This draft is a mere working document. All provisions and articles herein contained may be subject to substantial revision and changes, without commitment for the Bank. It is also subject to final approval by the Bank and to the Project receiving all required clearances.

 JUOPS/SEE/LW/MO Draft 1: 10/02/2015

**Highways IX**

**Guarantee Agreement**

*between the*

**Republic of Slovenia**

*and the*

**European Investment Bank**

[Location and Date]

THIS AGREEMENT IS MADE BETWEEN:

|  |
| --- |
| The Republic of Slovenia, acting through the Ministry of Finance, represented by ⚫ |

 (the “**Guarantor**")

of the first part, and

|  |
| --- |
| European Investment Bank having its Head Office at 100, Boulevard Konrad Adenauer, Luxembourg, L-2950 Luxembourg, represented by ⚫, |

 (the “**Bank**")

of the second part.

**WHEREAS**:

‑ By an agreement (hereinafter called the "Finance Contract") signed in [⚫] on [⚫] between the Bank and Družba za avtoceste v Republiki Sloveniji d.d. (the Motorway Company in the Republic of Slovenia, the “Borrower”), the Bank has agreed to establish in favour of the Borrower a credit in a principal amount of EUR  145,000,000.00 (one hundred and forty five million euros) to be used to finance a project for (i) the construction of a new motorway section between Draženci and Gruškovje on the A4 / E59 motorway, (ii) the upgrading of the Šmarje – Sap interchange on the A2 motorway, and (iii) investment in electro-mechanical equipment, intelligent transport systems and control centres across the motorway network (the "Project") The Project is more particularly described in the Technical Description set out in Schedule A.1 of the Finance Contract.

‑ The obligations of the Bank under the Finance Contract are conditional, *inter alia*, upon (i) the execution, delivery by the Guarantor and continuing operation of a guarantee of performance by the Borrower of its financial obligations under the Finance Contract (hereinafter this “**Guarantee Agreement**”) and (ii) the delivery of a legal opinion issued by the Attorney General’s Office of the Republic of Slovenia, as mentioned below.

‑ Execution of this Guarantee Agreement has been authorised by the Parliament of the Republic of Slovenia and a certified English translation of the relevant provisions of the relevant law is attached hereto as Annex I.

- A duly authorised officer of the Attorney General’s Office of the Guarantor will issue a legal opinion on this Guarantee Agreement in the form and substance satisfactory to the Bank (as set out in Annex II), as a condition to disbursement by the Bank under the Finance Contract.

- The Guarantor has ensured that the Guarantee provided under this Guarantee Agreement is in compliance with the European Union (“**EU**”) Treaty provisions on state aid and the secondary legislation relating thereto. The Guarantor confirms the Bank’s preferred creditor status as an international financial institution.

 **NOW THEREFORE it is hereby agreed as follows**:

# ARTICLE 1

# Finance Contract

**1.01** The Guarantor declares that it is well acquainted with the terms, conditions and clauses of the Finance Contract, a copy of which, as signed by the parties thereto, has been delivered to the Guarantor by the Bank.

**1.02** Terms defined in the Finance Contract shall have the same meaning in this Guarantee Agreement. References herein to Articles, Paragraphs, Recitals, Schedules and Annexes are, save if explicitly stipulated otherwise, references respectively to articles and paragraphs of, recitals, schedules and annexes to, this Guarantee Agreement. Furthermore, it is expressly agreed that references herein to the Finance Contract shall not be construed, in any circumstances, as affecting the unconditional and irrevocable nature of the present Guarantee.

# ARTICLE 2

# Undertakings by the Guarantor

**2.01** The Guarantor, as primary obligor and not merely as surety, guarantees entirely the full, punctual and irrevocable performance of all the monetary obligations of the Borrower to the Bank under the Finance Contract and irrevocably and unconditionally undertakes to pay to the Bank, on the Bank's first written demand in the form of Schedule 1 (the "**Demand**"), and in accordance with the conditions set out herein, all sums which the Bank may claim under the Finance Contract including in respect of principal monies, interest without any limitation, commissions, incidental charges, and other expenses and all the sums being due by the Borrower to the Bank under any provision of the Finance Contract (up to a maximum amount of EUR 166,750,000.00 (one hundred and sixty six million seven hundred and fifty thousand euros) (each amount so guaranteed being a “**Guaranteed Sum**” and together the a “**Guaranteed Sums**”) (the “**Guarantee**”).

**2.02** Any settlement or discharge given by the Bank to the Guarantor in respect of the Guarantor's obligations under this Guarantee Agreement or any other agreement reached between the Bank and the Guarantor in relation to it shall be, and be deemed always to have been, void if any act on the faith of which the Bank gave the Guarantor that settlement or discharge or entered into that agreement is subsequently avoided by or in pursuance of any provision of law. As a result the Bank’s right to serve a Demand and to recover from the Guarantor to the full extent of this Guarantee Agreement at any time shall not be prejudiced or affected.

If a payment made to the Bank in respect of a Guaranteed Sum is avoided, set aside, clawed back or revoked or must be restored in pursuance of any provision of law or of any enactment relating to the insolvency, liquidation or administration (or other proceedings of a similar nature) of the person by whom such amount was paid, for the purposes of this Guarantee Agreement such amount shall be regarded as not having been paid and the Guarantor shall not be discharged in respect of such payment.

**2.03** The Guarantor undertakes to promptly furnish information to the Bank on legislation or the regulatory framework affecting the Borrower, which may have an impact on the implementation of the Finance Contract.

2.04 The Guarantor shall ensure, until all the Guaranteed Sums have been fully paid or discharged, that the Guarantee provided under this Guarantee Agreement complies with the EU Treaty provisions on state aid and the secondary legislation relating thereto;

# ARTICLE 3

# Enforcement of guarantee

**3.01** The Bank may issue a Demand under this Guarantee Agreement after having made a demand for the relevant payment from the Borrower pursuant to the Finance Contract and evidence of such demand to the Borrower shall be attached to the Demand. The Demand shall be made in writing, stating that the Borrower has not performed or fulfilled its payment obligations under the Finance Contract, whether on a Payment Date, upon demand for early repayment or otherwise, in respect of all or part of the Guaranteed Sums and specifying the amount due and payable under the Guarantee. The Demand (together with the attachments) shall constitute conclusive evidence. The Bank shall not have to provide any other justification or evidence and the Guarantor shall not have the right to discuss its content nor to invoke the benefit of a condition or a justification whatsoever.

The Guarantee under this Guarantee Agreement shall remain in full force until all Guaranteed Sums have been fully and unconditionally paid or discharged.

**3.02** The payment by the Guarantor shall fall due on the fifteenth (15th) Business Day following the date of the Demand.

For the purpose of this Guarantee Agreement “**Business Day**” means a day on which banks are open for business in Luxembourg and Ljubljana.

**3.03** In the event of the Bank making a demand, the Guarantor shall have the right to discharge immediately, under the conditions set out in the Finance Contract, all the monetary obligations of the Borrower under the Finance Contract which are still outstanding at the time of such discharge (including inter alia indemnities, such as the indemnity under Article 10 of the Finance Contract).

# ARTICLE 4

# Autonomy of the Guarantee

**4.01** This Guarantee is an unconditional and irrevocable first demand guarantee, autonomous from the Finance Contract which cannot be construed as a surety (*cautionnement*) within the meaning of Article 2011 of the Luxembourg Civil Code or as any other ancillary undertaking.

**4.02** The Guarantor hereby waives irrevocably any objection or exception in law to the total or partial enforcement of this Guarantee Agreement and to refuse or delay the performance of its obligations under the Guarantee and/or any payment to be made under the Guarantee. It undertakes to perform its obligations upon Demand by the Bank in accordance with Article 3.01 whenever such Demand is made and to pay the sums due without any limitation, retention or condition, without the Bank having to furnish any special evidence in support of its request other than the reason for the Demand under this Guarantee Agreement.

In particular, the Bank is not is not obliged, prior to the enforcement of this Guarantee Agreement, to realise securities or to enforce any other security that the Borrower or a third party may have constituted.

The Guarantor acknowledges that its obligations to make payments hereunder are independent from (i) the validity, regularity and/or enforceability of the Finance Contract, (ii) the occurrence of any event whatsoever which could prevent the Borrower from performing his obligations, including his payment obligations, under the Finance Contract, or (iii) any other circumstances which might otherwise in relation to the Finance Contract constitute a legal discharge of or a defence for the Guarantor.

**4.03** The Guarantee is in addition to any other rights, which the Bank has, or may have, against the Borrower or any other entity which becomes the legal and/or universal successor of the Borrower in relation to or in connection with the transactions contemplated by the Finance Contract or against the Guarantor.

**4.04** The Guarantor accepts and acknowledges that the Bank will not be required to proceed or enforce any rights against the Borrower or any other entity which becomes the legal and/or universal successor of the Borrower in relation to or in connection with the transactions contemplated by the Finance Contract before making a claim under the Guarantee.

# ARTICLE 5

# Subrogation

When the Guarantor has made a payment to the Bank and provided the Guarantor has exercised its rights under Article 3.03, it is subrogated, to the extent of such payment, to the rights and actions relating to the said payment that the Bank has against the Borrower; this right of subrogation shall not be invoked to the detriment of the Bank.

# ARTICLE 6

# Information

**6.01** The Guarantor shall inform the Bank forthwith of any fact or event likely to affect the performance of its obligations under this Guarantee Agreement.

**6.02** The Guarantor shall notify the Bank of the completion of the procedures necessary in the Republic of Slovenia for the entry into force of the Guarantee Agreement.

# ARTICLE 7

# Modification of the Finance Contract

**7.01** The Bank may agree any modification of the Finance Contract that has the effect of improving or strengthening the position of the Bank vis-à-vis the Borrower without increasing the obligations of the Guarantor; any such modification shall be notified to the Guarantor.

**7.02** Any other modification of the Finance Contract shall be conditional upon the prior written consent of the Guarantor, which shall not be withheld unless the Guarantor reasonably considers that its obligations thereunder would be materially increased or extended thereby.

# ARTICLE 8

# Taxes, Charges and Expenses

Taxes or fiscal charges, legal costs and other expenses incurred in the execution or implementation of this Guarantee Agreement shall be borne by the Guarantor. The Guarantor shall make payments hereunder without withholding or deduction on account of tax or fiscal charges.

# ARTICLE 9

# Legal regime of this Guarantee Agreement

**9.01** The legal relations between the parties to this Guarantee Agreement, its formation and validity shall be governed by the laws of the Grand Duchy of Luxembourg.

**9.02** The place of performance of this Guarantee Agreement is the head office of the Bank.

**9.03** The parties hereto submit to the exclusive jurisdiction of the Court of Justice of the European Union and all disputes concerning the Guarantee Agreement shall be submitted to such court.

The decision of the Court of Justice of the European Union shall be conclusive and shall be accepted as such by the parties without restriction or reservation.

**9.04** The parties hereto agree that this Guarantee Agreement is of a commercial nature and hereby undertake to waive any immunities, which they may now or hereafter enjoy in any country from the jurisdiction of the Court of Justice of the European Union.

**9.05** In any legal action arising out of this Guarantee Agreement the certificate of the Bank as to any amount due to the Bank under this Guarantee Agreement shall be prima facie evidence of such amount.

**9.06** This Guarantee Agreement shall enter into force on the date when the Bank issues a written notice to the Guarantor confirming that the Bank has received a written notice pursuant to Article 5.02 of this Guarantee Agreement and a legal opinion issued by a duly authorised officer of the Attorney General’s Office of the Guarantor in the form and substance satisfactory to the Bank as set out in Annex II.

# ARTICLE 10

# Final Clauses

**10.01** Notices and other communications given hereunder shall be sent to the respective address set out below:

- for the Guarantor: International Finance Department

 Ministry of Finance

 Župančičeva 3

 1502 Ljubljana

 Slovenia

 Fax: 00386 1 369 6689

- for the Bank: Operations OPS/MA-3/SI HR W. BALK.

 European Investment Bank

 100 Boulevard Konrad Adenauer

 L‑2950 Luxembourg

 Grand Duchy of Luxembourg.

Each party may, by notice to the other, change its addresses as set out above.

**10.02** Notices and other communications, for which fixed periods are laid down in this Guarantee Agreement or which themselves fix periods binding on the addressee, shall be served by hand delivery, registered letter, telegram, telex, confirmed fax or any other means of transmission which affords evidence of receipt by the addressee. The date of registration or, as the case may be, the stated date of receipt of transmission shall be conclusive for the determination of a period.

**9.03** The Recitals forms part of this Guarantee Agreement.

The following Schedule and Annexes is attached hereto:

Schedule 1 Form of Demand

Annex I Certified English translation of the relevant provisions of the Slovenian Law on the guarantee.

Annex II Template of legal opinion of a duly authorised officer of the Attorney General’s Office of the Guarantor on this Guarantee Agreement

**IN WITNESS WHEREOF** the parties hereto have caused this Guarantee Agreement to be executed in 3 (three) originals in the English language.

This Guarantee Agreement has been initialled on behalf of the Guarantor by [⚫],and on behalf of the Bank by [⚫].

</> 2015 </> 2015

|  |  |
| --- | --- |
| Signed for and on behalf ofREPUBLIC OF SLOVENIA | Signed for and on behalf ofEUROPEAN INVESTMENT BANK |
| </></> | </> | </> |
| </> | </> |

**Schedule 1**

**FORM OF DEMAND**

1. To: <the Ministry of Finance of the Republic of Slovenia>
2. <DATE>
3. Dear Sirs,
4. **Guarantee Agreement signed between the Republic of Slovenia and the European Investment Bank on /** (the “**Guarantee Agreement”**)
5. We refer to the Guarantee Agreement. Terms defined in the Guarantee Agreement have the same meaning when used in this Demand.
6. We certify that (i) we have made a demand for the relevant payment pursuant to the Finance Contract which is attached to this Demand (ii) the Borrower should have paid <the sum of </> (the “**Amount Due**”) on </> pursuant to the Finance Contract and the demand made thereunder attached hereto and has failed to pay the Amount Due in breach of the terms of Finance Contract. The Amount Due is in respect of <principal/interest/commission/etc> and accordingly it is a Guaranteed Sum. We therefore demand payment by the Guarantor of the sum of <⚫>.
7. Payment should be made to the following account:
	1. Swift Code:
	2. Account Number:
	3. Bank:
8. Payment under this Demand shall be made forthwith upon its receipt and is issued without prejudice to the Bank’s rights under Article 3.02 of the Finance Contract.
9. Yours faithfully,
10. European Investment Bank

**Demand made under the Finance Contract**

ANNEX I

ANNEX II

**EUROPEAN INVESTMENT BANK**

**100 Boulevard Konrad Adenauer**

**L-2950 Luxembourg**

**GRAND DUCHY OF LUXEMBOURG**

Object: Legal Opinion on the Guarantee Agreement <> relating to the Finance Contract <>

1. I Refer to the:
	1. Finance Contract <>, FI N° <>, Serapis <>, and
	2. Guarantee Agreement <>, FI N° <>, Serapis <>.
2. I have examined the signed copy of the Finance Contract and of the Guarantee Agreement and of such other documents, as I have considered necessary or desirable to examine.
3. I, <>, in my capacity of the <> of the Republic of Slovenia hereby confirm that:
	1. The Finance Contract and the Guarantee Agreement are in full force and effect and all the obligations of the Republic of Slovenia are valid and binding upon it and enforceable in accordance with their terms.
	2. Under the laws of the Republic of Slovenia, nothing contravenes or limits the rights of the Bank to receive punctual and effective payment by the Republic of Slovenia of any sum due for principal, interest or other charges under the Finance Contract or the Guarantee Agreement.
	3. <>, <> is duly authorised to sign the Guarantee Agreement on behalf of the Republic of Slovenia.

Yours sincerely,

 *Signature*

<Attachments:>