

APPENDIX III

DRAFT CONSULTANT WARRANTY

Dated [_____]

**[INSERT FULL CORPORATE NAME OF CONSULTANT]
(as Consultant)**

Consultant Warranty

CONSULTANT WARRANTY

THIS WARRANTY is dated [_____] and is made as a deed entered by: *name of Consultant*, a [limited liability company] [joint stock company] incorporated, organised and existing under the laws of [_____] (the "**Consultant**").[

WHEREAS

- A. Pursuant to a Consultancy Services Agreement dated [_____] (the "**Consultancy Agreement**") between the Consultant and the European Bank for Reconstruction and Development ("**EBRD**"), the Consultant has agreed to provide the Consultancy Services for the benefit of the Client on the terms and conditions set out in the Consultancy Agreement.
- B. As a condition to EBRD entering into the Consultancy Agreement, the Consultant has agreed to execute this Deed in favour of the Client.
- C. It is intended that this Deed take effect as a deed notwithstanding the fact that the Consultant may only execute it under hand.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. Definitions; Interpretation

1.1. In this Deed (including the Recitals), unless the context otherwise requires:

"Client" means the Ministry of Economy of the Republic of North Macedonia;

"Consultancy Agreement" has the meaning given to it in Recital (A) to this Deed;

"Consultancy Services" has the meaning given to the term "Consultancy Services" in the Consultancy Agreement;

"Party" means either the Client or the Consultant;

"Parties" means the Client and the Consultant;

"Project" has the meaning given to the term "Project" in the Consultancy Agreement.

1.2. In this Deed, unless the context otherwise requires:

- a. words denoting the singular include the plural and vice versa;
- b. words denoting persons include individuals, corporations, partnerships and other enterprises, entities, trusts, firms and associations (regardless of whether they possess separate legal personality) and references to a person include its successors and permitted assigns; and
- c. a reference to an agreement or other instrument is a reference to that agreement or instrument as it may be amended, varied, supplemented, novated, restated, replaced or assigned from time to time.

1.3. The headings in this Deed do not affect its interpretation.

1.4. Save in respect of the Client and clauses 5.1 and 5.2, a person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any provision of this Deed. The Client shall be entitled to enforce any obligation including without limitation any warranty or undertaking owed to the Client pursuant to this Deed.

2. Warranty and Undertaking

2.1. The Consultant warrants and undertakes to the Client that:

- a. the Consultant has complied with, and will at all times continue to comply with, the provisions of the Consultancy Agreement; and
- b. the Consultant will perform the Consultancy Services with the skill and care of a professional duly qualified to perform the Consultancy Services.

2.2. The Consultant acknowledges that the Client is entitled to rely on the performance by the Consultant of the Consultancy Services in accordance with the Consultancy Services Agreement.

3. Assistance

The Consultant agrees that it shall, upon demand of the Client, give all assistance and information necessary to the Client in respect of any claim against or by the Client relating to the Project provided, however, that, where such claim involves the Consultant as a claimant or defendant, the Consultant shall not have any obligation to disclose any documents or information which are prejudicial to its interests. In consideration of the Consultant providing such assistance and information, the Client shall reimburse the Consultant for its reasonable costs and expenses incurred in providing the same.

4. Limitation of Liability
4.1. This Deed does not extend or increase the liability of the Consultant beyond that which would have existed had the Client been named as a party to the Consultancy Agreement rather than EBRD.
4.2. The Client shall be entitled to claim indemnification under the Consultancy Agreement and subject to its terms as if the Client has been named as a part to the Consultancy Agreement rather than EBRD.
5. Successors and Assigns
5.1. This Deed shall bind and inure to the benefit of the respective successors and assigns of the Consultant and the Client except that neither Party may assign or otherwise transfer all or any part of its rights or obligations under this Deed without the prior written consent of the other Party.
5.2. Except as provided in clause 5.1 above, none of the terms of this Deed are intended to be enforceable by any third party.
6. Notices
Any notice or other communication to be given or made under this Deed shall be in writing in the English language and shall be deemed to have been duly given or made when it is delivered by hand, mail 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 or other communication.
<p>For the Consultant: <i>[name of Consultant]</i> <i>[address]</i> Attention: [<input type="text"/>] Fax: [<input type="text"/>]</p> <p>For the Client: <i>[name of client]</i> <i>[address]</i> Attention: [<input type="text"/>] Fax: [<input type="text"/>]</p>
7. Governing Law
This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.
8. Dispute Resolution
Any dispute, controversy or claim arising out of, or relating to this Deed, the breach, termination or invalidity hereof or any non-contractual obligations arising out of or in connection with this Deed which cannot be amicably settled shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as in force and effect on the date of this Deed. There shall be one (1) arbitrator and the appointing authority for the purposes of the UNCITRAL Rules shall be the 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.
9. Entire Agreement; Amendments and Waivers

9.1. This Deed and the documents referred to in it constitute the entire obligation of the Consultant to the Client with respect to the subject matter of this Deed and shall supersede any prior expressions of intent or understandings with respect to such subject matter.

9.2. Any amendment to this Deed shall be in writing and signed by the Parties.

9.3. Any waiver or consent sought by the Consultant under or in relation to this Deed from the Client shall be in writing and signed by the Client.

10. Receipt of Consultancy Services Contract

On request from the Client, the Consultant shall provide to the Client a copy of the Consultancy Agreement (including all schedules and attachments to it).

11. Language of the Deed

This Deed has been prepared and executed in English and in Macedonian. In case of any inconsistency, discrepancy or conflict between the English and the Macedonian text of this Deed, the English version shall prevail and questions of interpretation shall be addressed solely in the English language.

All documents to be furnished or communications to be given or made under this Deed shall be in the English language or, if in another language, shall be accompanied by an English translation and such translation shall be conclusive and shall be the governing version.

12. Counterparts

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

IN WITNESS WHEREOF, the Consultant, acting through its duly authorised representatives, have caused this Deed to be executed and delivered as a deed to the Client on the date stated at the beginning of this Deed.

EXECUTED and DELIVERED
as a **DEED** for and on behalf of

[INSERT FULL CORPORATE NAME OF CONSULTANT]

By:

Name:

Title:

EXECUTED and DELIVERED
as a **DEED** for and on behalf of

[INSERT FULL NAME OF CLIENT]

By:

Name:

Title:

