing Agreements" means:

- (a) this Agreement;
- (b) the Project Support Deed;
- (c) the Debt Service Reserve Account Agreement;
- (d) the Existing Loan Agreements;
- (e) the Disbursement applications referred to in Section 3.02; and
- (f) any other agreements entered into between the Borrower or any other party and EBRD and notices, certificates and applications issued by the Borrower or any other party to EBRD in each case in connection with this Agreement or the transactions contemplated by this Agreement.

"Financing Plan" means the plan for financing the Project as set forth in Section 2.01(c).

"Fraudulent Practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation, as this term is interpreted in accordance with the EBRD Anti-Corruption Guidelines.

"Governmental Authority" means the government of any country, 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.

"IDA" means the Intercommunity Development Association "APAREGIO"(in Romanian *Asociatia de Dezvoltare*

Intercomunitara "APAREGIO").

"IFRS"

means International Financial Reporting Standards issued or adopted by the International Accounting Standards Board and consistently applied.

"Interbank Rate"

means:

- (a) for the first Interest Period of each Disbursement, the offered rate per annum for deposits in the Loan Currency which appears on the Reference Page as of 11:00 a.m., Brussels time, on the relevant Interest Determination Date for the period which equals the duration of such Interest Period (or if no such rate appears on the Reference Page for a period equal to the duration of such Interest Period but rates ("Reference Rates") do appear on the Reference Page both for a period that is shorter than and for a period that is longer than the duration of such Interest Period, the Interbank Rate shall be the rate (rounded upward, if necessary, to four decimal places) that would be applicable for a period equal to the duration of such Interest Period as determined through the use of straight-line interpolation by reference to the Reference Rate that appears on the Reference Page for the period that is the next shorter in length than the duration of such Interest Period and the Reference Rate that appears on the Reference Page for the period that is the next longer in length than the duration of such Interest Period); and
- (b) for each subsequent Interest Period, the offered rate per annum for deposits in the Loan Currency which appears on the Reference Page as of 11:00 a.m., Brussels time, on the relevant Interest Determination Date for the period which is closest to the duration of such Interest Period (or, if two periods are equally close to the duration of such Interest Period, the average of the two relevant rates);

provided that if, for any reason, the Interbank Rate cannot be determined at such time by reference to the Reference Page, the Interbank Rate for such Interest Period shall be the rate per annum which EBRD determines to be the arithmetic mean (rounded upward, if necessary, to four decimal places) of the offered rates per annum for deposits in the Loan Currency in an amount comparable to the portion of the Loan scheduled to be outstanding during such Interest Period for a period equal to such Interest

Period which are quoted to leading banks in the Euro-zone interbank market as advised to EBRD by at least two major banks active in the Euro-zone interbank market selected by EBRD.

Notwithstanding the above, if the Interbank Rate, as determined pursuant to the above, is below zero, the Interbank Rate shall be zero.

- "Interest Determination Date" means, for any Interest Period, the date two Business Days prior to the first day of such Interest Period.
- "Interest Payment Date" means any day which is [14 February] or [14 August], in any year, provided, however, that, if any Interest Payment Date would otherwise fall on a day which is not a Business Day, such Interest Payment Date shall be changed to the next succeeding Business Day in the same calendar month or, if there is no succeeding Business Day in the same calendar month, the immediately preceding Business Day.
[Drafting Note: The Interest Payment Dates to coincide with the date of signing of the Loan Agreement to ensure that the first repayment of the Loan occurs no later than the 4th anniversary of the Loan Agreement.]
- "Interest Period" means, for any Disbursement, the period commencing on the date of such Disbursement and ending on the next Interest Payment Date and each period of six months thereafter commencing on an Interest Payment Date and ending on the next Interest Payment Date; provided that, if such Disbursement is made less than 15 Business Days prior to the next Interest Payment Date, the first Interest Period for such Disbursement shall commence on the date of such Disbursement and end on the Interest Payment Date following the next Interest Payment Date.
- "Letter of Information" means the letter dated on or about the date of this Agreement furnished by the Borrower to EBRD, as such letter may from time to time be amended with the prior written consent of EBRD.
- "Licenses" means the authorisations and licenses issued by relevant authorities, including without limitation ANRSC, to the Borrower and which are legal requisites for the Borrower to (i) carry out its activity as regional operator, and (ii) perform the Project, including, but not limited to, the Operation License.
- "Lien" means any mortgage (whether movable or immovable),

pledge, charge, privilege, priority, hypothecation, encumbrance, assignment, lien, attachment, set-off or other security interest of any kind or any other agreement or arrangement having the effect of conferring security upon or with respect to, or any segregation of or other preferential arrangement with respect to, any present or future assets, revenues or rights, including, any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy.

"Loan" means the maximum principal amount of the loan provided for in Section 3.01 or, as the context may require, the principal amount thereof from time to time outstanding.

"Loan Currency" means the currency in which the Loan is denominated as set forth in Section 3.01.

"Long-term Debt" means, as of any date with respect to any person, any Financial Debt of such person all or part of which, or the final payment of which, is due more than one year after such date.

"Margin" means 3% per annum, subject to any adjustments from time to time pursuant to Section 3.05 (b).

"Market Disruption Event" means:

- (a) on the Interest Determination Date for the relevant Interest Period or the Default Interest Determination Date for the relevant Default Interest Period, the Reference Page is not available and none or only one of the major banks active in the Euro-zone interbank market supplies a rate to EBRD to determine the Interbank Rate for the Loan Currency for the relevant Interest Period or the default interest rate for the Loan Currency for the relevant Default Interest Period, as the case may be; or
- (b) before close of business in London on the Interest Determination Date for the relevant Interest Period or the Default Interest Determination Date for the relevant Default Interest Period, (1) EBRD determines that the cost to EBRD or (2) EBRD receives notification from one or more Participants whose aggregate participations in the Loan exceed 35% of the Loan that the cost to such Participant(s), as the case may be, of obtaining matching deposits in the Euro-zone interbank market would be in excess of the Interbank Rate.

"Material Adverse Effect"	means a material adverse effect on: <ul style="list-style-type: none"> (a) the ability of the Borrower or the City to perform or comply with any of its obligations under any Financing Agreement or Project Agreement; (b) the legality, validity, enforceability and binding nature of any Financing Agreement or Project Agreement or the legal rights, remedies and priorities of EBRD under any of the Financing Agreements; (c) the Borrower's ability to implement or operate the Project substantially in the manner contemplated by the Financing Agreements and the Project Agreements; or (d) the Borrower's business, operations, financial condition or prospects.
"MRD Account"	means a reserve account, established and used by the Borrower in accordance with MRD Legislation.
"MRD Legislation"	means Emergency Government Ordinance No. 198 of 2005 regarding the establishment, funding and utilisation of the Maintenance, Replacement and Development Fund for the projects of development of the public services infrastructure which have the benefit of non-refundable financial assistance from the European Union, published in the <i>Official Gazette</i> No. 1193 of 30 December 2005, as amended from time to time, and any law or regulation which will replace it.
"Operation License"	means the license class 2 No. 1391 of 24 February 2011 issued by ANRSC Order No. 139 of 24 February 2011.
"Participant"	means a person from whom EBRD receives a formal commitment to acquire a Participation through the execution of, or the accession to, a participation agreement with EBRD.
"Participation"	means a participation in the Loan or, as the context may require, in a Disbursement.
"Permitted Liens"	means the Liens referred to in Sections from 6.05(1) to 6.05(4).
"Prohibited Practice"	means any Corrupt Practice, Fraudulent Practice, Coercive

Practice or Collusive Practice.

"Project"	means the co-financing of the procurement contracts for water and wastewater investments co-financed with the cohesion funds, to be procured pursuant to the procurement plan attached, as Schedule 3 (<i>Procurement Plan</i>) to this Agreement provided that: (i) such contracts are not awarded based on the nationality of the tenderer, or the country of origin, or foreign content of the goods criteria; (ii) EBRD shall not finance the VAT under the contracts listed in Schedule 3 (<i>Procurement Plan</i>) to this Agreement; and (iii) such contracts have not been awarded to a supplier, contractor or consultant or any sub-supplier, sub-contractor or sub-consultant included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.
"Project Agreements"	means: <ul style="list-style-type: none">(a) the Delegation Contract;(b) guarantee enforcement agreement (in Romanian <i>acord de executare a garantiei</i>) concluded the Borrower and IDA pursuant to Article 41 (2) of the Delegation Contract;(c) the Letter of Information;(d) the Cohesion Funds Agreement; and(e) any other agreement or document which EBRD and the Borrower may from time to time designate as a Project Agreement.
"Project Bank"	means a bank licensed to operate in Romania which is acceptable to EBRD and which is legally selected by the Borrower to become a party to the Debt Service Reserve Account Agreement.
"Project Support Deed"	means the project support deed to be entered into among the Borrower, the City and EBRD, defining the terms and conditions of support to the Project to be provided by the City, which deed shall be in form and substance satisfactory to EBRD.
"Reference Page"	means the display of Euro-zone interbank offered rates for deposits in the Loan Currency designated as page

EURIBOR01 on Reuters services (or such other page as may replace page EURIBOR01 on Reuters services for the purpose of displaying Euro-zone interbank offered rates for deposits in the Loan Currency).

"Regionalisation"	means the expansion of the Borrower's service area to provide water and wastewater services to other local authorities in the County of Bihor and other neighbouring counties.
"Romanian GAAP"	means the accounting principles generally accepted in Romania and consistently applied.
"RON "	means the lawful currency of Romania.
"Shareholders"	means the territorial - administrative units listed in Section 2.02(c) of this Agreement.
"Short-term Debt"	means, with respect to any person, any Financial Debt of such person other than Long-term Debt.
"Subsidiary"	means, with respect to any entity, any other entity over 50% of whose capital is owned, directly or indirectly, by such entity or which is otherwise effectively controlled by such entity.
"TARGET Day"	means any day on which the Trans-European Automated Real-time Gross Settlement Payment System (TARGET) is open for the settlement of payments in Euro.
"Tax" or "Taxes"	means any tax, royalty, stamp or other duty, assessment, levy, charge, value added tax, or impost of any nature whatsoever (including any related penalty or interest) imposed under any law.
"VAT"	means value added tax as provided for in the Romanian Fiscal Code (Law No. 571 of 22 December 2003 as further amended) and any other tax of a similar nature.

Section 1.02. Interpretation

- (a) In this Agreement, unless the context otherwise requires, words denoting the singular include the plural and *vice versa*.
- (b) In this Agreement, a reference to a specified Article, Section, Schedule or Exhibit shall be construed as a reference to that specified Article or Section of, or Schedule or Exhibit to, this Agreement.

- (c) In this Agreement, a reference (i) to an amendment or to an agreement being amended includes a supplement, variation, assignment, extension (whether at maturity or otherwise), novation, restatement, replacement (however fundamental and whether or not more onerous) or re-enactment, and (ii) to an agreement shall be construed as a reference to such agreement as it may be amended from time to time.
- (d) In this Agreement, the headings and the Table of Contents are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.
- (e) In this Agreement, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting shares, by contract or otherwise.
- (f) In this Agreement, a Default is outstanding or continuing until it has been remedied or waived by EBRD in writing.
- (g) In this Agreement, any reference to "law" means any law (including, any common or customary law) and any treaty, constitution, statute, legislation, decree, normative act, rule, regulation, judgment, order, writ, injunction, determination, award or other legislative or administrative measure or judicial or arbitral decision in any jurisdiction which has the force of law or the compliance with which is in accordance with general practice in such jurisdiction.
- (h) In this Agreement, any reference to a provision of law, is a reference to that provision as from time to time extended, supplemented, restated, amended or re-enacted or replaced and includes any subordinate legislation and any binding judicial or administrative interpretation thereof.
- (i) In this Agreement, a reference to a "person" includes any person, natural or juridical entity, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and references to a "person" include its successors in title, permitted transferees and permitted assigns.
- (j) In this Agreement, "Euro-zone" is a reference to the region comprised of the member states of the European Union that adopt the single currency in accordance with the Treaty Establishing the European Community, as amended by the Treaty on European Union and the Treaty of Amsterdam.
- (k) In this Agreement, "including" and "include" shall be deemed to be followed by "without limitation" where not so followed.

Section 1.03. Non-English Terms

In this Agreement where it relates to a Romanian entity, a reference to:

- (a) **a lien, security or a security interest includes** *ipoteka mobiliara, ipoteka imobiliara, gaj, garantie financiara, garantie personala* (including *cautiune reala*), *cesiune pentru cauza de garantie, servitute, sarcina, uz, uzufruct, privilegiu, drept de preferinta, drept de retentie, drept de prim refuz, optiune*;
- (b) **a winding-up, dissolution, administration, reorganisation, bankruptcy or insolvency** includes *insolventa, reorganizare judiciara, faliment, lichidare, mandat ad-hoc, concordat preventiv* and *dizolvare*;
- (c) **insolvent** includes being in a state of *insolventa* and **bankrupt** includes being in *faliment* within the meaning of the Romanian Law No. 85 of 5 April 2006 regarding insolvency procedures;
- (d) **a receiver, administrator or similar officer** includes *judicator sindic, administrator judiciar, administrator special* or *lichidator, mandatar ad-hoc, conciliator*;
- (e) **charter documents** includes *contract de societate, statut* and/or *act constitutiv*; and
- (f) **seizure, expropriation, nationalisation, intervention, restriction** includes *expropriere, naționalizare, confiscare, rechiziție* or any similar proceeding.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations Regarding the Project

The Borrower represents and warrants as follows:

- (a) **Project Description.**
 - (1) The Project conforms in all material respects with the detailed description thereof contained in the Letter of Information furnished by the Borrower to EBRD (subject to any modifications to which EBRD may agree in writing).
 - (2) The information contained in the Letter of Information, other than in respect of financial forecasts or projections, is true, complete and correct in all material respects and the Letter of Information contains no untrue or misleading statement and does not omit any material fact the disclosure of which would make the statements therein untrue or misleading.
 - (3) As of the date of this Agreement, to the extent that any information contained in the Letter of Information relates to financial forecasts or projections of future events, such forecasts and projections have been prepared in good faith, giving due and careful consideration to all relevant factors and based on assumptions that were reasonable at the time that such forecasts and projections were prepared, and there has been nothing to interfere since the date such forecasts and projections were prepared that

would make them unreasonable.

- (b) **Estimated Project Costs.** As of the date of this Agreement, the total estimated cost of the Project is approximately EUR 83.27 million (VAT excluded), as follows:

Component	Approximated value in Euro (million)
<i>Construction & Installation</i>	71.77
<i>Technical Assistance</i>	4.35
<i>Design</i>	2.69
<i>Contingencies</i>	4.46
Total Project Cost	83.27 (VAT exclusive)

- (c) **Financing Plan.** The anticipated sources of financing the Project are as follows:

Bihor Financing Plan	Use of proceeds	Approximated amount in EUR (million)
<i>EU grant</i>	Water and wastewater rehabilitation works (including <i>Construction & Installation, Technical Assistance, Design, Contingencies</i>)	63.54
<i>State Budget</i>		9.72

<i>Local Budget</i>	1.49
City of Oradea	0.62
City of Beius	0.14
Tinca Commune	0.12
Osorhei Commune	0.10
Nojorid Commune	0.04
Biharia Commune	0.11
Santandrei Commune	0.10
Girisu de Cris Commune	0.12
County of Bihor	0.14
<i>EBRD Loan</i>	8.52
Total Financing	83.27
	(VAT excluded)

- (d) **VAT.** Any VAT charged in respect of the contracts listed in Schedule 3 of this Agreement (Procurement Plan) will be paid by the Borrower and its Shareholders from any sources other than the Loan.

Section 2.02. Representations Regarding the Borrower

The Borrower represents and warrants as follows:

- (a) **Incorporation.** The Borrower is a joint stock company, duly organised, validly existing, and, if applicable, in good standing under the laws of Romania and registered, to the extent required in accordance with applicable law, with all relevant registration bodies in any jurisdiction in which it carries on business or owns assets and has full power to own the properties which it owns or will own for the purposes of the Project and to carry out the businesses which it carries out or will carry out for the purposes of the Project.
- (b) **Subsidiaries.** The Borrower has no Subsidiaries.
- (c) **Share Capital.** The Borrower has an authorised capital of RON 12,000,800 consisting of 1,200,080 shares with a nominal value of RON 10 each. The following is a list of all shareholders in the Borrower, with their respective shareholdings, as of the date of this Agreement:

Shareholder	Number of Shares	Percentage
City of Oradea	1,200,000	99.9933337777%
Nojorid Commune	10	0.0008332778%
Osorhei Commune	10	0.0008332778%
Paleu Commune	10	0.0008332778%
Sanmartin Commune	10	0.0008332778%
Girisu de Cris Commune	10	0.0008332778%
Bors Commune	10	0.0008332778%
Cetariu Commune	10	0.0008332778%
Santandrei Commune	10	0.0008332778%
Total	1,200,080	100%

All of the shares listed above have been validly issued and are fully paid and all in-kind capital contributions by such shareholders have been made for full commercial value. The only issued shares of the Borrower are registered shares. There are no options, warrants or instruments convertible into shares or other agreements relating to the existing shares of the Borrower or for the issuance of additional shares of any class or description of the Borrower. No person has any right (other than as a shareholder or otherwise as provided under Government Ordinance No. 64/2001 regarding profit distribution within national companies, national enterprises and commercial companies which are state-owned or have majority state share capital, as well as within autonomous companies, as amended to date) to share in the profits of the Borrower.

- (d) **Directors and Officers.** As of the date of this Agreement, the Directors (in Romanian *administratori*) of the Borrower are Mr. Gavra Ovidiu Cornel, Mr. Oros Claudiu Romulus, Mr. Mercea Pavel, Mrs. Fodre Gabriela, Mr. Sabau Popa Liviu, Mr. Giurea Mina and Mr. Pop Miron, the General Manager (in Romanian *director general*) of the Borrower is Mr. Gavra Ovidiu Cornel, the Finance Director (in Romanian *director economic*) of the Borrower is Mrs. Panoiu Julianna, the Head of PIU (in Romanian *sef UIP*) is Mr. Ignat Georgică, the Head of the Legal Department (in Romanian *şeful biroului juridic*) of the Borrower is Mrs. Cornea Otilia Corina, the Technical Director (in Romanian *director tehnic*) of the Borrower is Mr. Popa Gheorghe, the Head of the Human Resources and Organisation Department of the Borrower is Mr. Cociuba Atanasie and the Head of the Accounting Department of the Borrower is Mrs. Pălcuțiu Luminița Adelina. **[Note: the Borrower to confirm the details regarding the directors.]**

- (e) **Financial Statements.** The balance sheet of the Borrower as at 31 December 2011 and the related income statement, statement of changes in equity, cash flow statement and notes, comprising a summary of significant accounting policies and other explanatory notes, of the Borrower for the Financial Year ending on that date, certified by the Auditors, present fairly the financial position, financial performance and cash flows of the Borrower as of the date of such balance sheet and for the period covered by such income statement, statement of changes in equity and cash flow statement and were prepared in accordance with IFRS. The Borrower had, as of the date of such balance sheet, no material contingent

obligations, liabilities for Taxes or unusual forward or long term commitments not disclosed by, or reserved against in, such balance sheet or the notes thereto. Since the date of such balance sheet, the Borrower has not suffered any Material Adverse Effect, incurred any substantial or unusual loss or liability or undertaken or agreed to undertake any substantial or unusual obligation except under the Financing Agreements and the Project Agreements.

- (f) **Title to Assets.** Except for the assets of the Borrower that are construed to be part of the public domain under applicable legislation, the Borrower owns and has good and marketable title to all of its assets, the ownership of which is reflected in its most recent balance sheet referred to in Section 2.02(e). With regard to the assets of the Borrower that are construed to be part of the public domain under applicable legislation and are necessary for the implementation of the Project, the Borrower has valid rights of administration, management and/or operation of such assets in full compliance with all applicable and relevant legislation. Such assets are free from any restrictions or covenants which might have a Material Adverse Effect. The Borrower's assets are not subject to any Lien, and the Borrower is not subject to any contract, arrangement or law, whether conditional or unconditional, pursuant to which any Lien may be created on its assets, except for Permitted Liens.
- (g) **Material Contracts.** As of the date of this Agreement, the Borrower is not a party to, or committed to enter into, any agreement, other than the Financing Agreements and the Project Agreements, that (i) involves any consultancy, agency, financial advisory or similar service contract or arrangement relating to the Project; or (ii) would or might affect the judgment of a prospective lender considering whether to enter into this Agreement and lend to the Borrower.
- (h) **Compliance with Law.** The Borrower is not in violation of any law applicable to it and presently in effect. To the best of the Borrower's knowledge, no law has been proposed or is expected which may have a Material Adverse Effect. All tax returns and reports of the Borrower required by law to be filed have been duly filed and all Taxes upon the Borrower, its properties and its income, which are due and payable, have been paid, other than those currently payable without penalty or interest. The Borrower is in compliance with all applicable laws concerning money laundering. Neither the Borrower nor any officers, directors, authorised employees, Affiliates, agents or representatives of the Borrower has committed or engaged in, with respect to the Project, or any transactions contemplated by this Agreement, any Prohibited Practice.
- (i) **No Default.** The Borrower is not in default under any agreement, obligation or duty to which it is a party or by which it or any of its properties or assets is bound and there exists no Default.

- (j) **Environmental and Social Compliance.** The Borrower and its businesses, operations, assets, equipment, property, leaseholds and other facilities are, in all material respects, in compliance with the provisions of all Environmental and Social Laws. The Borrower has been issued all required Authorisations relating to, and, has received no complaint, order, directive, claim, citation or notice from any Governmental Authority or other person with respect to: (1) air emissions, (2) discharges to surface water or ground water, (3) noise emissions, (4) solid or liquid waste disposal, (5) the use, generation, storage, transportation or disposal of toxic or hazardous substances, (6) labour and employment conditions, (7) occupational health and safety, (8) public health, safety and security, (9) indigenous peoples, (10) cultural heritage and (11) resettlement or economic displacement of persons.
- (k) **Litigation.** The Borrower is not engaged in, or, to the best of its knowledge, threatened by, any litigation, arbitration or administrative proceeding, the outcome of which might have a Material Adverse Effect. *[disclosures in the LOI regarding the pending litigations TBD - in particular with respect to the MAE of such pending litigations]*
- (l) **Regionalisation.** The transformation of the Borrower into a regional operator of water supply and sewerage services was made in compliance with, and with the observance of all laws and regulations applicable in Romania and the Borrower carries out its business as regional operator of water supply and sewerage services in accordance with the applicable Romanian legislation, including, but not limited to: (i) Law No. 51/2006 on local public services, as further amended and supplemented, and (ii) Law No. 241/2006 on water supply and sewerage services, as further amended and supplemented.
- (m) **Waiver of Immunity.** The waiver of sovereign immunity provision in Section 8.11 is valid and effective against the Borrower.
- (n) **County's Public Domain.** The Borrower does not operate any assets which are part of the County's public domain.

Section 2.03. Representations Regarding the Agreements

The Borrower represents and warrants as follows:

- (a) **Corporate Power.** The Borrower has the corporate power to enter into, and perform its obligations under, the Financing Agreements and the Project Agreements to which it is a party.

(b) **Due Authorisation; Enforceability; No Conflict.** The Financing Agreements and the Project Agreements to which the Borrower is a party have been or will be, when executed and delivered, duly authorised by the Borrower. This Agreement has been duly executed by the Borrower and this Agreement constitutes, and the other Financing Agreements and the Project Agreements, to which the Borrower is a party, when executed and delivered, will constitute, valid and legally binding obligations of the Borrower, enforceable in accordance with their respective terms. The making of the Financing Agreements and the Project Agreements and the compliance with the terms thereof:

- (1) will not result in any violation of the Borrower's Charter, Licenses or any provision contained in any law applicable to the Borrower;
- (2) will not conflict with or result in the breach of any provision of, or require any consent under, or result in the imposition of any Lien under, any agreement or instrument to which the Borrower is a party or by which the Borrower or any of its assets is bound; and
- (3) will not constitute a default or an event which, with the giving of notice, the passage of time or the making of any determination (or any combination thereof), would constitute a default under any such agreement or instrument.

(c) **Governmental Authorisations.** No Authorisations from any Governmental Authority are required for:

- (1) the due execution, delivery or performance by the Borrower of any Financing Agreement, or the validity or enforceability thereof, except for (i) the notification of the Loan Agreement with the National Bank of Romania pursuant to Regulation No. 31/2011 issued by the National Bank of Romania; and (ii) the approval by the Oradea City Council of the Project Support Deed;
- (2) the carrying out of the Project or the carrying on of the business of the Borrower as it is carried on or is contemplated to be carried on, except for those (i) Licenses (including the Licenses required for carrying out its activities in the territorial administrative units which are parties to the Delegation Contract but in which the Borrower is not providing water supply and/or wastewater services as at the date of this Agreement; provided that, before the Borrower starts providing water supply and/or wastewater services in such territorial administrative units, the Borrower shall obtain from ANRSC an amendment to the Operation License to reflect the extension of the Operation License, so as to cover the territorial administrative units in which the Borrower will provide water supply and/or wastewater activities) and (ii) Authorisations which are not necessary at the time this representation is made (or repeated) and which are of a routine or minor nature and are customarily granted in due course after timely application, or which need only be obtained as the Project progresses or after construction is completed and in respect of which the Borrower is not aware of any reason for it being unable to obtain in due course such

Licenses and Authorisations; for the avoidance of any doubt, the Borrower represents and warrants that it does not operate in any territorial administrative unit which is not contemplated in the Operation License; and

- (3) the due execution and delivery or performance by the Borrower of any Project Agreement, or the validity or enforceability thereof.
- (d) **Pari Passu Ranking.** The Borrower's payment obligations under the Financing Agreements rank at least *pari passu* with claims of all of its other creditors, except for claims mandatorily preferred by laws applicable to companies generally.
- (e) **Security.** The Borrower is not a party to any other security agreement or instrument creating or purporting to create a Lien on any of its assets, except for the Permitted Liens.
- (f) **Project Agreements.** The Delegation Contract was signed on 11 September 2009, is in full force and effect without modification from the form referred to in Section 1.01 and the conditions for the effectiveness of the Delegation Contract provided in Article 51 (*Effectiveness Date and Conditions*) of the Delegation Contract were and continue to be cumulatively met. There has occurred no breach, and no event which with the giving of notice, the passage of time or the making of any determination, or any combination thereof, would constitute a breach, of the Delegation Contract. The Borrower has provided the guarantee required under Articles 40 and 41 of the Delegation Contract. The Delegation Contract does not, and the Project Support Deed, when executed and delivered, will not, represent state aid under the relevant EU regulations and do not have to be notified and/or approved by the European Commission. The Delegation Contract has been awarded to the Borrower by the City and other municipalities (through IDA) with the full observance of the applicable Romanian legislation, including, but not limited to: (i) Law No. 51/2006 on local public services, as further amended and supplemented, (ii) Law No. 241/2006 on water supply and sewerage services, as further amended and supplemented, and (iii) the legal conditions for the direct award of the Delegation Contract to the Borrower were cumulatively met as at the date of the Delegation Contract and continue to be met.
- (g) **Taxes.** There is no Tax of any Governmental Authority of Romania to be imposed on or by virtue of the execution, delivery or performance of any Financing Agreement or necessary to ensure the legality, validity, enforceability or admissibility in evidence thereof in Romania.
- (h) **Letter of Information.** The information contained in the Letter of Information is otherwise true, complete and accurate, subject to the qualifications contained therein.

Section 2.04. Acknowledgement and Repetition

- (a) The Borrower acknowledges that it has made the representations and warranties contained in Sections 2.01, 2.02 and 2.03 with the intention of inducing EBRD to enter into this Agreement and that EBRD has entered into this Agreement on the basis of, and in full reliance on, each of such representations and warranties. The Borrower warrants that it has no knowledge of any additional facts or matters the omission of which makes any of such representations and warranties misleading or which would or might reasonably be expected to affect the judgment of a prospective lender regarding lending to the Borrower.
- (b) Any representation or warranty given hereunder which specifies that such representation and warranty is provided hereunder "as of the date of this Agreement" shall only be given on the date of this Agreement and shall not be deemed to be repeated hereafter in connection with any Disbursement made pursuant to this Agreement. In respect of all other representations and warranties provided in this Article II, such representations and warranties shall be deemed to be repeated on submission of each Disbursement request and on each Disbursement date by reference to the facts and circumstances then existing.

ARTICLE III - LOAN

Section 3.01. Amount and Currency

On and subject to the terms and conditions of this Agreement, EBRD agrees to lend to the Borrower an amount not to exceed EUR 8,520,000 (eight million five hundred twenty thousand Euros).

Section 3.02. Disbursements

- (a) Subject to Section 3.03 and Article IV, the Loan shall be disbursed by EBRD from time to time on any Business Day during the Commitment Period in one or more Disbursements upon request of the Borrower, provided that there shall be no more than 15 Disbursements. The Borrower may request a Disbursement by submitting to EBRD an original application for such Disbursement, in the form of Exhibit A and in substance satisfactory to EBRD, at least ten Business Days prior to the proposed date of such Disbursement. Such application shall, unless EBRD otherwise agrees, be irrevocable and binding on the Borrower.
- (b) Disbursements (other than a Disbursement of the entire undisbursed amount of the Loan) shall be made in amounts of not less than EUR 500,000.
- (c) The proceeds of the Loan shall be used by the Borrower to finance up to 16 % of the contract value (VAT exclusive) of each procurement contract specified in Schedule 3 (*Procurement Plan*) hereto or any other contract agreed by EBRD provided that such contract: (i) was not awarded based on the nationality of the tenderer, or the country of origin, or foreign content of the goods criteria, and (ii) has not been awarded to a supplier, contractor or consultant or any sub-supplier, sub-contractor or sub-consultant included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such

list may be found on EBRD's website. In the event there are loan savings under the Loan, EBRD will work together with the Borrower to devise possible ways for the Borrower to utilise such savings, subject to obtaining all applicable internal approvals.

Section 3.03. Suspension and Cancellation

- (a) From time to time, EBRD may, by notice to the Borrower, suspend or cancel the right of the Borrower to all or any portion of any further Disbursements:
- (1) if the first Disbursement has not been made by the second anniversary of the date of this Agreement or such other date as may be agreed by the parties hereto;
 - (2) if an Event of Default has occurred and is continuing;
 - (3) if the Board of Governors of EBRD has decided in accordance with Article 8, paragraph 3 of the Agreement Establishing the European Bank for Reconstruction and Development or otherwise that access by the Country of Operation to EBRD resources should be suspended or otherwise modified;
 - (4) if the cohesion funds under the Cohesion Funds Agreement are suspended or cancelled or the Cohesion Funds Agreement is terminated before its maturity; or
 - (5) if a Market Disruption Event has occurred and is continuing.
- (b) Upon the issuance of such notice by EBRD, the right of the Borrower to further Disbursements shall be suspended or cancelled as indicated in the notice. The exercise by EBRD of the right of suspension shall not preclude EBRD from exercising its right of cancellation as provided in this Section 3.03, either for the same or another reason, and shall not limit any other rights of EBRD under the Financing Agreements.
- (c) The Borrower shall have the right at any time, on not less than thirty (30) days prior notice to EBRD, to cancel in whole or in part any undisbursed portion of the Loan, provided that the Borrower shall pay to EBRD at the same time all accrued commitment fees on the portion of the Loan to be cancelled and all other amounts due hereunder; for the avoidance of any doubt, in the case of partial cancellation by the Borrower of the undisbursed portion of the Loan, such cancellation shall be in an amount of not less than EUR 2,000,000.
- (d) Any such notice of cancellation by the Borrower under Section 3.03(c) shall be irrevocable and binding on the Borrower. Amounts of the Loan that are cancelled by the Borrower may not be reinstated.

Section 3.04. Charges, Commissions and Fees

- (a) The Borrower shall pay to EBRD during the Commitment Period a commitment fee, on so much of the Loan as has not, from time to time, been disbursed to the

Borrower or cancelled, at the following rates:

Relevant Period	Commitment Fee Rate
From (and including) [14 February 2015] until (and excluding) [14 February 2016]	0.50% per annum
From (and including) [14 February 2016] and at all times thereafter.	0.60% per annum

The commitment fee shall accrue from day to day from, and including, the date which is the second anniversary of the date of this Agreement. The commitment fee shall be calculated on the basis of the actual number of days elapsed in the relevant period and a 360-day year and shall be due and payable in arrears on each Interest Payment Date (even though no interest may be payable on such date).

- (b) The Borrower shall pay to EBRD a front-end commission of EUR 85,200 (representing 1% of the Loan). Such front-end commission shall be due and payable not later than three (3) Business Days prior to the first Disbursement of the Loan or thirty (30) Business Days after the date of this Agreement, whichever is earlier.
- (c) The charges, commissions and fees referred to in this Section 3.04 are non-refundable and are exclusive of any Tax which might be chargeable in connection with such charges, commissions or fees. If any such Tax becomes chargeable, the Borrower shall pay such Tax to EBRD at the same time that the relevant charge, commission or fee becomes due and payable.

Section 3.05. Interest

- (a) Except as provided in Section 3.06, the Borrower shall pay interest on the principal amount of each Disbursement from time to time outstanding during each Interest Period for such Disbursement at a rate equal to the sum of the Margin and, subject to Section 3.07, the Interbank Rate for such Interest Period.
- (b) Notwithstanding the foregoing, the Margin shall be adjusted starting on the first Interest Payment Date following the fourth anniversary of the date of this Agreement, as follows:
 - (i) if the Debt Service Coverage Ratio, as determined from time to time by EBRD based on the most recent Audited Financial Statements, is greater than 1.3:1.0 and equal to or lower than 1.5:1.0, the Margin shall be decreased by 25 bps (resulting in a Margin of 2.75% per annum); and
 - (ii) if the Debt Service Coverage Ratio, as determined from time to time by EBRD based on the most recent Audited Financial Statements, is greater than 1.5:1.0, the Margin shall be decreased by a further 25 bps (resulting in a Margin of 2.50% per annum);

provided that such adjustment(s) contemplated under items (i) and (ii) above shall only be made if the Borrower is compliant with all the financial covenants provided in this Agreement, including without limitation those provided under Section 5.11 (*Financial Ratios*) and following the receipt by EBRD of the most recent Audited Financial Statements referred to in Section 5.15 (d) in compliance with this Agreement;

and further provided that in all cases:

- (1) any Margin decrease effected pursuant to the provisions of this Section 3.05(b) shall only apply from the Interest Payment Date immediately following the date on which the Borrower has (i) notified EBRD that the event causing such Margin adjustment has occurred; and (ii) provided EBRD with all reasonable supporting documentation required by EBRD;
- (2) any Margin decrease effected pursuant to this Section 3.05(b) shall cease to have effect from the Interest Payment Date immediately following the date on which the Borrower ceases to meet the required Debt Service Coverage Ratio, as determined from time to time by EBRD based on the most recent Audited Financial Statements, and shall revert to the margin set forth in Section 3.05(b) or in the definition of Margin (as the case may be) and corresponding to the applicable level of the Debt Service Coverage Ratio;
- (3) if an Event of Default has occurred then, notwithstanding anything to the contrary, while such event is continuing the Margin shall be 3% per annum;
- (4) notwithstanding anything to the contrary provided under this Section 3.05(b), if the Borrower breaches the provisions of Section 6.05 (*Liens*) of this Agreement, then the Margin of 5 % per annum shall apply from the date on which the breach occurred until such breach is remedied to the satisfaction of EBRD, it being acknowledged that any such margin increase shall not affect the right of EBRD to declare an Event of Default pursuant to Section 7.01(b);
- (5) as a result of Margin adjustments pursuant to the provisions of this Section 3.05(b) during the term of this Agreement, the level of the adjusted Margin shall not exceed 5 % nor be lower than 2.50%; and
- (6) notwithstanding the above, should at any time the Borrower's Financial Debt/EBITDA ratio (calculated in accordance with Section 5.11(c)) be more than 4.5:1.0, no step downs will apply and the Margin will remain equal to or will be increased to (as applicable) 3%.

(c) Interest shall:

- (1) accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period;
- (2) be calculated on the basis of the actual number of days elapsed and a 360-day year; and

- (3) be due and payable on the Interest Payment Date which is the last day of the relevant Interest Period.
- (d) Except as otherwise provided in Section 3.07, on each Interest Determination Date, EBRD shall determine the interest rate applicable during the relevant Interest Period and promptly give notice thereof to the Borrower. Each determination by EBRD of the interest rate applicable to any portion of the Loan shall be final, conclusive and binding upon the Borrower unless shown by the Borrower to the satisfaction of EBRD that any such determination has involved manifest error.

Section 3.06. Default Interest

- (a) If the Borrower fails to pay when due any amount payable by it under this Agreement, the overdue amount shall bear interest at a rate equal to the sum of:
 - (1) 2.00% per annum;
 - (2) the Margin; and
 - (3) the interest rate per annum offered in the Euro-zone interbank market on the Default Interest Determination Date for a deposit in the Loan Currency of an amount comparable to the overdue amount for a period equal to the relevant Default Interest Period or, if a Market Disruption Event has occurred, the rate which expresses as a percentage rate per annum the cost to EBRD and each Participant of funding its respective portion of the Loan from whatever source EBRD or such Participant(s) may reasonably select (or at the option of EBRD and such Participant(s), the relevant Interbank Rate, if available).

For the avoidance of any doubt, the interest rate applicable pursuant to this Section 3.06 (a) to any overdue amount shall not be higher than the sum of: (i) 5% per annum, and (ii) the interest rate determined in accordance with Section 3.06 (a)(3) of this Agreement.

- (b) Default interest shall:
 - (1) accrue from day to day from the due date to the date of actual payment, after as well as before judgment, if any;
 - (2) be calculated on the basis of the actual number of days elapsed and a 360-day year;
 - (3) be compounded at the end of each Default Interest Period; and
 - (4) be due and payable forthwith upon demand.
- (c) Each determination by EBRD of the interest rates applicable to overdue amounts and of Default Interest Periods shall be final, conclusive and binding upon the Borrower unless shown by the Borrower to the satisfaction of EBRD that any such determination has involved manifest error.

Section 3.07. Market Disruption

- (a) If a Market Disruption Event occurs, then EBRD shall be entitled to notify the Borrower of the occurrence of such Market Disruption Event.
- (b) If EBRD notifies the Borrower of the occurrence of a Market Disruption Event, pursuant to the above paragraph (a) interest shall accrue on the Loan at a rate equal to the sum of:
- (1) the Margin; and
 - (2) the rate which expresses as a percentage rate per annum the cost to EBRD and each Participant of funding its respective portion of the Loan from whatever source EBRD or such Participant(s) may reasonably select (or, at the option of EBRD and such Participant(s), the relevant Interbank Rate, if available), as notified by EBRD to the Borrower as soon as practicable and in any event before interest is due to be paid in respect of the relevant Interest Period, until EBRD has given notice to the Borrower that the Market Disruption Event has ceased to exist.
- (c) If a Market Disruption Event has occurred, EBRD shall have the right, in its discretion, to change the duration of any relevant Interest Period by sending to the Borrower a written notice thereof. Any such change to an Interest Period shall take effect on the date specified by EBRD in such notice.
- (d) Notwithstanding Section 3.07(a), if a Market Disruption Event occurs and EBRD or the Borrower so requires, within five (5) Business Days of the notification by EBRD pursuant to Section 3.07 (a) above, EBRD 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 applicable to the Loan. Any alternative basis so agreed shall take effect in accordance with its terms and replace the interest rate then in effect pursuant to Section 3.07 (a) above. If agreement cannot be reached, the Borrower may prepay the Loan on the next Interest Payment Date in accordance with Section 3.09, but without any prepayment fee.

Section 3.08. Repayment *[Drafting note: Repayment dates to be set after the signing date is known and to coincide with the Interest Payment Dates.]*

- (a) The Borrower shall repay the Loan in 22 equal (or as nearly equal as possible) semi-annual instalments starting on [14 February 2017] and thereafter on [14 February] and [14 August] of every year until (and including) [14 August 2027], provided that if any Disbursement is made after one or more of such repayment dates, such Disbursement shall be allocated by EBRD for repayment on each of the remaining repayment dates described above in amounts which are pro rata to the amounts of the respective remaining instalments of the Loan on each such repayment date (with EBRD adjusting those allocations as necessary so as to achieve whole numbers in each case).

- (b) The dates for payment of principal of the Loan are intended to coincide with Interest Payment Dates. If any Interest Payment Date is affected by the proviso to the definition of "Interest Payment Date", then the corresponding date for payment of principal shall be changed to coincide with such Interest Payment Date. Amounts of the Loan repaid may not be reborrowed.

Section 3.09. Prepayment

The Borrower shall have the right at any time, on not less than 30 days' prior notice to EBRD, to prepay on any Interest Payment Date all or any part of the principal amount of the Loan then outstanding, provided that:

- (1) the Borrower shall pay to EBRD at the same time all accrued interest and other amounts payable on the principal amount of the Loan to be prepaid and all other amounts due and payable hereunder;
- (2) in the case of a partial prepayment, such prepayment shall be in an amount of not less than EUR 2,000,000 and shall be applied to prepay the outstanding repayment instalments of the Loan in inverse order of maturity;
- (3) there will not be more than four notices of prepayment; and
- (4) the Borrower shall pay to EBRD on the date of prepayment a prepayment fee equal to (A) 3% of the principal amount of the Loan to be prepaid in case of prepayment on or before the fifth anniversary of the date of this Agreement, (B) 2% of the principal amount of the Loan to be prepaid in case of prepayment after the fifth anniversary of the date of this Agreement but on or before the sixth anniversary of the date of this Agreement, or (C) 1% of the principal amount of the Loan to be prepaid in case of prepayment, at any time, after the sixth anniversary of the date of this Agreement.

Any such notice of prepayment by the Borrower shall be irrevocable and binding on the Borrower and, upon delivery of such notice, the Borrower shall be obligated to prepay the Loan in accordance with the terms thereof. Amounts of the Loan prepaid by the Borrower may not be reborrowed.

Section 3.10. Payments

- (a) All payments of principal, interest, charges, commissions, fees, expenses and any other amounts due to EBRD under this Agreement shall be made, without set-off or counterclaim, in the Loan Currency (or, in the case of costs and expenses of EBRD, in the currency in which such costs and expenses were incurred), for value on the due date, to such account or such other place as EBRD may from time to time designate by notice to the Borrower.
- (b) The sums to be disbursed by EBRD to the Borrower hereunder shall be payable in the Loan Currency for value, unless otherwise agreed by the Borrower and EBRD, on the value date requested by the Borrower in its Disbursement application and to

such correspondent account in Romania as the Borrower may designate in its Disbursement application (with instructions to transfer such sums, at the Borrower's risk and expense, to such account as the Borrower may designate in its Disbursement application).

- (c) If the due date for any payment under this Agreement would otherwise fall on a day which is not a Business Day, then such payment shall instead be due on the next succeeding Business Day in the same calendar month or, if there is no succeeding Business Day in the same calendar month, the immediately preceding Business Day.
- (d) EBRD shall have the right, to the fullest extent permitted by law, to set off any amount owed by EBRD to the Borrower, whether or not matured, against any amount then due and payable by the Borrower under any Financing Agreement, whether or not EBRD has demanded payment by the Borrower of such amount and regardless of the currency or place of payment of either such amount. EBRD shall have the right, to the fullest extent permitted by law, to deduct from the proceeds of any Disbursement any charges, commissions, fees, expenses and other amounts then due and payable by the Borrower to EBRD under any Financing Agreement.

Section 3.11. Insufficient Payments

- (a) If EBRD at any time receives less than the full amount then due and payable to it under this Agreement, EBRD shall have the right to allocate and apply the amount received in any way or manner and for such purpose or purposes under this Agreement as EBRD in its sole discretion determines, notwithstanding any instruction that the Borrower may give to the contrary.
- (b) The Borrower shall indemnify EBRD against any losses resulting from a payment being received, or a claim being filed or an order or judgment being given, hereunder in a currency or place other than the currency and place specified in Section 3.10(a). The Borrower shall pay such additional amount as is necessary to enable EBRD to receive, after conversion to such currency at a market rate and transfer to such place, the full amount due to EBRD hereunder in the currency and at the place specified in Section 3.10(a).

Section 3.12. Taxes

- (a) The Borrower shall pay or cause to be paid, or reimburse EBRD on demand for, all present and future Taxes, now or at any time hereafter levied or imposed by any Governmental Authority of any jurisdiction out of which or through which payments hereunder are made, on or in connection with the payment of any amounts due to EBRD under this Agreement.
- (b) All payments of principal, interest and other amounts due to EBRD under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes, provided, however, that, in the event that the

Borrower is prevented by operation of law or otherwise from making such payments free and clear of such deductions or withholdings, the principal, interest or other amount (as the case may be) due under this Agreement shall be increased to such amount as may be necessary to remit to EBRD the full amount it would have received had such payment been made without such deductions or withholdings.

- (c) The provisions of Sections 3.12(a) and 3.12(b) shall not apply to Taxes, to the extent that such Taxes arise as a direct consequence of a Participation having been acquired by a Participant whose principal office is located in the Country of Operation or by the permanent office or establishment in the Country of Operation of a Participant.

Section 3.13. Unwinding Costs

- (a) If, for any reason (including, without limitation, an acceleration pursuant to Section 7.02), any portion of the Loan becomes due and payable on a date other than the last day of an Interest Period, the Borrower shall pay to EBRD on demand the amount, if any, by which:

- (1) the interest which would have accrued on such portion of the Loan from the date on which such portion of the Loan has become due and payable to the last day of the then current Interest Period at a rate equal to the Interbank Rate for such Interest Period;

exceeds:

- (2) the interest which EBRD would be able to obtain if it were to place an amount equal to such portion of the Loan on deposit with a leading bank in the Euro-zone interbank market for the period commencing on the date on which such portion of the Loan has become due and payable and ending on the last day of the then current Interest Period.

- (b) If any overdue amount is paid on a date other than the last day of a Default Interest Period, the Borrower shall pay to EBRD on demand the amount, if any, by which:

- (1) the interest which would have accrued on such overdue amount from the date of receipt of such overdue amount to the last day of the then current Default Interest Period at a rate equal to the rate specified in Section 3.06(a)(3) for such Default Interest Period;

exceeds:

- (2) the interest which EBRD would be able to obtain if it were to place an amount equal to such overdue amount on deposit with a leading bank in the Euro-zone interbank market for the period commencing on the Business Day immediately following the date of receipt of such overdue amount and ending on the last day of the then current Default Interest Period.

- (c) The Borrower shall forthwith upon notice from EBRD reimburse EBRD for any

costs, expenses and losses incurred by EBRD or any Participant, and not otherwise recovered by EBRD under Sections 3.13(a) and 3.13(b), as a result of the occurrence of an Event of Default, a change in the duration of any relevant Interest Period pursuant to Section 3.07(b), a change in the basis for determining the rate of interest pursuant to Section 3.07(c), prepayment of any portion of the Loan on a date other than an Interest Payment Date, failure by the Borrower to pay any amount when due hereunder, failure by the Borrower to borrow in accordance with a Disbursement application submitted pursuant to Section 3.02 or failure by the Borrower to make any prepayment in accordance with a notice of prepayment delivered pursuant to Section 3.09.

- (d) A certificate of EBRD as to any amount payable under this Section 3.13 shall be final, conclusive and binding on the Borrower unless shown by the Borrower to the satisfaction of EBRD to contain manifest error.

Section 3.14. Increased Costs

- (a) The Borrower shall, from time to time on demand of EBRD, reimburse EBRD for any net incremental costs to EBRD of making or maintaining, or committing to make, the Loan or to any Participant of acquiring or maintaining its Participation which result from:

- (1) the introduction of, or any change in, any applicable law or any applicable guideline or policy (whether or not having the force of law but, if not having the force of law, being of a type with which it is customary for banks generally to comply with), or any change in the interpretation or application thereof by any governmental or regulatory authority charged with the administration thereof; and/or
- (2) any compliance with any request from, or requirement of, any central bank or other monetary or other authority,

which, subsequent to the date of this Agreement:

- (A) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets held by, or deposits with or for the account of, or loans by, EBRD or such Participant;
- (B) imposes a cost on EBRD or such Participant as a result of it having made the Loan or acquired its Participation, as the case may be, or reduces the rate of return on the overall capital of EBRD or such Participant which it would otherwise have been able to achieve;
- (C) changes the basis of Tax on payments received by EBRD or such Participant in respect of the Loan or its Participation, as the case may be, other than by a change in taxation of the overall net income of EBRD or such Participant; or
- (D) imposes on EBRD or such Participant any other condition regarding

the making or maintaining of the Loan or the acquisition or maintaining of its Participation, as the case may be.

Notwithstanding the foregoing, the Borrower shall not be obligated to reimburse EBRD for any such net incremental costs which are a direct consequence of a Participation having been acquired by a Participant whose principal office is located in the Country of Operation or by the permanent office or establishment of a Participant in the Country of Operation.

- (b) EBRD shall furnish to the Borrower with any such demand a certificate of EBRD or the relevant Participant certifying:
- (1) that such net incremental costs have been incurred;
 - (2) the circumstances giving rise to such net incremental costs;
 - (3) that, in the opinion of EBRD or such Participant, it has complied with its obligations under Section 3.16; and
 - (4) the amount of such net incremental costs.

The certificate of EBRD or any Participant as to the amount of such net incremental costs shall be final, conclusive and binding on the Borrower unless shown by the Borrower to the satisfaction of EBRD to contain manifest error.

- (c) Notwithstanding anything in Section 3.09, the Borrower shall have the right, on not less than 30 days' notice to EBRD (which notice shall be irrevocable and binding on the Borrower), to prepay on any Interest Payment Date that portion of the Loan on which EBRD informs the Borrower that such net incremental costs are then being charged, provided that the Borrower shall pay to EBRD at the same time all accrued interest and other amounts (including, any such net incremental costs) payable on the principal amount of the Loan to be prepaid and all other amounts due hereunder.

Section 3.15. Illegality

Notwithstanding anything in this Agreement, if it is or becomes unlawful in any jurisdiction for EBRD to make, maintain or fund the Loan or perform any of its obligations under this Agreement or for any Participant to maintain or fund its Participation, then:

- (1) upon request by EBRD, the Borrower shall, on the next Interest Payment Date or such earlier date as EBRD may specify, prepay that portion of the principal amount of the Loan which EBRD notifies to the Borrower as being affected by such change, together with all accrued interest and other amounts payable thereon; and
- (2) upon notice from EBRD, any portion of the Loan which EBRD notifies to the Borrower as being affected by such change and which has not theretofore been disbursed shall be cancelled immediately.

Section 3.16. Mitigation

(a) If, in respect of EBRD or a Participant, circumstances arise which would, or with the giving of notice would, result in:

- (1) any Taxes, duties and fees or other charges becoming payable under Section 3.12, or
- (2) any increased cost becoming payable under Section 3.14, or
- (3) any prepayment or cancellation under Section 3.15,

then EBRD will take (and request a Participant to take) such reasonable steps as may be practicable to mitigate the effects of such circumstances provided always that EBRD will be under no obligation to take (or request that such Participant take) such reasonable steps if such action would be materially adverse to the interests of EBRD or that Participant.

(b) Section 3.16(a) above, does not in any way limit the obligations of the Borrower or any other party to any Financing Agreement.

Section 3.17. Loan Account

EBRD shall open and maintain on its books an account in the Borrower's name showing the Disbursements and repayments thereof and the computation and payment of interest, charges, commissions, fees and other amounts due and sums paid hereunder. Such account shall be final, conclusive and binding on the Borrower as to the amount at any time due from the Borrower hereunder, absent manifest error.

ARTICLE IV - CONDITIONS PRECEDENT

Section 4.01. First Disbursement

The obligation of EBRD to make the first Disbursement under the Loan shall be subject to the prior fulfilment, in form and substance satisfactory to EBRD, or at the sole discretion of EBRD the waiver, whether in whole or part and whether subject to conditions or unconditional, of the following conditions precedent (including, at EBRD's sole discretion, certified English translations of documents executed in languages other than the English language):

(a) **Financing Agreements.** EBRD shall have received duly executed originals of the following agreements:

- (1) this Agreement;

- (2) the Existing Loan Agreements together with duly executed amendments to each of the Existing Loan Agreements which will harmonise each of the Existing Loan Agreements with this Agreement, which amendments shall be in the form and substance required by EBRD;
 - (3) the Project Support Deed; and
 - (4) the Debt Service Reserve Account Agreement.
- (b) **Project Agreements.** EBRD shall have received certified copies of the following agreements:
- (1) the Letter of Information;
 - (2) the Licenses;
 - (3) the Cohesion Funds Agreement (including all schedules thereto);
 - (4) the Delegation Contract (including all schedules thereto); and
 - (5) guarantee enforcement agreement (in Romanian *acord de executare a garantiei*) concluded the Borrower and IDA pursuant to Article 41 (2) of the Delegation Contract;
- (c) **Charters.** EBRD shall have received:
- (1) certified copies of the Charter of the Borrower (as registered with the Romanian Commercial Registry) and, at the request of EBRD, of any other parties to the Financing Agreements and the Project Agreements, each as amended to date;
 - (2) certified copy of the registration certificate (in Romanian *certificat de inregistrare*) of the Borrower;
 - (3) original certificate of corporate good standing (in Romanian *certificat constatator*) of the Borrower issued by the Romanian Commercial Registry (not older than three Business Days prior to the date of this Agreement, any other Financing Agreement to which it is a party and the Disbursement application) evidencing, among others, the registration of the general manager (*director general*, in Romanian) of the Borrower with the Romanian Commercial Registry and the appointed members (which shall be in odd number, but in any event not less than 5) of the Borrower's board of directors as at the date of such certificate;
 - (4) original Romanian Commercial Registry excerpt indicating that no proceeding act has been published in the Bulletin for Insolvency Proceedings (in Romanian *Buletinul Procedurilor de Insolvență*) with respect to the Borrower (not older than three Business Days prior to the date of this Agreement, any other Financing Agreement to which it is a party and the Disbursement application); and

- (5) original extract (in Romanian *extras*) issued by the Romanian Commercial Registry pursuant to Article 9(3) of Law 359/2004, confirming that the Borrower is operational as at the date of such extract (not older than three Business Days prior to the date of this Agreement, any other Financing Agreement to which it is a party and the Disbursement application).
- (d) **Corporate Authorisations.** EBRD shall have received certified copies of all corporate Authorisations (including any board of directors and/or shareholders resolutions and the board of directors' ratification resolutions, if the case) and documents (including the evidence of proper performance of the convening procedures and meeting minutes) necessary for the due execution, delivery and performance of the Financing Agreements (other than the Existing Loan Agreements) and the Delegation Contract, and any other documents in implementation thereof, by the Borrower and the City and, at the request of EBRD, any other parties thereto and for the transactions contemplated thereby, including the authorisations of the persons signing the Financing Agreements (other than the Existing Loan Agreements) and the Delegation Contract to sign such documents and to bind the respective parties thereby, and the evidence of registration of the Borrower's shareholders resolutions approving the Financing Agreements and the Delegation Contract with the relevant Commercial Registry and its publication with the *Official Gazette* of Romania, Part IV.
- (e) **Specimen Signatures.** EBRD shall have received an original certificate of incumbency and authority of the Borrower and other parties to the Financing Agreements substantially in the form of Exhibit B.
- (f) **Governmental and Other Authorisations.** EBRD shall have received certified copies of all Authorisations, including creditors' consents, necessary for the execution, delivery and performance of the Financing Agreements (other than the Existing Loan Agreements) and the Delegation Contract by the Borrower and the City and, at the request of EBRD, any other parties thereto and for the transactions contemplated thereby, including:
- (1) the borrowing by the Borrower under this Agreement;
 - (2) the carrying out of the Project and the Financing Plan;
 - (3) the remittance to EBRD of all monies payable in respect of the Financing Agreements;
 - (4) the carrying on of the business of the Borrower as it is presently carried on and is contemplated to be carried on;
 - (5) the approval of the Project Support Deed by the Oradea City Council;
 - (6) evidence that ANRSC has endorsed the rules and formulas regulating the setting up, adjustments and changes of the tariffs contemplated under Article 36 (*Prices, tariffs and other revenue sources*) of the Delegation Contract and Section 5.12 (*Tariff Adjustments*) of this Agreement (including the tariff strategy contemplated in Schedule 4 (*Tariff Strategy*) hereto);

- (7) evidence that the tariff strategy contemplated in Schedule 4 (*Tariff Strategy*) hereto has been approved by IDA and has been included in the Delegation Contract; and
- (8) the notification of this Agreement with the National Bank of Romania pursuant to Regulation No. 31/2011 issued by the National Bank of Romania;

other than any Authorisation of a routine or minor nature which is not necessary for the implementation of the Project at the time of the proposed Disbursement or which may only be obtained as the Project progresses or after construction is completed and in each case which is customarily granted in due course after timely application, and in respect of which the Borrower is not aware of any reason for it being unable to obtain in due course such Authorisation.

- (g) **Insurance.** EBRD shall have received an original insurance certificate from the Borrower's insurer or insurance broker showing that all insurance policies required under Section 5.04 are in full force and effect and certified copies of such insurance policies and endorsements.
- (h) **Auditors Letter.** EBRD shall have received a copy of a letter to the Auditors from the Borrower substantially in the form of Exhibit C.
- (i) **Environmental and Social Action Plan.** EBRD shall have received the Environmental and Social Action Plan.
- (j) **Process Agent Appointments.** EBRD shall have received written confirmation from the agents for service of process appointed by each of the Borrower, the City and the Project Bank pursuant to the Financing Agreements (other than the Existing Loan Agreements) of their acceptances of such appointments.
- (k) **Legal Opinions.** EBRD shall have received the following legal opinions regarding such matters incident to the transactions contemplated by the Financing Agreements (other than the Existing Loan Agreements) and Project Agreements as EBRD reasonably requests:
 - (1) the opinion of Mrs. Otilia Corina Cornea , the Head of the Legal Department of the Borrower (in Romanian, *Seful Biroului Juridic*);
 - (2) the opinion of Allen & Overy LLP, special English counsel to EBRD; and
 - (3) the opinion of Radu Taracila Padurari Retevoescu SCA in association with Allen & Overy LLP, special Romanian counsel to EBRD.
- (l) **Debt Service Reserve Account.** EBRD shall have received satisfactory evidence that the Debt Service Reserve Account has been validly opened and has been funded in accordance with the Debt Service Reserve Account Agreement.
- (m) **Borrower's Management.** EBRD shall have received satisfactory evidence that:

- (1) the board of directors of the Borrower was duly appointed and is comprised of an odd number of directors (but in any event not less than 5 members); and
 - (2) the general manager of the Borrower was duly appointed by the Borrower's board of directors.
- (n) **Project Support Deed.** The Effective Date (as such term is defined in the Project Support Deed) has occurred.

Section 4.02. All Disbursements

In addition to the provisions of Section 4.01 above, the obligation of EBRD to make any Disbursement shall also be subject to the fulfilment, in form and substance satisfactory to EBRD, or at the sole discretion of EBRD the waiver, whether in whole or part and whether subject to conditions or unconditional, of the conditions that, on the date of the Borrower's application for such Disbursement and on the date of such Disbursement:

- (a) **Continuing Validity of Documents.** All agreements, documents and instruments delivered to EBRD pursuant to Section 4.01 shall be in full force and effect and unconditional (except for this Agreement having become unconditional, if that is a condition of any such agreement, document or instrument).
- (b) **Representations and Warranties.** Each of the representations and warranties made or confirmed by the Borrower and the City in the Financing Agreements and the Project Agreements shall be true on and as of such dates with the same effect as though such representations and warranties had been made on and as of such dates.
- (c) **No Default.** No Default shall have occurred and be continuing or shall, in the reasonable opinion of EBRD, be imminent and the Borrower shall not, as a result of such Disbursement, be in violation of its Charter, any provision contained in any agreement or instrument to which the Borrower is a party (including this Agreement) or by which the Borrower is bound or any law applicable to the Borrower; no default of any nature occurred or is continuing or shall, in the reasonable opinion of EBRD, be imminent under the Existing Loan Agreements.
- (d) **No Material Adverse Change.** Nothing shall have occurred which, in the reasonable opinion of EBRD, might have a Material Adverse Effect.
- (e) **Compliance with Financial Covenants.** The Borrower is compliant with all financial covenants under this Agreement, including without limitation to those provided under Section 5.11 (*Financial Ratios*) below.

- (f) **Use of Proceeds.** The proceeds of such Disbursement shall be needed by the Borrower for the purposes of the Project and EBRD shall have received such evidence as to the proposed utilisation of the proceeds of such Disbursement and the utilisation of the proceeds of any prior Disbursement as EBRD reasonably requests.
- (g) **Fees and Expenses.** EBRD shall have received payment of all amounts due and owing to it under the Financing Agreements, including all fees and expenses described in Section 3.04 and Section 5.14.
- (h) **Disbursement Application.** EBRD shall have received an original of the Borrower's timely application for such Disbursement substantially in the form of Exhibit A.
- (i) **Pro-rata Funding.** EBRD shall have received the evidence that:
 - (i) on the date of the Borrower's application for such Disbursement and on the date of such Disbursement, the amounts disbursed by EBRD under the Loan will not be used by the Borrower to finance more than 16 % of the contract value (VAT exclusive) of each contract specified in Schedule 3 (*Procurement Plan*) hereto or any other contract agreed by EBRD;
 - (ii) none of the procurement contracts specified in Schedule 3 (*Procurement Plan*) hereto or any other contract agreed by EBRD to be financed from the Loan was awarded based on the nationality of the tenderer, or the country of origin, or foreign content of the goods criteria; and
 - (iii) none of the procurement contracts specified in Schedule 3 (*Procurement Plan*) hereto or any other contract agreed by EBRD to be financed from the Loan was awarded to a supplier, contractor or consultant or any sub-supplier, sub-contractor or sub-consultant included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.
- (j) **Other.** EBRD shall have received such other documents and legal opinions as EBRD may reasonably request (including, at EBRD's sole discretion, certified English translations of all documents, provided under this Section 4.02, executed in languages other than the English language).

ARTICLE V - AFFIRMATIVE COVENANTS

Unless EBRD otherwise agrees in writing:

Section 5.01. Project Implementation

The Borrower shall carry out the Project in accordance with the provisions of the Financing Agreements and the Project Agreements, including full participation in the performance of benchmarking exercise led by ARA, and any other agreement or document which EBRD and the Borrower may from time to time designate as a Project Agreement and cause the financing specified in the Financing Plan to be applied exclusively to the Project.

Section 5.02. Maintenance, Continuity of Business and Management

The Borrower shall maintain its corporate existence in compliance with all applicable laws. The Borrower shall conduct its business with due diligence and efficiency, in accordance with sound engineering, financial and business practices and shall ensure that its directors and management officers satisfy the efficiency, technical and professional requirements as may be set out by EBRD from time to time, in compliance with all applicable laws, including all money laundering laws. Any changes to personnel of the Borrower, including the position of the general manager (*director general*, in Romanian) shall be immediately notified, in writing, to EBRD.

Section 5.03. Environmental and Social Compliance

- (a) Except as otherwise specified in the Environmental and Social Action Plan, the Borrower shall, and shall cause any contractor to, carry out the Borrower's business and operations in accordance with the Designated Performance Requirements.
- (b) Without limiting the foregoing, the Borrower shall diligently implement and adhere to the Environmental and Social Action Plan and monitor the implementation of such plan in accordance with the monitoring provisions contained in such plan.
- (c) The Borrower and EBRD may from time to time agree to amend the Environmental and Social Action Plan in response to changes in the circumstances of the Project, the Borrower or the Borrower's business and operations, unforeseen events and the results of monitoring. Without limiting the generality of the foregoing:
 - (1) if there is any adverse environmental or social impact or issue that was not foreseen by or contemplated in the Environmental and Social Action Plan either entirely or as to its severity,
 - (2) if any impact mitigation measure set out in the Environmental and Social Action Plan is not sufficient to eliminate or reduce any environmental or social impact to the level contemplated by the relevant Designated Performance Requirements within the time frame set out in the Environmental and Social Action Plan, or

- (3) if any material non-compliance with the Environmental and Social Action Plan or with any Environmental and Social Law has been identified by an inspection from any regulatory or enforcement authority,

the Borrower shall, as soon as reasonably practicable and subject to the consent of EBRD, develop and incorporate into the Environmental and Social Action Plan such additional or revised mitigation measures as may be necessary to achieve compliance with the Designated Performance Requirements, in each case in a manner satisfactory to EBRD.

Section 5.04. Insurance

The Borrower shall maintain the insurance against loss, damage and liability with respect to all of its assets including assets awarded to the Borrower under the Delegation Contract, if and as required under the Delegation Contract and/or any applicable laws and regulations, in a manner and with insurers satisfactory to EBRD.

Section 5.05. Accounting

- (a) The Borrower shall maintain books of account and other records adequate to present fairly the financial position, financial performance and cash flows of the Borrower and the results of its operations (including the progress of the Project) in conformity with (i) IFRS (for each Financial Year from and including 2013 and thereafter) and (ii) the Romanian GAAP (for each quarter of each Financial Year).
- (b) The Borrower shall maintain as Auditors of the Borrower a firm of independent accountants acceptable to EBRD.
- (c) The Borrower shall authorise, by a letter substantially in the form of Exhibit C, the Auditors to communicate directly with EBRD at any time regarding the Borrower's accounts and operations.
- (d) The Borrower shall maintain an accounting and cost control system and management information system satisfactory to EBRD.

Section 5.06. Continuing Governmental and Other Authorisations

- (a) The Borrower shall obtain and at all times maintain in force (or, where appropriate, renew) all Authorisations required for the purposes described in Sections 4.01(d) and 4.01(f). The Borrower shall perform and observe all the conditions and restrictions contained in, or imposed on the Borrower by, such Authorisations.
- (b) At least six (6) months before the expiry of the Operation License, the Borrower shall take all actions required by law, including, without limitation, the submission to ANRSC of all necessary documents, in order to obtain the renewal of the Operation License.

- (c) Before starting to carry out its activities in the territorial administrative units which are parties to the Delegation Contract but in which the Borrower has not started to provide water and/or wastewater services, as at the date of this Agreement, the Borrower shall take all actions required by law, including, without limitation, the submission to ANRSC of all necessary documents, in order to obtain from ANRSC an amendment to the Operation License to reflect the extension of the Operation License so as to cover the territorial administrative units in which the Borrower will provide water supply and/or wastewater activities. For the avoidance of any doubt, the Borrower shall carry out activities in a territorial administrative unit which is not a party to the Delegation Contract and which is not contemplated in the Operation License only after: (1) the respective territorial administrative unit has become a party to the Delegation Contract. (2) all schedules and other documents required under the Delegation Contract have been signed and attached to the Delegation Contract and (3) the Borrower has obtained the extension of the Operation License so as to cover that territorial administrative unit.

Section 5.07. Debt Service Reserve Account

The Borrower shall establish, maintain and fund the Debt Service Reserve Account pursuant to the Debt Service Reserve Account Agreement.

Section 5.08. Compliance with Other Obligations

The Borrower shall comply with all material agreements to which it is a party or by which it or any of its properties or assets is bound.

Section 5.09. Taxes

- (a) The Borrower shall pay when due all of its Taxes, including any Taxes against any of its properties, other than Taxes which are being contested in good faith and by proper proceedings and as to which adequate reserves have been set aside for the payment thereof. The Borrower shall make timely filings of all Tax returns and governmental reports required to be filed or submitted under any applicable law.
- (b) The Borrower shall pay all Taxes payable on, or in connection with, the execution, issue, delivery, registration or notarisation of any Financing Agreement, any Project Agreement or any other document related to this Agreement. Upon notice from EBRD, the Borrower shall pay to EBRD, or reimburse EBRD for, an amount equal to any such Taxes levied on or paid by EBRD.

Section 5.10. Project Agreements

The Borrower shall at all times maintain all Project Agreements to which the Borrower is a party in full force and effect without modification and enforce its rights and perform its obligations under, and not commit any breach of or default under, any such Project Agreement, provided that the Borrower shall be entitled to agree to changes

to the Delegation Contract which will not, in the reasonable opinion of EBRD, (i) result in a decrease in the level of the tariffs described in Section 5.12 (*Tariff Adjustments*) of this Agreement; or (ii) have a Material Adverse Effect, and provided further that the Borrower has submitted to EBRD detailed projections on the impact of such changes, in form and substance satisfactory to EBRD, and such other information and/or documents as EBRD may reasonably request.

Section 5.11. Financial Ratios

- (a) **Debt Service Coverage Ratio.** The Borrower shall, at all times, commencing on the date of this Agreement maintain a ratio of (i) Cash Available for Debt Service for the 12 months preceding the date of calculation to (ii) the sum of the principal repayments and interest payments on all Financial Debt due or accrued during such period, of not less than 1.2:1.

For the purposes of this Section, "**Cash Available for Debt Service**" means net cash from operating activities during the relevant period plus (i) interest paid (if classified as net cash from operating activities) during such period minus (ii) those cash flows for such period which are applied during that period to acquiring long term assets but excluding those cash flows which are applied to acquire long term assets for the Project using this Loan and/or EU Cohesion Fund grants and/or cash balances from previous periods that are in excess of cash balances held on the Debt Service Reserve Account and MRD Account.

- (b) **Minimum Collection Ratio:** The Borrower shall ensure that the ratio of Collections from Customers to Total Revenue shall not be less than: (i) 85% (starting from the date of this Agreement until and including the fourth anniversary of the date of this Agreement) and (ii) 90% (at any time after the fourth anniversary of the date of this Agreement).

For the purposes of this Section:

- (1) "**Collections from Customers**" means total revenue of the Borrower during a Financial Year from all its customers for water supply and wastewater services, minus (i) outstanding customer debt owing at the end of the relevant period from customers to the Borrower for water supply and wastewater services, plus (ii) outstanding customer debt owing at the beginning of the relevant period from customers to the Borrower for water supply and wastewater services, minus (iii) any increases in the bad customer debt provisions and any write-offs of outstanding customer debt, plus (iv) any decreases in the bad debt provisions; and
- (2) "**Total Revenue**" means the total revenue of the Borrower in any Financial Year from all its customers for water supply and water services.
- (c) **Financial Debt/EBITDA Ratio.** The Borrower shall, at all times, starting from the date of this Agreement, maintain a ratio of (i) Financial Debt, to (ii) EBITDA, of not more than 4.5:1.

For the purposes of this Section, "**EBITDA**" means profit or loss of the Borrower,

for the 12 months preceding the date of calculation, before (i) any interest, commissions, discounts and other financing fees and costs and any interest earned, (ii) any provision for income tax, (iii) any depreciation on fixed assets and amortisation and any amounts attributable to amortisation of goodwill and other intangible assets and (iv) any concession fee that is recorded in expenditures in such period that was paid to the County and other municipalities as set forth in the Delegation Contract, but returned to the MRD Account.

- (d) **Operating Costs Ratio.** The Borrower shall ensure that the ratio of the 2015 Operating Costs to the 2012 Operating Costs shall be of not more than 0.9:1.

For the purposes of this Section:

(1) "**Operating Costs**" means for any period all costs directly relating to operations of the Borrower (excluding depreciation expense, interest expense, extraordinary items and taxes) which operating cost shall be calculated annually and included into the Audited Financial Statements submitted to EBRD;

(2) "**2012 Operating Costs**" means the Operating Costs as shown in the Audited Financial Statements for the Financial Year ending as of 31 December 2012 indexed annually starting from the Financial Year ending as of 31 December 2013 until (and including) the Financial Year ending as of 31 December 2015 using the National Annual Average Producer Price Index published by the National Institute of Statistics of Romania or, if such Index ceases to be published, such other Romanian national price index as may be acceptable to EBRD; and

(3) "**2015 Operating Costs**" means the Operating Costs as shown in the Audited Financial Statements for the Financial Year ending as of 31 December 2015.

- (e) Words used in this Section which have a prescribed meaning under IFRS shall have that meaning for the purposes of this Section also.

Section 5.12. Tariff Adjustments

Unless EBRD otherwise agrees in writing, the Borrower shall take, or cause to be taken, all actions required to adjust the tariffs applicable (as of the date of this Agreement) to any of the Borrower's services to reflect inflation and ensure full cost recovery and compliance with the financial covenants provided under Section 5.11 (*Financial Ratios*) throughout the term of this Agreement, as follows:

- (i) each tariff shall be increased to (x) cover:
- (a) direct operating and exploitation expenses (including, without limitation, royalties);
 - (b) maintenance and repair costs;
 - (c) amortization and depreciation;
 - (d) financial costs (including interest expenses and repayment of principal);

- (e) mandatory investments required for the replacement, rehabilitation and refurbishment of existing assets and any other investment required for the purpose of implementing the projects co-financed with EU Cohesion Funds;

and (y) ensure profit for the Borrower in accordance with the Delegation Contract;

- (ii) each tariff shall also be increased in real terms in accordance with the tariff strategy contemplated in Schedule 4 (*Tariff Strategy*) to this Agreement;
- (iii) the adjustments of the tariffs in real terms contemplated in paragraph (ii) above do not include: (a) the inflation from the period between the tariff adjustments made in accordance with paragraph (ii); and (b) VAT. The tariffs increased in real terms as contemplated in Section 5.12 (ii) above, will be adjusted to reflect the inflation in accordance with the tariff strategy contemplated in Schedule 4 (*Tariff Strategy*) to this Agreement; and
- (iv) the tariffs shall also be increased in accordance with the Delegation Contract.

Section 5.13. Further Documents

The Borrower shall execute all such other documents and instruments and do all such other acts and things as EBRD may determine are necessary or desirable to give effect to the provisions of the Financing Agreements and the Project Agreements and to cause the Financing Agreements and the Project Agreements to be duly registered, notarised and stamped in any applicable jurisdiction. The Borrower hereby irrevocably appoints and constitutes EBRD as the Borrower's true and lawful attorney with right of substitution (in the name of the Borrower or otherwise) to execute such documents and instruments and to do such acts and things in the name of and on behalf of the Borrower in order to carry out the provisions hereof.

Section 5.14. Costs and Expenses

- (a) The Borrower shall, whether or not any Disbursement is made, pay to EBRD or as EBRD may direct, within 21 days of EBRD furnishing to the Borrower the invoice therefor, all out-of-pocket costs and expenses (including the fees and expenses of outside counsel to EBRD) incurred by EBRD in connection with:
 - (1) the assessment, preparation, negotiation and arrangement of the Loan by EBRD;
 - (2) the preparation, review, translation, negotiation, execution and, where appropriate, registration and notarisation of the Financing Agreements, the Project Agreements and any other documents related thereto; and
 - (3) the giving of any legal opinions hereunder,

up to the equivalent of Euro 50,000. If such fees and expenses exceed the

equivalent of Euro 50,000, EBRD will seek the approval of the Borrower to incur such additional fees and expenses.

- (b) The Borrower shall pay to EBRD or as EBRD may direct, on demand, all fees, costs and expenses (including, legal fees and expenses) incurred by EBRD:
 - (1) in the determination of whether there has occurred a Default;
 - (2) in respect of the preservation or enforcement of any of its rights under any Financing Agreement and the collection of any amount owing to EBRD;
 - (3) in connection with the assessment, preparation, review, negotiation, execution and, where appropriate, registration and notarisation of any amendment to or waiver of any Financing Agreement, any Project Agreement or any other document related thereto; and
 - (4) the administration and monitoring of the Financing Agreements, including visits by EBRD's environmental and social staff.

Section 5.15. Furnishing of Information

- (a) As soon as available but, in any event, within forty-five (45) days after each quarter of each Financial Year, the Borrower shall furnish to EBRD the interim Financial Statements for such quarter (prepared in accordance with Romanian GAAP) in a form satisfactory to EBRD (prepared and delivered in hard copy or pdf format) and, if requested by EBRD, certified by an officer of the Borrower, which Financial Statements shall *inter alia* include the calculation of the financial ratios provided under Section 5.11 (*Financial Ratios*).
- (b) As soon as available but, in any event, within forty five (45) days after the end of each quarter of each Financial Year, the Borrower shall furnish to EBRD (i) a statement of all changes made to key personnel in the managerial staff of the Borrower, (ii) a progress report, in form and substance acceptable to EBRD, including, for each contract with a contract value in excess of EUR 50,000 (or the equivalent thereof in other currencies at then current rates of exchange) awarded by the Borrower in respect of the Project and to be financed from the Loan funds, the identity and nationality of the contractor, and the value and date of the contract and information related to changes and claims during the execution of such contract, including, but not limited to, information on changes in the terms of the contract and changes affecting costs and completion time, and (iii) a statement of transactions with its Affiliates and Shareholders in excess of EUR 30,000 (or the equivalent thereof in other currencies at then current rates of exchange).
- (c) No later than 1 June of each Financial Year the Borrower shall furnish to EBRD, in Romanian, a report which will include a management discussion, technical aspects and discussion of performance of the Borrower as per reporting requirements under the Delegation Contract. The Borrower will also furnish to EBRD the English summary of each of such Romanian language documents.

- (d) As soon as available but, in any event, within (i) one hundred and eighty (180) days after the end of each Financial Year, or (ii) one (1) month of the annual financial statements approval by the General Meeting of Shareholders of the Borrower as per the Delegation Contract, whichever is earlier, the Borrower shall furnish to EBRD the Borrower's complete Audited Financial Statements for such Financial Year, which Financial Statements shall *inter alia* include the calculation of the financial ratios provided under Section 5.11 (*Financial Ratios*) (delivered in hard copy or pdf format) (provided that the letter from the Auditors to the Shareholders of the Borrower mentioned under point (b) of the definition of the "Audited Financial Statements" under Section 1.01 shall be provided to EBRD only upon EBRD's request).
- (e) As soon as available but, in any event, within ninety (90) days after the end of each Financial Year, the Borrower shall furnish to EBRD a report, in form and scope satisfactory to EBRD, on Environmental and Social Matters arising in relation to the Borrower or the Project during such Financial Year, including:
- (1) information on compliance by the Borrower with the Designated Performance Requirements as described in Section 5.03(a) and the implementation of the Environmental and Social Action Plan;
 - (2) information on how the Borrower has monitored the compliance with the Designated Performance Requirements and the Environmental and Social Action Plan by any contractor engaged for the Project and a summary of any material non-compliance by such contractor with the Designated Performance Requirements and the Environmental and Social Action Plan and of any measures taken to remedy such non-compliance;
 - (3) information on implementation of the stakeholder engagement plan 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, the Borrower's business and operations, including the status of any Authorisation required therefore, 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, and a summary of any material notice, report and other communication on Environmental and Social Matters relating to the Project, the Borrower's business and operations submitted by the Borrower to any regulatory authority;
 - (5) information on occupational health and safety management and the occupational health and safety record of the Project, the Borrower's business and operations, 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, the Borrower's business and operations; and
 - (7) copies of any information on Environmental and Social Matters periodically submitted by the Borrower to its Shareholders or the general public;
- (f) The Borrower shall furnish to EBRD:
- (1) within forty-five (45) days after any insurance policy is issued to the Borrower, as required under Section 5.04 of this Agreement, a certified copy of that policy incorporating any loss payee and additional insured provisions, if applicable (unless that policy has already been provided to EBRD pursuant to Section 4.01 (g) (*Insurance*));
 - (2) not less than ten (10) days prior to the expiry date of any insurance policy (or, for insurance with multiple renewal dates, not less than ten (10) days prior to the expiry date of the policy on the principal asset), an original certificate of renewal from the insurer, insurance broker or agent confirming the renewal of that policy, containing details of the names of the loss payees (if applicable), beneficiaries and assignees, the name of the insurer, the renewal period, the premium, the assets insured, the amounts and risks insured for each asset or item and any changes in terms or conditions from the policy's issue date or last renewal;
- (g) The Borrower shall promptly notify EBRD of:
- (1) any proposed change in the nature or scope of the Project (including the location of raw materials, technology or processes used in, or the schedule for, the Project) or the business or operations of the Borrower;
 - (2) any claim made by the Borrower under any insurance policy in excess of EUR 500,000 (five hundred thousand Euros) or the equivalent thereof in other currencies at then current rates of exchange;
 - (3) any event or condition (including, but not limited to, any pending or threatened dispute, litigation, arbitration or administrative proceeding, any notice received from a competent authority, and any damage to or destruction of Project facilities) which might have a Material Adverse Effect;
 - (4) any change in laws or regulations which may have a Material Adverse Effect;
 - (5) any penalties or liquidated damages paid or payable by the Borrower in excess of EUR 350,000 (three hundred fifty thousand Euros) or the equivalent thereof in other currencies at then current rates of exchange;
 - (6) any abandonment or suspension of the Project; and

- (7) any disputes between the Borrower and any party to the Financing Agreements or the Project Agreements and of any breaches to the Delegation Contract.
- (h) Immediately upon the occurrence of any Default, the Borrower shall give EBRD notice thereof by facsimile transmission specifying the nature of such Default and any steps the Borrower is taking to remedy the same.
- (i) 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, or on public or occupational health or safety, the Borrower shall inform EBRD and promptly thereafter give EBRD notice thereof specifying the nature of such incident or accident and any steps the Borrower is taking to remedy the same. 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 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, or
- (D) such incident or accident has become, or is likely to become, public knowledge whether through media coverage or otherwise.
- (j) The Borrower shall promptly notify EBRD of any significant protest or petition by workers or members of the public directed at or relating to the Project, the Borrower's business and operations which might have a Material Adverse Effect 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 EBRD specifying the outcome of the Borrower's investigation into such protest or petition, and any steps taken, or proposed to be taken, by the Borrower to resolve the issues raised in the protest or petition.
- (k) The Borrower shall furnish promptly to EBRD two copies of all notices, reports and other communications of the Borrower to its Shareholders and the minutes of all Shareholders' meetings. Without limiting the foregoing, the Borrower shall, on or before the date that it gives official notice to its Shareholders of any

Shareholders' meeting, furnish EBRD, by facsimile transmission, with notice of such meeting and the agenda thereof.

- (l) The Borrower shall promptly notify EBRD if the Borrower obtains any information regarding a violation of Section 2.02(h) or Section 6.14 or if any international financial institution has imposed any sanction on the Borrower for any Prohibited Practice. If EBRD notifies the Borrower of its concern that there has been a violation of such Section 2.02(h) or such Section 6.14, the Borrower shall cooperate in good faith with EBRD and its representatives in determining whether such a violation has occurred and shall respond promptly and in reasonable detail to any such notice from EBRD and shall furnish documentary support for such response upon EBRD's request.
- (m) The Borrower shall furnish promptly to EBRD such other information as EBRD may from time to time reasonably request (including, in order to facilitate EBRD's evaluation of the Project). The Borrower shall permit representatives of EBRD (including, any consultants engaged by EBRD) to visit the Project or any of the other premises where the business of the Borrower is conducted or where the Project is being carried out and to have access to the books of account and records of the Borrower.

Section 5.16. Procurement

Except as EBRD shall otherwise agree, the Borrower shall ensure that all goods, works and services required for the Project and to be financed out of the proceeds of the Loan are procured in compliance with Emergency Government Ordinance No. 34/2006 on the awarding of public procurement agreements, public works concession agreements and public services concession agreements and subsequent implementation norms, as amended from time to time.

Section 5.17 Benchmarking

(a) The Borrower shall participate in the benchmarking technical cooperation programme developed by EBRD in conjunction with the ARA. Specifically, the Borrower will cooperate with the consultants and will implement benchmarking reporting on its operational performance on key performance indicators in line with new benchmarking reporting standards.

(b) The Borrower shall participate in the procurement benchmarking programme for the purpose of obtaining certification by an internationally-recognised professional institution for best practice procurement procedures. The procurement benchmarking and certification exercise will (i) include a thorough review of existing staff and systems performed by a specialised consultant, through data analysis and interviews; (ii) benchmark against international standards and practice and (iii) provide a gap analysis and improvement action plan. The action plan shall include where necessary, development of policies and procedures in addition to defining an appropriate code of ethics for the Borrower's organisational environment. The action plan shall be implemented by the Borrower in order to achieve the certification within 18 months from the date of this Agreement unless otherwise agreed with EBRD. The Borrower will

cooperate with the consultants, so that the consultant will be able to conduct periodic audits to demonstrate that the certified procedures are being implemented correctly. The certification exercise will cover most of the elements relevant to a successful, dynamic and sustainable procurement approach, leading to the issue of an internationally recognised procurement certification.

Section 5.18 MRD Account

The Borrower shall fully comply with the MRD Legislation and shall utilise the amounts standing to the credit of the MRD Account for the mandatory purposes provided for in the MRD Legislation.

ARTICLE VI - NEGATIVE COVENANTS

Unless EBRD otherwise agrees in writing:

Section 6.01. Dividends

Subject to any applicable mandatory legal provision under Romanian legislation to the contrary, the Borrower shall not declare or pay any dividend, or make any distribution on its share capital, or purchase, redeem or otherwise acquire any shares of capital of the Borrower or any option over the same, unless, at the time when such action is taken:

- (1) no Default has occurred and is continuing;
- (2) the Debt Service Coverage Ratio as determined at the last calculation date immediately preceding the date of such action and after taking into account the amounts to be paid as dividends or distributed in respect of its share capital is equal to or higher than 1.5:1.0 as determined pursuant to the latest Audited Financial Statements provided by the Borrower; and
- (3) such action is taken only after the fourth anniversary of the date of this Agreement or any other date notified to the Borrower by EBRD.

Section 6.02. Capital Expenditures

The Borrower shall not incur expenditures or commitments for expenditures for fixed and other non-current assets (other than expenditures required for carrying out the Project or for maintenance, repairs or replacements essential to the operation of the Project, as included in the Financing Plan) in an aggregate amount in excess of EUR 500,000 (or the equivalent thereof in other currencies at then current rates of exchange) in any Financial Year.

Section 6.03. Leases

The Borrower shall not enter into any agreement or arrangement to acquire by lease the use of any property or equipment of any kind, except to the extent that the aggregate payments by the Borrower in respect of such leases do not exceed EUR 500,000 (or the equivalent thereof in other currencies at then current rates of exchange) in any Financial Year.

Section 6.04. Financial Debt

- (a) The Borrower shall not incur, assume or permit to exist any Financial Debt except:
 - (1) that provided in the Financing Plan, including the Loan;
 - (2) that provided in the Existing Loan Agreements; and
 - (3) Short-term Debt for working capital purposes in an aggregate amount not to exceed EUR 1,000,000 (or the equivalent thereof in other currencies at then current rates of exchange).
- (b) The Borrower shall not enter into any agreement or arrangement to guarantee or, in any way or under any condition, to become obligated for all or any part of any financial or other obligation of another person.

Section 6.05. Liens

The Borrower shall not create or permit to exist any Lien on any property, revenues or other assets, present or future, of the Borrower, except:

- (1) if the Borrower at no cost to EBRD creates and perfects an equivalent ranking (*pari-passu*) Lien on the same property, revenues or assets securing any payments to be made by the Borrower under any of the Financing Agreements (including but not limited to the principal of, and interest and any fees on, the Loan), under terms satisfactory to EBRD;
- (2) any Tax or other non-consensual Lien arising by operation of law or other statutory Lien arising in the ordinary course of business, provided that such Lien (other than a Lien for a sum which is not yet delinquent) is discharged within 30 days after the date it is created or, if the validity or amount of such Lien or the sum secured by such Lien is being contested in good faith and by proper proceedings and adequate reserves have been set aside for the payment of such sum, within 30 days after final adjudication;
- (3) any Lien arising in the ordinary course of the Borrower's business and securing any Short-Term Debt for working capital purposes as provided in Section 6.04(a)(3) of this Agreement, provided that all times the aggregated amount secured under any such Lien does not exceed Euro 1,000,000 (or the equivalent thereof in other currencies at then current rates of exchange); and
- (4) the guarantee created in favour of IDA in accordance with Article 40 of the Delegation Agreement.

Section 6.06. Derivative Transactions

The Borrower shall not enter into any interest rate or currency swap, interest rate cap or collar, forward rate agreement or other interest rate, currency or commodity hedge or similar derivative transaction.

Section 6.07. Arm's Length Transactions

The Borrower shall not enter into any transaction with any person except in the ordinary course of business, on ordinary commercial terms and on the basis of arm's-length arrangements, or enter into any transaction whereby the Borrower would pay more than the ordinary commercial price for any purchase or would receive less than the full ex-works commercial price (subject to normal trade discounts) for its products or services.

Section 6.08. Profit-sharing and Management Arrangements

- (a) The Borrower shall not enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the Borrower's income or profits are, or might be, shared with any other person, except as provided under the Delegation Contract.
- (b) The Borrower shall not enter into any management contract or similar arrangement whereby its business or operations are managed by any other person.

Section 6.09. Investments

The Borrower shall not form or have any Subsidiary, or make or permit to exist loans or advances to, or deposits (other than deposits in the ordinary course of business with reputable banks) with, other persons or investments in any person or enterprise, provided, however, that the Borrower shall be at liberty to invest in short-term investment grade marketable securities solely to give temporary employment to the Borrower's idle resources.

Section 6.10. Project Agreements

The Borrower shall not terminate, amend or grant any waiver in respect of any provision of any Project Agreement to which it is a party or consent to any assignment of any Project Agreement by any other party thereto; provided that the Borrower shall be entitled to agree to changes to the Delegation Contract which will not, in the reasonable opinion of EBRD: (i) result in a decrease in the level of the tariffs described in Section 5.12 (*Tariff Adjustments*) of this Agreement; or (ii) have a Material Adverse Effect, and provided further that the Borrower has submitted to EBRD detailed projections on the impact of such changes, in form and substance satisfactory to EBRD, and such other information and/or documents as EBRD may reasonably request.

Section 6.11. Changes in Business, Capital and Charter

- (a) The Borrower shall not make changes, or permit changes to be made, to the nature of its business or operations or change the nature or scope of the Project. The Borrower shall not carry out any business or activity which would result in changing of its business or the Project.
- (b) The Borrower shall not make changes, or permit changes to be made, to its capital except in accordance with the Financing Plan or to the extent necessary for its further Regionalisation in line with the purposes of the Project, the Financing Agreements and the Project Agreements. EBRD must be promptly informed in writing of any such change and in any case no later than 30 days prior to its execution.
- (c) The Borrower shall not permit changes to be made to its Charter in any material respect, except to the extent necessary for its further Regionalisation in line with the purposes of the Project, the Financing Agreements and the Project Agreements. EBRD must be promptly informed, in writing of any such change and in any case no later than 30 days prior to its execution.

Section 6.12. Prepayment of Long-term Debt

The Borrower shall not (whether voluntarily or involuntarily) make any prepayment, repurchase or early redemption of any Long-term Debt (other than the Long-term Debt under the Existing Loan Agreements) or make any repayment of any Long-term Debt (other than the Long-term Debt under the Existing Loan Agreements) pursuant to any provision of any agreement or note which provides directly or indirectly for acceleration of repayment in time or amount, unless in any such case, if EBRD so requires, the Borrower contemporaneously makes a proportionate prepayment of the principal amount then outstanding of the Loan in accordance with the provisions of Section 3.09 (except that there shall be no minimum amount or notice period for such prepayment).

Section 6.13. Sale of Assets; Merger

- (a) The Borrower shall not sell, transfer, lease or otherwise dispose of all or a substantial part of its assets (whether in a single transaction or in a series of transactions, related or otherwise).
- (b) The Borrower shall not undertake or permit any merger, consolidation or reorganisation, except to the extent necessary for its further Regionalisation in line with the purposes of the Project, the Financing Agreements and the Project Agreements. EBRD must be promptly informed, in writing of any such merger, consolidation or reorganisation and in any case no later than 30 days prior to its execution or commencement.

Section 6.14. Fraud and Corruption

The Borrower shall not, and shall not authorise or permit any of its officers, directors, authorised employees, Affiliates, agents or representatives to, engage in with respect to the Project or any transactions contemplated by this Agreement any Prohibited Practice.

Section 6.15. Contract Value Limitation

The proceeds of the Loan shall not be used by the Borrower to finance more than 16 % of the contract value (VAT exclusive) of each procurement contract specified in Schedule 3 (*Procurement Plan*) hereto or any other contract agreed by EBRD.

Section 6.16. Ineligibility

The Borrower shall not apply for a Disbursement where any of the specific contracts which are to be financed from such Disbursement was awarded based on the nationality of the tenderer or the country of origin, or foreign content of the goods criteria and/or such contract has been awarded to a supplier, contractor or consultant or any sub-supplier, sub-contractor or sub-consultant included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.

Section 6.17 Accession of the County to the Delegation Contract

The Borrower shall not operate any assets resulted from the Project which, in accordance with Romanian law, must become part of the County's public domain, unless:

- (1) the County has inventoried the assets resulted from the Project which, in accordance with Romanian law, must become part of the County's public domain and such inventory has been approved by the County Council; and
- (2) the County has become a party to the Delegation Contract by signing any documents necessary or required by the then applicable legislation.

ARTICLE VII - EVENTS OF DEFAULT

Section 7.01. Events of Default

Each of the following events and occurrences shall constitute an Event of Default under this Agreement:

- (a) **Payments.** The Borrower fails to pay when due any principal of, or interest on: (i) the Loan as required by this Agreement and (ii) any loans granted by EBRD to the

Borrower under any of the Existing Loan Agreements as required by the Existing Loan Agreements, except where both of the following conditions apply:

- (1) the failure to pay is due to an administrative error of an account bank, other than an error caused by the negligence or wilful misconduct of the Borrower; and
 - (2) within three (3) Business Days after the due date full payment of the same is made in accordance with this Agreement.
- (b) **Covenants.** The Borrower or any other party (other than EBRD) fails to perform in a timely manner any of its obligations under any Financing Agreement or any other agreement between the Borrower and EBRD, the failure to perform such obligation is not referred to elsewhere in this Section 7.01 and, if capable of remedy, such failure to perform has continued for a period of 30 days after notice thereof has been given to the Borrower by EBRD.
- (c) **Project Agreements.** Any party (other than EBRD) fails to perform in a timely manner any of its obligations under any Project Agreement, the failure to perform such obligation is not referred to elsewhere in this Section 7.01 and, if capable of remedy, such failure to perform has continued for a period of 30 days after notice thereof has been given to the Borrower by EBRD.
- (d) **Delegation Contract.** The Delegation Contract terminates or becomes capable of being terminated by a party thereto otherwise than by reason of full performance of the Delegation Contract, the expiry of its term or as consented by EBRD.
- (e) **Representations.** Any representation or warranty made or confirmed by the Borrower or the City in any Financing Agreement or any Project Agreement was false or misleading in any material respect when made or repeated.
- (f) **Nationalisation.** Any Governmental Authority condemns, nationalises, seizes or otherwise expropriates all or any substantial part of the property or other assets of the Borrower or of its share capital, or assumes custody or control of such property or other assets or of the business or operations of the Borrower or of its share capital, or acquires majority ownership of the Borrower, or takes any action for the dissolution or disestablishment of the Borrower or any action that would prevent the Borrower or its officers from carrying on its business or operations or a substantial part thereof.
- (g) **Bankruptcy.** A decree or order by a court is entered against the Borrower or the City adjudging the Borrower or the City bankrupt or insolvent or ordering the winding up or liquidation of its affairs; or a petition is filed seeking reorganisation, administration, arrangement, adjustment, composition or liquidation of or in respect of the Borrower or the City under any applicable law; or a receiver, administrator, liquidator, assignee, trustee, sequestrator, secured creditor or other similar official is appointed over or in respect of the Borrower or the City or any substantial part of its property or assets; or the Borrower or the City institutes proceedings to be adjudicated bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files a

petition or answer or consent seeking reorganisation, administration, relief or liquidation under any applicable law, or consents to the filing of any such petition or to the appointment of a receiver, administrator, liquidator, assignee, trustee, sequestrator, secured creditor or other similar official of the Borrower or the City or of any substantial part of its property, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due; or any other event occurs which under any applicable law would have an effect analogous to any of the events listed in this paragraph.

- (h) **Financial Debt.** Any payment on any Financial Debt (including the Financial Debt under the Existing Loan Agreements) of the Borrower (other than the Loan) is not paid when due; or a default of any nature not otherwise provided for in this paragraph occurs under any agreement evidencing any such Financial Debt of the Borrower and such default continues beyond any applicable period of grace; or any such Financial Debt of the Borrower becomes prematurely due and payable or is placed on demand.
- (i) **Change of Control.** Any change of control of the Borrower occurs or the City ceases at any time to own directly or indirectly at least 75% of the issued and outstanding shares of the Borrower, in each case without the prior written consent of EBRD.
- (j) **Ineligibility for EBRD Financing.** In accordance with EBRD's Enforcement Policy and Procedures, EBRD shall have determined that the Borrower or an Affiliate of the Borrower has engaged in a Prohibited Practice in relation to an EBRD Project and the Borrower shall be included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.
- (k) **Material Adverse Effect.** Any circumstance or event occurs which, in the reasonable opinion of EBRD, is likely to have a Material Adverse Effect.
- (l) **Cohesion Funds Agreement.** A default of any nature occurs under the Cohesion Funds Agreement and such default continues beyond any applicable period of grace; or any such Financial Debt of the Borrower under the Cohesion Funds Agreement becomes prematurely due and payable or is placed on demand; or the cohesion funds under the Cohesion Funds Agreement are suspended or cancelled or the Cohesion Funds Agreement is terminated before its maturity.
- (m) **Dividends Payment.** The Borrower declares or pays any dividend, or makes any distribution on its share capital, or purchases, redeems or otherwise acquires any of its shares or any option over the same, except as otherwise provided under Section 6.01 of this Agreement.
- (n) **Maintenance, Continuity of Business and Management.** The Borrower ceases to maintain its corporate existence, or to conduct its business with due diligence, or any of its directors and management officers ceases to satisfy the efficiency, technical and professional requirements, or there occur any changes in the key personnel of the Borrower, including the position of the general manager of the Borrower (*director general*, in Romanian) which have not been notified to

EBRD, as provided under Section 5.02 of this Agreement.

- (o) **Continuity of Project.** The nature of the Borrower's business or operations or the nature or scope of the Project is changed, or the Borrower carries out any business or activity which would result in changing of its business or the Project.
- (p) **Changes to the share capital or the Charter.** The Borrower's share capital or the Charter is changed, except as otherwise provided under Sections 6.11 (b) and (c) of this Agreement.
- (q) **Merger, Consolidation or Reorganisation.** Any merger, consolidation or reorganisation in relation to the Borrower occurs otherwise as provided under Section 6.13 (b).
- (r) **Co-financed Procurement Contracts.** Any procurement contract specified in Schedule 3 (*Procurement Plan*) hereto or any other contract agreed by EBRD to be financed from the Loan is awarded by the Borrower based on the nationality of the tenderer, or the country of origin, or foreign content of the goods criteria; and/or such contract has been awarded to a supplier, contractor or consultant or any sub-supplier, sub-contractor or sub-consultant included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.
- (s) **Tariff Adjustments.** The tariffs applicable to any of the Borrower's services are not adjusted in accordance with paragraphs (i) to (iv) of Section 5.12 (*Tariff Adjustments*) of this Agreement.
- (t) **Change of MRD Legislation.** There occurs any change of the Emergency Government Ordinance No. 198 of 2005 regarding the establishment, funding and utilisation of the Maintenance, Replacement and Development Fund for the projects of development of the public services infrastructure which have the benefit of non-refundable financial assistance from the European Union, published in the *Official Gazette* No. 1193 of 30 December 2005, as approved and amended by Law No. 108 of 2006 published in the *Official Gazette* No. 379 of 3 May 2006.
- (u) **Licenses and Delegation Contract.**
 - (1) The Operation License is revoked, rescinded, suspended, terminated, cancelled or is not granted when required, or expires without renewal (whether in whole or in part) or otherwise ceases to be in full force and effect.
 - (2) The Borrower fails to comply with its obligations contemplated in Section 5.06 (c) of this Agreement.
- (v) **County's Public Domain.** Any assets resulted from the Project which, in accordance with Romanian law, must become part of the County's public domain, have not been inventoried, in accordance with the applicable Romanian legislation, and awarded into concession through the signing by the County of the

Delegation Contract within [3] months as of the completion of the works related to such assets.

Section 7.02. Consequences of Default

If an Event of Default occurs and is continuing, then EBRD may at its option, by notice to the Borrower, declare all or any portion of the principal of, and accrued interest on, the Loan (together with any other amounts accrued or payable under this Agreement) to be, and the same shall thereupon become (anything in this Agreement to the contrary notwithstanding), either:

- (1) due and payable on demand; or
- (2) immediately due and payable without any further notice and without any presentment, demand or protest of any kind, all of which are hereby expressly waived by the Borrower.

ARTICLE VIII - MISCELLANEOUS

Section 8.01. Term of Agreement

This Agreement shall continue in force until the date that the obligation of EBRD to make Disbursements hereunder has terminated in accordance with the terms hereof or, if later, until all moneys payable hereunder have been fully and irrevocably paid in accordance with the provisions hereof; provided that the indemnities and warranties of the Borrower and the provisions of Sections 3.10(a), 3.10(d), 8.04, 8.05, 8.08, 8.09, 8.10 and 8.11 shall survive repayment of the Loan and termination of this Agreement.

Section 8.02. Entire Agreement; Amendment and Waiver

This Agreement and the documents referred to herein constitute the entire obligation of the Parties hereto with respect to the subject matter hereof and shall supersede any prior expressions of intent or understandings with respect to this transaction. Any amendment to, waiver by EBRD of any of the terms or conditions of, or consent given by EBRD under, this Agreement (including, this Section 8.02) shall be in writing, signed by EBRD and, in the case of an amendment, by the Borrower. The parties to this Agreement may by agreement rescind or vary this Agreement without the consent of any person that is not a party to this Agreement. In the event that EBRD waives a condition to any Disbursement, the Borrower shall, by receiving the proceeds of such Disbursement, be deemed to have agreed to all of the terms and conditions of such waiver.

Section 8.03. Notices

Any notice, application or other communication to be given or made under this

Agreement to EBRD or to the Borrower shall be in writing. Except as otherwise provided in this Agreement, such notice, application or other communication shall be deemed to have been duly given or made when it is delivered by hand, airmail or facsimile transmission to the party to which it is required or permitted to be given or made at such party's address specified below or at such other address as such party designates by notice to the party giving or making such notice, application or other communication.

For the Borrower:

S.C. COMPANIA DE APA ORADEA S.A.

3 D. Zamfirescu Street, 3700, Oradea, Bihor County, Romania

Attention: Mr. Ovidiu Cornel Gavra, General Manager

Fax: + *[Borrower to insert details.]*

For EBRD:

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

One Exchange Square
London EC2A 2JN
United Kingdom

Attention: Operation Administration Department

Fax: +44 20 7338 6100

Section 8.04. English Language

Except as expressly provided otherwise in this Agreement, all documents to be furnished or communications to be given or made under this Agreement shall be in the English language or, if in another language, shall be accompanied by a translation into English certified by the Borrower, which translation shall be the governing version between the Borrower and EBRD.

Section 8.05. Financial Calculations

All financial calculations to be made under, or for the purposes of, this Agreement shall be made using the then most recently issued quarterly Financial Statements which the Borrower is required to furnish to EBRD from time to time under Section 5.15(a), except as otherwise required to conform to the definitions contained in Article I or any other provisions of this Agreement, provided, however, that:

- (1) if the relevant quarterly Financial Statements should be in respect of the last quarter of a Financial Year then, at EBRD's option, such calculations may instead be made from the Audited Financial Statements for the relevant Financial Year; and
- (2) if there should occur any material adverse change in the financial condition of the Borrower after the end of the period covered by the relevant Financial Statements, then such material adverse change shall also be taken into account in calculating the relevant figures.

Section 8.06. Rights, Remedies and Waivers

- (a) The rights and remedies of EBRD in relation to any misrepresentations or breach of warranty on the part of the Borrower shall not be prejudiced by any investigation by or on behalf of EBRD into the affairs of the Borrower, by the execution or the performance of this Agreement or by any other act or thing which may be done by or on behalf of EBRD in connection with this Agreement and which might, apart from this Section, prejudice such rights or remedies.
- (b) No course of dealing or waiver by EBRD in connection with any condition of Disbursement under this Agreement shall impair any right, power or remedy of EBRD with respect to any other condition of Disbursement or be construed to be a waiver thereof.
- (c) No action of EBRD in respect of any Disbursement shall affect or impair any right, power or remedy of EBRD in respect of any other Disbursement. Without limiting the foregoing, the right of EBRD to require compliance with any condition under this Agreement which may be waived by EBRD in respect of any Disbursement is, unless otherwise notified to the Borrower by EBRD, expressly preserved for the purposes of any subsequent Disbursement.
- (d) No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to EBRD upon any default under this Agreement or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No action of EBRD in respect of any such default or acquiescence by it therein, shall affect or impair any right, power or remedy of EBRD in respect of any other default.
- (e) The rights and remedies provided in this Agreement and the other Financing Agreements are cumulative and not exclusive of any other rights or remedies, whether provided by applicable law or otherwise.

Section 8.07. Indemnification

- (a) The Borrower assumes full liability for, and agrees to and shall indemnify and hold harmless EBRD and its officers, directors, employees, agents and servants

against and from, any and all liabilities, obligations, losses, damages (compensatory, punitive or otherwise), penalties, claims, actions, Taxes, suits, costs and expenses (including reasonable legal counsel's fees and expenses and costs of investigation) of whatsoever kind and nature, including, without prejudice to the generality of the foregoing, those arising in contract or tort (including negligence) or by strict liability or otherwise, which are imposed on, incurred by or asserted against EBRD or any of its officers, directors, employees, agents or servants (whether or not also indemnified by any other person under any other document) and which in any way relate to or arise out of, whether directly or indirectly:

- (1) any of the transactions contemplated by any Financing Agreement or any Project Agreement or the execution, delivery or performance thereof;
- (2) the operation or maintenance of the Borrower's facilities or the ownership, control or possession thereof by the Borrower; or
- (3) the exercise by EBRD of any of its rights and remedies under any of the Financing Agreements;

provided that EBRD shall not have any right to be indemnified hereunder for its own gross negligence or wilful misconduct.

- (b) The Borrower acknowledges that EBRD is entering into this Agreement, and has acted, solely as a lender, and not as an advisor, to the Borrower. The Borrower represents and warrants that, in entering into the Financing Agreements, it has engaged, and relied upon advice given to it by, its own legal, financial and other professional advisors and it has not relied on and will not hereafter rely on any advice given to it by EBRD.

Section 8.08. Governing Law

This Agreement shall be governed by and construed in accordance with English law. Any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with English law.

Section 8.09. Arbitration and Jurisdiction

- (a) Any dispute, controversy or claim arising out of or relating to (1) this Agreement, (2) the breach, termination or invalidity hereof or (3) any non-contractual obligations arising out of or in connection with this Agreement shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. There shall be one arbitrator and the appointing authority shall be LCIA (London Court of International Arbitration). The seat and place of arbitration shall be London, England and the English language shall be used throughout the arbitral proceedings. The Parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England. The arbitral tribunal shall not be authorised to grant, and the Borrower agrees that it shall not seek from any judicial authority, any interim measures or pre-award relief against EBRD, any

provisions of the UNCITRAL Arbitration Rules notwithstanding. The arbitral tribunal shall have authority to consider and include in any proceeding, decision or award any further dispute properly brought before it by EBRD (but no other party) insofar as such dispute arises out of any Financing Agreement, but, subject to the foregoing, no other parties or other disputes shall be included in, or consolidated with, the arbitral proceedings. In any arbitral proceeding, the certificate of EBRD as to any amount due to EBRD under any Financing Agreement shall be *prima facie* evidence of such amount.

- (b) Notwithstanding Section 8.09(a), this Agreement and the other Financing Agreements, and any rights of EBRD arising out of or relating to this Agreement or any other Financing Agreement, may, at the option of EBRD, be enforced by EBRD in the courts of England, Romania or in any other courts having jurisdiction. For the benefit of EBRD, the Borrower hereby irrevocably submits to the non-exclusive jurisdiction of the courts of England with respect to any dispute, controversy or claim arising out of or relating to this Agreement or any other Financing Agreement, or the breach, termination or invalidity hereof or thereof. Failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned. The Borrower hereby irrevocably consents to the service of process or any other legal summons out of such courts by mailing copies thereof by registered airmail postage prepaid to its address specified herein. The Borrower covenants and agrees that, so long as it has any obligations under this Agreement, it shall maintain a duly appointed agent to receive service of process and any other legal summons in England for purposes of any legal action or proceeding brought by EBRD in respect of any Financing Agreement and shall keep EBRD advised of the identity and location of such agent. Nothing herein shall affect the right of EBRD to commence legal actions or proceedings against the Borrower in any manner authorised by the laws of any relevant jurisdiction. The commencement by EBRD of legal actions or proceedings in one or more jurisdictions shall not preclude EBRD from commencing legal actions or proceedings in any other jurisdiction, whether concurrently or not. The Borrower irrevocably waives any objection it may now or hereafter have on any grounds whatsoever to the laying of venue of any legal action or proceeding and any claim it may now or hereafter have that any such legal action or proceeding has been brought in an inconvenient forum.

Section 8.10. Privileges and Immunities of EBRD

Nothing in this Agreement shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of EBRD accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Notwithstanding the foregoing, EBRD has made an express submission to arbitration under Section 8.09(a) and accordingly, and without prejudice to its other privileges and immunities (including, without limitation, the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5(2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and

Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Section 8.09(a).

Section 8.11. Waiver of Sovereign Immunity

The Borrower represents and warrants that this Agreement and the incurring by the Borrower of the Loan are commercial rather than public or governmental acts and that the Borrower is not entitled to claim immunity from legal proceedings with respect to itself or any of its assets (except for the assets that are part of the public domain as defined in accordance with the Romanian legislation) on the grounds of sovereignty or otherwise under any law or in any jurisdiction where an action may be brought for the enforcement of any of the obligations arising under or relating to this Agreement. To the extent that the Borrower or any of its assets (except for the assets that are part of the public domain as defined in accordance with the Romanian legislation) has or hereafter may acquire any right to immunity from set-off, legal proceedings, attachment prior to judgment, other attachment or execution of judgment on the grounds of sovereignty or otherwise, the Borrower hereby irrevocably waives such rights to immunity in respect of its obligations arising under or relating to this Agreement.

Section 8.12. Successors and Assigns; Third Party Rights

- (a) This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except that the Borrower may not assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of EBRD.
- (b) EBRD may sell, transfer, assign, novate or otherwise dispose of all or part of its rights or obligations under this Agreement and the other Financing Agreements, (including, by granting of Participations or otherwise).
- (c) Except as provided in Section 8.12(a) or 8.12(b), none of the terms of this Agreement are intended to be enforceable by any third party.

Section 8.13. Disclosure

EBRD may disclose such documents, information and records regarding the Borrower and this transaction (including, copies of any Financing Agreements and Project Agreements) as EBRD deems appropriate in connection with any dispute involving the Borrower or any other party to a Financing Agreement, for the purpose of preserving or enforcing any of EBRD's rights under any Financing Agreement or collecting any amount owing to EBRD or in connection with any proposed Participation or any other proposed sale, transfer, assignment, novation or other disposal contemplated by Section 8.12.

Section 8.14. Severability

If at any time any one or more of the provisions in this Agreement is or becomes

invalid, illegal or unenforceable in any respect under any law or regulation, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be in any way affected or impaired thereby.

Section 8.15. Counterparts

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

Section 8.16. Governing Language

Subject to Section 8.15, this Agreement shall be executed in six (6) original versions as of the day and year first above written, three (3) of which original versions shall be in the English language and three (3) of which original versions shall be in the Romanian language. In the event of any discrepancy or inconsistency between the English and Romanian language versions of this Agreement, the terms of the English language versions shall prevail and shall be governing between the Parties.

By signing this Agreement and for the purpose of Article 1203 of the Romanian Civil Code, the Borrower, declares that it expressly agrees with the clauses of this Agreement, including but not limited to all the provisions in this Agreement on limitation of liability, unilateral termination, suspension of the performance of obligations, loss of right or term, limitation of right to challenge, limitation of contractual freedom, silent renewal, governing law and choice of jurisdiction, including, but not limited to, clauses of Section 1.01 (definition of “Project”), Section 3.02, Section 3.03, Section 3.05 (d), Section 3.06 (c), Section 3.07, Section 3.09, Section 3.12, Section 3.13, Section 3.14, Section 3.15, Section 3.16, Section 3.17, Article IV, Section 5.04, Section 5.05, Section 5.16, Article VI, Article VII, Section 8.01, Section 8.06, Section 8.07, Section 8.08, Section 8.09, Section 8.10, Section 8.11, Section 8.12 of this Agreement and of Article 6 of Exhibit A to this Agreement.

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

S.C. COMPANIA DE APA ORADEA S.A.

By: _____
Name:
Title:

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

By: _____
Name:
Title:

SCHEDULE 1 - DEFINITIONS AND GUIDELINES FOR PRIVATE SECTOR OPERATIONS (FRAUD AND CORRUPTION)

The purpose of these Guidelines is to clarify the meaning of the terms "Corrupt Practices", "Fraudulent Practices", "Coercive Practices," and "Collusive Practices" in the context of the EBRD's non-sovereign operations in favour of private sector projects.

1. CORRUPT PRACTICES

"Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party. In implementing this definition, the EBRD will be guided by the following principles:

- (a) The conduct in question must involve the use of improper means (such as bribery or kickbacks) by someone to induce another person to act or to refrain from acting in the exercise of his duties, in order to obtain or retain business, or to obtain an undue advantage. Antitrust, securities and other violations of law that are not of this nature fall outside of the definition of Corrupt Practices but may still be scrutinised under alternative procedures.
- (b) 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 payer'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.
- (c) 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.
- (d) 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.
- (e) The EBRD does not condone facilitation payments whether they are criminalised or not. Such payments, which are illegal in most countries, are dealt with in accordance with relevant local laws and international conventions.

2. FRAUDULENT PRACTICES

"Fraudulent Practice" means 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. In implementing this definition, the EBRD will be guided by the following principles:

- (a) 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".
- (b) Fraudulent Practices are intended to cover actions or omissions that are directed to or against the EBRD. The expression also covers Fraudulent Practices directed to or against an EBRD member country in connection with the award or implementation of a government contract or concession in a project financed by the EBRD. Frauds on, or other illegal behaviour directed against, other third parties are not condoned. Such behaviour may represent an impediment to doing business with EBRD.

3. COERCIVE PRACTICES

"Coercive Practice" means impairing or harming, or threatening to impair or harm directly or indirectly, any party or the property of the party to influence improperly the actions of a party. In implementing this definition, the EBRD will be guided by the following principles:

- (a) 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.
- (b) Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable 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 in such implementation.

4. COLLUSIVE PRACTICES

"Collusive Practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party. In implementing this definition, the EBRD will be guided by the principle that 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.

5. GENERAL

In implementing the foregoing definitions, the EBRD will be guided by the principle that a person should not be liable for actions taken by unrelated third parties unless that person has participated in the prohibited act in question.

SCHEDULE 2 – ENVIRONMENTAL AND SOCIAL ACTION PLAN

No	Action	Environmental Risks Liability/ Benefits	Legislative requirement/ Best practice	Investment Needs/ Resources/ Responsibility	Timetable. Action to be Completed by	Target and Evaluation Criteria For Successful Implementation	Comment
PR 1. Environmental and Social Appraisal and Management							
1.1.	Strengthen relation among the department responsible with the Integrated Management System (Internal Audit Department) and those involved in implementation of social and environmental procedures (Environmental Quality department and H&S department) by providing detailed information on how the IMS is functioning at company level.	Management of environmental and social risk	Best practice	Management time	By the end Q1, 2013	Track of meetings (minutes of the meeting), collaboration committee	Measure envisaged for ensuring compliance with PR 1.2.
1.2	Each sub-project should have a clearly defined ESMP to tackle the mitigation measures identified during the Screening Decisions of the Environmental Agreement procedure, and the ones proposed by the due diligence performed by EBRD's E&S (GAP Analysis Annex 1), and any other measures which are identifiable in the area of influence for the sub-project. Both tendering documents and	Reduction of the social and environmental impacts during the construction phase.	GD 445/2009 (Directive 85/337/CEE, Directive 97/11/CE, Directive 2003/35/CE)	Does not require additional costs. Current activity. Responsibility PIU	Q1, 2013	Tender and contract documents which include Plans of Measures for each site of the project, including the requirement concerning the development and implementation of an Environmental Management Plan.	Measure envisaged for ensuring compliance with EBRD PR 1.5, PR 1.6 and PR 1.7.

contracting documents should include these mitigation measures, so that responsibility is clearly defined.

1.3.	<p>Collect basic social data about the project's area of interest and influence, to better assess the potential impacts, direct or indirect, over the affected communities.</p> <p>Main social and environmental issues that should be addressed are:</p> <ul style="list-style-type: none"> - Social vulnerable groups within the target area of the project, - Temporary loss of access to utilities, - Water/wastewater services affordability (with special emphasis on poor communities), - Education needs regarding use of water/wastewater services (special emphasis on rural communities newly connected to water/wastewater systems), - Health and safety measures, - Division of beneficiaries on income level, - Division of potential clients on 	<p>Lack of information about social risks and opportunities</p>	<p>Best Practice</p>	<p>Management time/Consultant fees</p>	<p>Q3, 2013</p>	<p>Data availability</p>	<p>Measure envisaged for ensuring compliance with EBRD PR1.5.</p>
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	income level						
	- Customer satisfaction (on gender),						
	- Incidences of diseases related to water and wastewater,						
	- Traffic flows caused by truck and staff transport during construction period, nuisance level.						
1.4	The Company should keep EBRD informed about the institutional problem in Biharia, and include periodical up-to-date information about court decisions, media impact, social implications at the level of community, negotiation and consultation decisions, etc	Social tension, communication issues, company image distortion.	Best practice	Does not require additional costs. Current activity. Responsibility of PIU.	Q1 2013	Reporting system in place and updated versions every three months.	Measure envisaged for ensuring compliance with EBRD PR 1.5
1.5.	Analyse and revise the organizational structure of the company in order to align the PIU's responsibilities with their decision making power. A possible solution might be to shift the position of PIU by directly subordinating them to the general director.	Identify better decision making process	Best practice	Does not require additional costs. Responsibility of the management.	Q1 2013	Revised organizational structure for better decision making for PIU.	Measure envisaged for ensuring compliance with EBRD PR 1.17

PR 2. Labor and Working Conditions

2.1.	Develop and implement a grievance mechanism for employees	Better working conditions	Best practice	HR time	By the end of Q2, 2013	Grievance system in place	Measure envisaged for ensuring compliance with EBRD PR 2.18
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PR 3. Pollution Prevention and Abatement

3.1	Inclusion in the contract documents of requests concerning the efficiency of use of resources or in the company procedure for contractor monitoring	Ensure energy efficiency	Best Practice	Does not require additional costs. Current activity. Responsibility of PIU.	Q1, 2013	Requirements included in contract documents	Measure envisaged for ensuring compliance with EBRD PR 3.11.
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3.2	Revision of the Sludge Management Action Plan	Sound sludge management	GD 349/2005 OM 344/2004	Does not require additional costs. PIU, Hill Consultant	Q4, 2013	Revised action plan	The draft Sludge Management Strategy is under implementation. After one year the final version will be developed. Measure envisaged for ensuring compliance with EBRD PR 3.12.
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3.3	Development and implementation of a work instruction for handling and disposal of materials containing asbestos.	Affect the health of the workers and contamination of the environment.	GD 124/2003	Does not require additional costs. Responsibility: AQ and environment quality service.	Q1, 2013	Work instruction.	Measure envisaged for ensuring compliance with EBRD PR 3.13.
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3.4	Include in contract documents or company procedures requirements for contractors to remove and dispose of asbestos containing piping only by appropriately trained personnel and authorized subcontractors.	Safe removal of pipes containing asbestos and disposal of asbestos containing waste	Best Practice	Does not require additional costs. Current activity. Responsibility: PIU	Q1, 2013 (or when the tender documents are prepared)	Requirement included in tendering and contracting documents	Measure envisaged for ensuring compliance with EBRD PR 3.13.
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PR 4. Community Health, Safety and Security

4.1.	Improve the Simulation Exercise Programme by identifying and applying measures to improve to responsiveness of employees to emergency situations.	Avoid accidents and improve emergency responsiveness for the employees.	Best practice, PR4 EBRD	Responsibility of the Health & Safety Department.	Q1 2013	Action Plan for each Simulation Exercise.	Measure envisaged for ensuring compliance with EBRD PR 4.18
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PR 5. Land Acquisition, Involuntary Resettlement and Economic Displacement

5.1.	Development and implementation of a specific procedure to ensure any land acquisition, and/or temporary use of land and possible economic displacements that may result from the sub-projects are carried out in accordance with the national requirements and EBRD PR 5. These measures and process should address any permanent or temporary land use restrictions, loss or reduction of agricultural productivity, loss of utility supplies, etc, detailing the legal framework and compensation /mitigation entitlements.	Avoid impacts on owners and/or users (eg. Renters) and to compensate for any losses incurred. .	Law 33/1994, Romanian Civil Code, PR5 EBRD	Do not require additional costs. Responsibility of the General Manager of the Company	Q1 2013	Nr of cases where compensation provided and Nr of complaints-Grievance Mechanism	<p>The procedure will identify the land ownership, to confirm that no private land will be impacted.</p> <p>In case of impact, the procedure should define a LRF)to address temporary land use restrictions, loss or reduction of agricultural productivity, loss of utility supplies, etc, detailing the legal framework and compensation actions.</p> <p>Measure envisaged for ensuring compliance with EBRD PR 5.11-13, 5-39-40.</p>
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PR 6. Biodiversity Conservation and Sustainable Management of Living Natural Resources

6.1	Inclusion of the mitigation measures for accidental pollution in the Operation and Exploitation Plan.	Affecting the conservation objectives.	the Management plans for the respective NATURA 2000 sites.	Does not require additional costs. Current activity / PIU	Q1, 2015	Inclusion of the mitigation measures in the Operation and Exploitation Regulatory.	Measure envisaged for ensuring compliance with EBRD PR 6.6-6.11.
6.2	Obtaining a written decision from the Custodian of Natura 2000 sites that can be affected by the works (ROSCI-0104 – “Lunca Inferioara a Crisului Repede”, ROSCI-0050 – “Crisul Repede amonte de Oradea”, and ROSCI-0042 – “Codrul Moma”) concerning the acceptance and, possibly, the work conditions for the works to be carried out.	Avoiding an institutional conflict related to the operations of the Contractors within the NATURA 2000 sites.	Best practice	Does not require additional costs. Current activity / PIU	Q2, 2013	Permits administrators / custodians	Measure envisaged for ensuring compliance with EBRD PR 6.15.

PR 8. Cultural heritage

8.1	Develop a Chance Find Procedure for cultural heritage.	Avoid impacts on cultural heritage	Best practice Romanian laws	Does not require additional costs. Current activity. Responsibility: AQ and environment quality service.	Q1 2013	Number of complaints referring to cultural heritage	Included as a specific procedure linked with EIA.
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PR 10. Information disclosure and stakeholders involvement

10.1	Prepare a SEP based on an updated stakeholders’ analysis in order to obtain a clear understanding of	Improve the communication with the identified	Law 544/2001 regarding the public access to	Does not require additional costs.	By the end Q1 2013	SEP in place; Implementation on track	Measure envisaged for ensuring compliance with EBRD PR 10.8-9, PR 10.11,
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	stakeholders' interests, influence, importance and involvement within the company's activities and future project	stakeholders; support from the community for the implementation of the project through an adequate publicity and promotion of the project benefits	the public information Respecting the EU Financing Contract regarding the project promotion and publicity	Current activity Responsibility: General Director, PIU PR Officer			No complaints from the stakeholders regarding the project implementation	PR 10.21-22
10.2	Assure that all stakeholders meetings and consultation process is meaningful and respects the transparency principle.	Improve the engagement of stakeholders.	Law 544/2001 , EBRD PR 10	Does not require additional cost. Current activity. Responsibility: PR department, PIU	By the end Q1 2013	No complaints related to lack of information	Measure envisaged for ensuring compliance with EBRD PR 10.15-16	
10.3	Provide general public with access to information on the environmental performance of the Company (e.g. via a public domain created on the Company's website and/or by periodical press releases). The company's website structure to be improved	Improve the communication with the identified stakeholders; support from the community for the implementation of the project	Law 544/2001 regarding the public access to the public information	Does not require additional costs. Current activity Responsibility: Development and External Relations Direction	By the end Q1 2013	Public information procedures in place. Implementation on track	General public access to information related to the Company is limited. Relevant improvements made by the Company in the last years are not well known to the public. Also, the impact of the company's activities is not always known by general public. Measure envisaged for ensuring compliance with EBRD PR10.12-14., 10.21-22	
10.4	Develop a concrete and unitary Grievance procedure for the clients	Unitary management of	Best practice	Marketing department time	By the end of Q1, 2013	Procedure in place	Measure envisaged for ensuring compliance with	

complaints and
improvement of
client service

/ Client service
dep. time

EBRD PR. 10.24-26

SCHEDULE 3 – PROCUREMENT PLAN

A	B	C	D	E	F	G	H	I	L	M
No	Code	Contract description	*Estimated Value EUR	Contract Type	Procurement Method	Portion Financed by EBRD EUR	Subject to selective Review	Contract signature date	Contract end date	Estimated Amount of EBRD retroactive financing
1	CS1	Project Management	2,307,539	Services	Open	369,295	N/A	7-11	3-15	259,598
2	CS 2	Supervision of Works	2,745,039	Services	Open	439,312	N/A	11-11	8-15	144,115
3	CS 3	Designer Technical Assistance	611,946	Services	Open	97,935	N/A	10-12	2-15	
4	CW 1	Baius water source and trunk main	2,569,744	Yellow Book FIDIC	Open	411,258	N/A	6-12	6-15	26,288
5	CW 2	Beiuş New WWTP and transfer sewer PS	4,625,912	Yellow Book FIDIC	Open	740,325	N/A	12-12	11-15	
6	CW 3	Beiuş Water and Wastewater networks	1,015,564	Red Book FIDIC	Open	162,530	N/A	5-12	7-15	15,233
7	CW 4	Tinca WWTP	1,971,116	Yellow Book FIDIC	Open	315,455	N/A	1-13	10-15	
8	CW 5	Tinca sewerage network	3,403,140	Red Book FIDIC	Open	544,634	N/A	1-13	09-15	
9	CW 6	Nojorid water and sewer networks	1,086,588	Red Book FIDIC	Open	173,896	N/A	7-12	8-15	16,299
10	CW 7	Biharia water and sewer networks	5,430,529	Red Book FIDIC	Open	869,095	N/A	1-13	09-15	

11	CW 8	Water and Wastewater networks in Sântandrei, Palota, Girișu de Criș, Tarian	6,160,668	Red Book FIDIC	Open	985,945	N/A	6-12	7-15	92,410
12	CW 9	Sewerage networks in Osorhei, Alparea Fughiu	4,565,327	Red Book FIDIC	Open	730,629	N/A	12-12	09-15	
13	CW 10	Extension and Rehabilitation of water and sewerage networks in Oradea	5,837,965	Red Book FIDIC	Open	934,300	N/A	6-12	11-15	87,569
14	CW 11	Extension and Rehabilitation of water and sewerage networks in south East area Oradea	6,973,264	Red Book FIDIC	Open	1,115,992	N/A	9-12	8-15	
15	CW 12	Extension of water and sewerage networks in Oradea	1,873,042	Red Book FIDIC	Open		N/A	12-11	1-15	
16	CW 13	Extension of water and sewerage networks and WWPS in Oradea	1,693,679	Red Book FIDIC	Open	271,054	N/A	9-12	6-15	25,405
17	CW 14	Improvements to Oradea WWTP	2,239,121	Yellow Book FIDIC	Competitive	358,346	N/A	12-12	9-15	
		CapEx Sub-total EUR	55,110,183							
		Taxes, fees, permits	939,028							
		Salaries for project implementation	336,202							

		Organisation of procurement procedures	105,827							
		Audit	115,749							
		Contingencies	4,460,706							
		*Savings achieved between estimated and actual value for signed contracts	21,470,775							
		Eligible VAT	851,828							
		Grand total CapEx EUR	83,274,549			8,520,000				666,918

SCHEDULE 4 –TARIFF STRATEGY

This tariff strategy has to ensure that tariffs are set at cost recovery levels.

A. Increases in real terms

The tariffs shall be increased in real terms as follows:

- (1) with respect to the Financial Year ending as of 31 December 2013, by no later than 1 July 2013 the tariff applicable to both residential and non-residential customers for the water supply service shall be increased by not less than 4% and the tariff applicable to the sewerage service and the storm water service shall be increased by not less than 25% (excluding the tariff adjustment required under paragraph B (*Adjustments for inflation*) below).
- (2) with respect to the Financial Year ending as of 31 December 2014, by no later than 1 July 2014 the tariff applicable to both residential and non-residential customers for the water supply service shall be increased by not less than 3% and the tariff applicable to the sewerage service and the storm water service shall be increased by not less than 10% (excluding the tariff adjustment required under paragraph B (*Adjustments for inflation*) below); and
- (3) with respect to the Financial Year ending as of 31 December 2015, by no later than 1 July 2015 the tariff applicable to both residential and non-residential customers for the sewerage service and the storm water service shall be increased by not less than 7.5% (excluding the tariff adjustment required under paragraph B (*Adjustments for inflation*) below).

B. Adjustments for inflation

The increases to the tariffs for water supply and sewerage services in real terms contemplated in paragraph (A) (*Increases in real terms*) above do not include: (a) the inflation from the period between the tariff adjustments made in accordance with paragraph (A) (*Increases in real terms*); and (b) VAT.

The tariffs for water supply and sewerage services increased in real terms as contemplated in paragraph (A) (*Increases in real terms*) will be adjusted to reflect the inflation (on 1 January and 1 July of each Financial Year) according to the following formula:

$$T_{n+i} = a_{n+i} \times I_{n+i}$$

Where:

T_{n+i} – tariff at date “n+i”;

a_{n+i} – adjustments in real terms of the tariff at the date “n+i”;

I_{n+i} – inflation at adjustment “n+i”, which is calculated according to the following formula:

$$I_{n+i} = \frac{IPC \times (1+INF)^{m/12}}{IPI}$$

Where:

IPC – the latest available price index;

IPI – initial price index, at the date of T_n ;

INF – inflation for the 12 months period preceding the latest available Price Index;

m - number of months between the date of the latest available price index and the effectiveness date of the new tariff; and

Price Index - the General Price Index published monthly by the National Statistics Institute of Romania.

EXHIBIT A - FORM OF DISBURSEMENT APPLICATION

[To Be Typed on Letterhead of the Borrower]

[Date]

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

Attention: Operation Administration Department

Subject: Operation No. 43548
Disbursement Application No. _____

Dear Sir/Madam:

1. Please refer to the loan agreement dated [__] 2013 (the "Loan Agreement") between S.C. COMPANIA DE APA ORADEA S.A. (the "Borrower") and European Bank for Reconstruction and Development (the "EBRD").
2. Expressions defined in the Loan Agreement bear the same meanings herein.
3. We attach to this application for Disbursement (i) a completed Contract Summary Sheet indicating the specific contracts which are to be financed from the Disbursement requested herein (together with a detailed breakdown of the aggregate amounts of all past Disbursements against such contracts), (ii) a conformed copy of such contracts, (iii) a summary of all changes and claims during the execution of such contracts, including, but not limited to, information on changes in the terms of the contracts and changes affecting costs and completion time and (iv) a Contract Award Summary Sheet. We confirm that the [goods, works and services] covered by this Disbursement application have been or are being purchased in accordance with the terms of the Loan Agreement and in compliance with the Item 1.3 of the Environmental and Social Action Plan.
4. We hereby request the following Disbursement of the Loan in accordance with the provisions of the Loan Agreement:

Currency required: EUR
Amount (in figures and words): _____

Value Date: [As soon as possible, on a date selected by EBRD in its discretion, but not later than]

Payment Instructions (Borrower's Banking Details):

Borrower's Account Name: _____
Borrower's Account Number (IBAN number): _____
Borrower's Bank Name: _____
Borrower's Bank Address: _____

Borrower's Bank Correspondent Details:

Correspondent's Name: _____
Correspondent's Address: _____

Borrower's Bank's Account Name: _____
Borrower's Bank's Account Number (IBAN number): _____
Reference: _____

5. For the purposes of Section 4.02 of the Loan Agreement, we hereby represent and warrant that:
- (a) all agreements, documents and instruments delivered to EBRD pursuant to Section 4.01 of the Loan Agreement are in full force and effect and unconditional (except for the Loan Agreement having become unconditional, if that is a condition of any such agreement and except for the legal opinions provided under Section 4.01(k) (2) and (3), which were in full force and effect as of the date of their issuance);
 - (b) the representations and warranties made by the Borrower and the City in the Financing Agreements and Project Agreements and deemed repeated on the date hereof thereunder are true on and as of the date hereof with the same effect as though such representations and warranties had been made on and as of the date hereof;
 - (c) no Default has occurred and is continuing or is imminent;
 - (d) the Borrower will not, as a result of such Disbursement, be in violation of its Charter, any provision contained in any agreement or instrument to which the Borrower is a party (including the Loan Agreement) or by which the Borrower is bound or any law applicable to the Borrower;
 - (e) nothing has occurred which might have a Material Adverse Effect; and
 - (f) the proceeds of such Disbursement are needed by the Borrower for the purposes of the Project.

6. For the purposes of Section 4.02(i) of the Loan Agreement, we represent and warrant that, at the date of this Disbursement Application and upon giving effect to such Disbursement, the amounts disbursed by EBRD under the Loan will not be used by the Borrower to finance (i) more than 16 % of the contract value (VAT exclusive) of each contract specified in the Contract Summary Sheet attached hereto and (ii) any procurement contract to be financed from the Disbursement awarded based on the nationality of the tenderer, or the country of origin, or foreign content of the goods criteria, as presented in the Contract Award Summary Sheet attached hereto or awarded to a supplier, contractor or consultant or any sub-supplier, sub-contractor or sub-consultant included on EBRD's list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD's website.
7. The representations and warranties made in paragraphs 5 and 6 above will continue to be true on and as of the date of such Disbursement with the same effect as though such representations and warranties had been made on and as of the date of such Disbursement. If any such representation or warranty is no longer true on or prior to or as of the date of such Disbursement, we shall immediately notify EBRD and shall, upon demand by EBRD, repay any amount which has been or is disbursed by EBRD in respect of such Disbursement.
8. This Disbursement Application is a Financing Agreement for the purposes of the Loan Agreement. This Disbursement Application and any non-contractual obligation arising out of or in connection with it are governed by English law and Article VIII (*Miscellaneous*) of the Loan Agreement shall apply *mutatis mutandis*.

Yours faithfully,

S.C. COMPANIA DE APA ORADEA S.A.

By: _____
Authorised Representative

ATTACHMENT 1 TO EXHIBIT A - FORM OF CONTRACT SUMMARY SHEET

Date

Operation Number

Disbursement Application Number

Contract No.	Contract date	Name of Contract	Contractor name	Contractor Address	Contract Price	Contract Currency	Contract type	Current Disbursement Application (Amount claimed under this application)	FX Rate Loan Currency	Amount in Loan Currency	Previous Disbursement Application (Amount in Loan Currency)	Cumulative Payments in Loan Currency	Cumulative Payments in contract currency	% of contract price	Variations (purpose, time for completion, contract price)	Remarks
			TOTAL													

**ATTACHMENT 2 TO EXHIBIT A – FORM OF CONTRACT AWARD
SUMMARY SHEET**

<i>Contract No.:</i>	
<i>Description:</i>	
<i>General</i>	
Estimated contract value before tendering:	
Procurement method used:	
<i>Tendering</i>	
Date of tender notice:	
Date of receipt of the tenders:	
Number of tenders received:	
Names of tenderers and tender price offered:	
Tenders rejected based on nationality of the tenderers or origin of goods or services ¹ :	
Number of complaints:	
Names and nationality of complainants and substance of complaints:	
Result of complaints:	
Final authority which decided on complaints:	
<i>Contracting</i>	
Name of successful tenderer:	
Contract value at award:	
Dates of contract award and signing of the contract:	
Date of expected contract completion:	

¹ Please specify if any tender was rejected or refused award solely due to the nationality of the tenderer or the origin of the goods or services and provide details.

**EXHIBIT B - FORM OF CERTIFICATE OF INCUMBENCY AND
AUTHORITY**

**EXHIBIT B.1. – FORM OF CERTIFICATE OF INCUMBENCY AND
AUTHORITY FOR THE BORROWER**

[To Be Typed on Letterhead of the Borrower]

[Date]

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

Attention: Operation Administration Department
Subject: Operation No. 43548
Certificate of Incumbency and Authority

Dear Sir/Madam:

With reference to the loan agreement dated [__] 2013 (the "Loan Agreement") between S.C. COMPANIA DE APA ORADEA S.A. (the "Borrower") and European Bank for Reconstruction and Development ("EBRD"), I, the undersigned [President] [Chairman of the Board of Directors] [Director] of the Borrower, duly authorised by its Board of Directors, hereby certify that the following are the names, offices and true specimen signatures of the persons, any one of whom is and will continue to be (until EBRD has received actual written notice from the Borrower that they or any of them no longer continue to be) authorised, on behalf of the Borrower, individually:

- (1) to sign the Loan Agreement, any Disbursement applications, certifications, letters or other documents to be provided under the Loan Agreement and any other agreements to which EBRD and the Borrower may be party in connection therewith; and
- (2) to take any other action required or permitted to be taken by the Borrower under the Loan Agreement or any other agreement to which EBRD and the Borrower may be party in connection therewith:

NAME	OFFICE	SPECIMEN SIGNATURE
_____	_____	_____
_____	_____	_____

I further certify that disbursements under the Loan Agreement should be made to the following account (or such other account as the Borrower may from time to time designate by notice to EBRD):

Payment Instructions (Borrower's/ Contractor's Banking Details):

Borrower's Account Name: _____
Borrower's Account Number (IBAN number): _____
Borrower's Bank Name: _____
Borrower's Bank Address: _____

Borrower's Bank Correspondent Details:

Correspondent's Name: _____
Correspondent's Address: _____

Borrower's Bank's Account Name: _____
Borrower's Bank's Account Number (IBAN number): _____
Reference: _____

IN WITNESS WHEREOF, I have signed my name on the date first above written.

Yours faithfully,

S.C. COMPANIA DE APA ORADEA S.A.

By: _____
Name:
Title: [President]
[Chairman of the Board of Directors]
[Director]

**EXHIBIT B.2. – FORM OF CERTIFICATE OF INCUMBENCY AND
AUTHORITY FOR THE CITY**

[To Be Typed on Letterhead of the City]

[Date]

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

Attention: Operation Administration Department

Subject: Operation No. 43548
Certificate of Incumbency and Authority

Dear Sir/Madam:

With reference to the loan agreement dated [___] 2013 (the "Loan Agreement") between S.C. COMPANIA DE APA ORADEA S.A. (the "Borrower") and the European Bank for Reconstruction and Development ("EBRD") and the project support deed dated [___] between the Borrower, the City of Oradea (the "City") and EBRD (the "Project Support Deed"), I, the undersigned Mayor of the City, duly authorised by the Local Council of the City, hereby certify that the following are the names, offices and true specimen signatures of the persons, any one of whom is and will continue to be (until EBRD has received actual written notice from the City that they or any of them no longer continue to be) authorised, on behalf of the City, individually:

- (1) to sign the Project Support Deed and any certifications, letters or other documents to be provided under the Project Support Deed and any other agreements or other document to which EBRD and the City may be party in connection therewith; and
- (2) to take any other action required or permitted to be taken by the City under the Project Support Deed or any other agreement or other document to which EBRD and the City may be party in connection therewith:

NAME	OFFICE	SPECIMEN SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Expressions defined in the Loan Agreement and in the Project Support Deed shall bear the same meanings herein.

IN WITNESS WHEREOF, I have signed my name on the date first above written.

Yours faithfully,

CITY OF ORADEA

By: _____
 Name:
 Title:

**EXHIBIT B.3. – FORM OF CERTIFICATE OF INCUMBENCY AND
AUTHORITY FOR THE PROJECT BANK**

[To Be Typed on Letterhead of the Project Bank]

[Date]

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

Attention: Operation Administration Department

Subject: Operation No. 43548
Certificate of Incumbency and Authority

Dear Sir/Madam:

With reference to the loan agreement dated [] 2013 (the "Loan Agreement") between S.C. COMPANIA DE APA ORADEA S.A. (the "Borrower") and European Bank for Reconstruction and Development ("EBRD") and the debt service reserve account agreement dated [] between the Borrower, EBRD and the Project Bank (the "Debt Service Reserve Account Agreement"), I, the undersigned [General Manager]², duly authorised by the [Board of Directors] / [General Manager]³ of the Project Bank, hereby certify that the following are the names, offices and true specimen signatures of the persons, any one of whom is and will continue to be (until EBRD has received actual written notice from the Project Bank that they or any of them no longer continue to be) authorised, on behalf of the Project Bank, individually:

- (1) to sign the Debt Service Reserve Account Agreement and any certifications, letters or other documents to be provided under the Debt Service Reserve Account Agreement and any other agreements or other document to which EBRD and the Project Bank may be party in connection therewith; and
- (2) to take any other action required or permitted to be taken by the Project Bank under the Debt Service Reserve Account Agreement or any other agreement or other document to which EBRD and the Project Bank may be party in connection therewith:

NAME	OFFICE	SPECIMEN SIGNATURE
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² The certificate can be issued only by a legal representative of the Project Bank, please insert the name of the relevant person and its title.

³ Any other relevant appointment authority/person which empowered the legal representative of the Project Bank to issue the certificate to be inserted.

Expressions defined in the Loan Agreement and in the Debt Service Reserve Account Agreement shall bear the same meanings herein.

IN WITNESS WHEREOF, I have signed my name on the date first above written.

Yours faithfully,

[THE PROJECT BANK]

By: _____
Name:
Title:

EXHIBIT C - FORM OF LETTER TO AUDITORS

[To Be Typed on Letterhead of the Borrower]

[Date]

[Name of Auditors]

[Address]

Dear Sir/Madam:

We hereby authorise and request you to give to European Bank for Reconstruction and Development ("EBRD") all such information as it may reasonably request with regard to the Financial Statements, both audited and unaudited, which we have agreed to furnish to EBRD under the terms of the loan agreement dated [] 2013 (the "Loan Agreement") between ourselves and EBRD. For your information, we enclose a copy of the Loan Agreement.

We authorise you to send our audited accounts to EBRD to enable us to satisfy the reporting requirements set forth in Section 5.15 of the Loan Agreement. When submitting such audited accounts to EBRD, you are also requested to send, at the same time, a copy of your full report on such accounts in a form acceptable to EBRD.

For our records, please ensure that you send to us a copy of every letter which you receive from EBRD immediately upon receipt and a copy of each reply made by you immediately upon the issue thereof.

Yours faithfully,

S.C. COMPANIA DE APA ORADEA S.A.

By: _____
Authorised Representative

Enclosure: Loan Agreement

cc: European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom
Attention: Operation Administration Department
Subject: Operation No. 43548