MODEL
PRVILIGED PRODUCER ELECTRIC POWER PURCHASE AGREEMENT

Pursuant to Article 65 of the Law on Energy
Republic of Serbia

[[Place], [Date]]
This Privileged Producer Electric Power Purchase Agreement (this “Agreement”) is made this [●] day of [month] [year], by and between:

1) [Name of the Privileged Producer, address, Tax Identification Number, Identification Number, account number] as the producer, represented by ______________, on the one side (the “Producer”), and

2) The EPS Public Enterprise (Electric Power Industry of Serbia), Belgrade, Carice Milice 2, Tax Identification Number 103920327, Identification Number 20053658, [account number.] or RES Purchaser pursuant to the Law on Energy (the supplier who is supplying electric power to the public supplier), as the purchaser of electric power, represented by ______________. General Manager, on the other side (the “Purchaser”).

Both the Producer and the Purchaser are referred to individually as a “Party” and collectively as the “Parties”.

**ELECTRIC POWER PURCHASE AGREEMENT**

The Parties agree that:

- whereas under The Energy Community Treaty (Official Journal of the European Union No. [●]), the Republic of Serbia has agreed with, inter alia, the European Community to implement Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market;
- whereas under Article 51 of the Law on Energy (Official Gazette of the Republic of Serbia, No. [●]) the National Assembly of Serbia has determined that the deployment of renewable energy is in the interest of the Republic of Serbia;
- the Producer has developed a project to produce electrical power from renewable energy sources (insert data on the renewable source of energy as specified in Article 2 of the Decree on Incentives for Production of Electricity from Renewable Energy Sources and Combined Heat and Power Production (Official Gazette of Republic of Serbia no. 99/09), or in line with the Government Decree referred to in paragraph 1, Article 53 of the Law on Energy);
- pursuant to Articles 64A and 64B of the Law on Energy (Official Gazette of the Republic of Serbia, No. [●]), the Decree on the Conditions for Acquiring the Status of a Privileged Producer of Electric Energy and the Criteria on Meeting these Conditions (Official Gazette of the Republic of Serbia, No. 72/09) and the Decree on Incentives for the Production of Electricity from Renewable Energy Sources and Combined Heat and Power Production (Official Gazette of the Republic of Serbia, No. 99/09) [until replaced by the Government Decree referred to in paragraph 1, Article 53 of the Law on Energy], the Producer has submitted an application to the Ministry of Mining and Energy for the status of a privileged producer and acquiring the right to the feed-in tariff; and
- the Producer wishes to sell and deliver, and the Purchaser wishes to purchase and receive, electrical power produced by the Facility pursuant to the terms and conditions of this Agreement.
THE SCOPE OF THE AGREEMENT

Article 1
This Agreement shall govern the rights, obligations and responsibilities of the Parties in relation to the operation of the Facility and the purchase of Electrical Output produced in the Facility.

Article 2
The Producer will sell all Electrical Output to the Purchaser during the Term and deliver the same to the Purchaser at the Delivery Point in accordance with this Agreement. Title and risk of loss to the Electrical Output will pass to the Purchaser at the Delivery Point.

Article 3
The Purchaser undertakes to purchase all the Electrical Output produced by the Facility during the Term at the Delivery Point in accordance with this Agreement.

THE TERM OF THE AGREEMENT

Article 4
This Agreement will be effective on execution. The term will commence upon the date on which each of the following conditions are satisfied or waived:

(a) provision by the Producer of a copy of the license for undertaking activities pertaining to electric power generation;
(b) provision by the Producer of a copy of the contract with the license holder, in circumstances in which the capacity of the Facility is 1 MW or higher, and the producer is not the license holder;
(c) provision by the Producer of all designs, plans and specifications in accordance with which the Facility is to be constructed;
(d) provision by the Producer of a copy of the Connection Contract;
(e) provision by the Producer of a copy of the [usage permit];
(f) provision by the Producer of a copy of the Energy Permit;
(g) provision by the Producer of a copy of the Certificate of Origin;
(h) provision by the Producer of information on the individual responsible for the operation of the Facility, including the name, position, phone number, fax number and e-mail of such individual,

and the Commercial Operations Date has occurred (the “Commencement Date”), and unless terminated earlier in accordance with the terms of this Agreement, will expire on the twentieth \(^1\) anniversary of the Commencement Date (the “Term”). If the Commencement Date has not occurred by the Longstop Date, this Agreement shall automatically terminate, the Performance Bond may be called and the Parties hereto shall have no further obligations or liability towards each other resulting from such termination. All obligations contained in Articles 34, 38, 41, 43 and in Schedule 2 (Resolution of Disputes), however, shall continue to apply.

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\(^{1}\) Term to be comparative to the incentive period.
On the Commencement Date, the Purchaser / [Ministry] shall return the Performance Bond to the Producer.

**COMMISSIONING AND COMMERCIAL OPERATIONS DATE**

Article 5

The Producer will procure that the Facility is designed, installed and constructed in accordance with the basic technical and energy characteristics set out in Annex 1 and good wind industry practice.

Article 6

The Producer will give the Purchaser not less than thirty (30) days’ notice of the commencement of commissioning. The Purchaser (or its representatives) will have the right to attend, observe and witness any of the Commissioning Tests during the Commissioning Period. The Commercial Operations Date shall occur on the date on which the Facility passes the last of the Commissioning Tests. In the event of any dispute as to whether the Commissioning Test has been passed, the matter shall be referred to Expert Resolution in accordance with the provisions of Schedule 2 (*Resolution of Disputes*).

Article 7

The Purchaser shall co-operate with the Producer by all means possible to allow the Producer to construct, install, commission and synchronise the Facility, and the Commencement Date to occur, by [●], or where the Commencement Date does not occur by [●] for reasons not attributable to the Purchaser, as soon as possible thereafter, including, without limitation, procuring:

(a) that the System Operator provides a stable grid connection meeting the technical characteristics and safety requirements set out in Schedule 6 (*Technical and Safety Requirements*) by the date set out therein;
(b) access to the substations of the Purchaser (or procuring access to substations where it is owned by the System Operator);
(c) isolation of portions of the Grid System when deemed reasonably necessary by the Producer,

and purchasing all electrical output of the Facility during the Commissioning Period.

**ELECTRICITY PRODUCTION PLANNING**

Article 8

[During the Term, the Producer will, by the third Wednesday of each month in respect of the following month furnish the Purchaser with data on planned monthly and daily production of electricity in the Facility, including the hourly schedule, in substantially the form included in Part A of Annex 2]2

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2 To be used where the Plant is reliant on predictable technologies (e.g. biomass) and output can be guaranteed.
[During the Term, the Producer will, by the third Wednesday of each month, notify the Purchaser of its non-binding estimate of the generating capacity of the Facility that the Producer reasonably considers will be technically available (that is, without regard to resource conditions at the Facility in the following month, in substantially the form contained in Part B of Annex 2).]

**EXPLOITATION OF THE FACILITY**

**Article 9**

The Producer shall operate the Facility during the Term in accordance with Prudent Operating Practice and the technical characteristics and safety requirements set out in Schedule 6 (*Technical and Safety Requirements*).\(^3\)

**THE QUALITY OF THE ELECTRICITY**

**Article 10**

The quality of the Electrical Output taken over from the Producer during the Term must be in compliance with the quality provisions set out in Schedule 7 (*Quality of Electrical Output*).\(^4\) Under no circumstances shall the Producer have any liability as a result variations in Electrical Output (MWh) including where attributable to the intermittency of the underlying renewable resource. To the extent that any power delivered does not comply with the quality provisions set out in Schedule 7 (*Quality of Electrical Output*) and the Purchaser has timely, within [●], notified the Producer to that effect, the Purchaser shall not be required to pay for the relevant Electrical Output. In the event of any dispute as to whether Electrical Output complies with the quality provisions set out in Schedule 7 (*Quality of Electrical Output*), the matter shall be referred to Expert Resolution in accordance with the provisions of Schedule 2 (*Resolution of Disputes*). The provisions of this Article 10 shall be the Purchaser’s sole and exclusive remedy for any failure of the Electrical Output to comply with the quality provisions set out in Schedule 7 (*Quality of Electrical Output*).

**PRODUCTION HALTS**

**Article 11**

No later than 15 July in each calendar year during the Term, the Producer shall prepare and supply to the Purchaser a schedule of the planned repair and maintenance to the Facility (“Planned Maintenance”) during the succeeding calendar year, in substantially the form contained in Annex 3. In preparing the Planned Maintenance schedule for any calendar year, the Producer shall act in accordance with Prudent Operating Practice and shall, to the extent possible, take into account and give effect to the reasonable requirements of the Purchaser and the System Operator.

**Article 12**

\(^3\) To be used where the Plant is reliant on intermittent technologies (e.g. wind, solar and small hydro) and output cannot be guaranteed.

\(^4\) First draft of Schedule 6 to be produced by technical consultant.

\(^5\) Serbian counsel/technical consultant to draft Schedule 7.
During the Term, the Producer shall notify the Purchaser promptly of any change in Planned Maintenance. Where repairs or maintenance are required to the Facility (other than Planned Maintenance or repairs and maintenance notified to the Purchaser in advance in accordance with Article 11) which, in the case of Predictable Facilities results in the actual daily production of electricity in the Facility and the hourly schedule being inconsistent with the data furnished to the Purchaser in accordance with Article 8, and in the case of Intermittent Facilities results in a reduction in generating capacity below that forecast pursuant to Article 8 ("Unplanned Outage"), the Producer shall:

(i) notify the Purchaser within a reasonable time after becoming aware of a situation occurring which will or is likely to give rise to an Unplanned Outage;
(ii) keep the Purchaser informed about changes in or developments relating to the Unplanned Outages; and
(iii) provide the Purchaser with regularly updated non-binding estimates as to when the Producer (acting reasonably) considers the Unplanned Outage will end.

Save for its obligations under this Article 12, the Producer shall have no liability to the Purchaser for any Unplanned Outage or for failing to deliver the planned or any other level of Electrical Output in any year.

**ELECTRIC POWER METERING**

Article 13

The Purchaser shall procure that, during the Term, the construction, maintenance, control, inspection and testing of the Metering System shall be undertaken by the System Operator in accordance with Schedule 5 (Metering Requirements). No later than the [5th day] of each Calculation Period, the Purchaser shall provide the Producer with a report from the System Operator reporting on the Electrical Output recorded by the Metering System for the previous Calculation Period.

Article 14

The Parties agree that if there is any doubt about the accuracy of the Electrical Output recorded by the Metering System, the Purchaser shall procure that the System Operator inspects and tests the Metering System in accordance with Schedule 5 (Metering Requirements) in the presence of authorised representatives of both Parties and if this does not resolve the Dispute the matter shall be referred to Expert Resolution in accordance with the provisions of Schedule 2 (Resolution of Disputes).

**PRICE**

Article 15

The Purchaser shall pay to the Producer in respect of a Calculation Period in arrears, [nine and a half (9.5)] Euro cents as the relevant tariff set out in Article 4 of the
Decree on Incentives for Production of Electricity from Renewable Energy Sources and Combined Heat and Power Production (Official Gazette of Republic of Serbia no. 99/09) until replaced with the Government Decree referred to in paragraph 1, Article 53 of the Law on Energy, and in any event escalated annually from (1 January 2010) in accordance with [Euro CPI index to be specified], for each kWh of Electrical Output and Deemed Output in such Calculation Period. The price does not include Value Added Tax.

In addition to the price referred to in this Article 15, the Purchaser shall pay, in respect of each Calculation Period, all Increased Costs incurred in such Calculation Period. In the case of any Increased Cost arising prior to the Commercial Operations Date, the Parties shall, at the request of the Purchaser, seek to agree (acting reasonably) on an increase to the price payable per kWh over the Term of this Agreement sufficient to compensate the Producer for the amount of such Increased Cost and for the Producer’s weighted average cost of financing such amount over the Term (provided that the Producer shall not be required to agree to a tariff increase if it is not able to finance the same). If any such increase in the price is agreed the price in this Article 15 shall be adjusted accordingly. In any other case, the total amount of such Increased Cost shall be payable with 30 days of the date incurred by the Producer or on the Commercial Operations Date, if earlier.

INVOICING

Article 16

For the purposes of this Agreement, each calculation period shall be one Month, starting from the first day of the Month at 7:00 hours and ending on the first day of the following Month at 7:00 hours provided that where the Commercial Operations Date occurs on a date which is not the first day of a Month, the Calculation Period shall be the period from the Commercial Operations Date at 7:00 hours to the first day of the following Month at 7:00 hours (a “Calculation Period”).

Within [10] days of the end of a Month, the Producer shall issue an invoice to the Purchaser in respect of the Electrical Output generated in, and any Deemed Output in respect of, the previous Calculation Period.

Article 17

In addition to any other prescribed elements required by this Agreement, each draft invoice shall contain the following:

- the calculation units indicated in the record of the Metering System referred to in Article 13 of this Agreement,
- the amount of any Deemed Output during the Calculation Period,
- the purchase price indicated in Article 15 of this Agreement;
- the amount of any Increased Costs arising in respect of a Calculation Period;
- the calculated Value Added Tax;
- the total amount to be paid; and
- the deadline for payment (being 10 Business Days from the date of invoice).

Payments shall be made in RSD counter value at the mean exchange rate of the National Bank of Serbia valid on the date of payment of the relevant invoice.

Article 18
If the Purchaser does not agree with the invoice, it may serve notice on the Producer detailing the amount of the Dispute and the basis thereof. Any Dispute as to an invoice shall be referred to Expert Resolution in accordance with the provisions of Schedule 2 (Resolution of Disputes). If the Producer agrees with all or part of the invoice or, where disputed, the disputed amount due in respect of the relevant Calculation Period is determined, the Purchaser must pay such undisputed or determined amount to the Producer within 10 Business Days of the date of invoice or determination (as applicable). In the event any payment is not made when due, such late payment will bear interest (calculated daily) at the Default Interest Rate for each day of delay.

**DAMAGE LIABILITY**

Article 19

The Purchaser agrees to bear all risks, costs and losses arising from the intermittency of the Electrical Output and shall indemnify and hold harmless the Producer from all costs, claims, losses, liabilities, expenses, suits, actions and proceedings whatsoever arising directly or indirectly as a result of such intermittency, including any liability under any industry agreements or codes, or under any agreements for the connection of the Facility to the Grid System.

**FORCE MAJEURE**

Article 20

The term "Force Majeure Event" shall mean any event, circumstance or combination of events or circumstances, beyond the reasonable control of, and without the fault or negligence of the Affected Party occurring on or after the date of this Agreement that affects the performance by the Affected Party of its obligations under or pursuant to this Agreement which could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and reasonable care.

Article 21

Subject to Article 22, a "Political Force Majeure Event" is any event, circumstance, or combination of events or circumstances of the following types that occurs inside or directly involves Serbia (which shall include events outside Serbia):

(a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution;
(b) radioactive or chemical contamination or ionising radiation originating from a source in Serbia or resulting from another Political Force Majeure Event;
(c) any riot, insurrection, civil commotion, act or campaign of terrorism;
(d) any strike, work-to-rule, or go-slow which is not primarily motivated by a desire to influence the actions of the Affected Party so as to preserve or improve conditions of employment;
(e) a Change in Law;
(f) any act of the [Government of Serbia] or of any public sector entity in Serbia, including local regulators, municipalities, land and commercial registry, that impairs the performance or enjoyment of rights under this Agreement or the construction, operation, management, maintenance, use, enjoyment or
circumstance, Majeure delay performing Majeure

(b) The Majeure keep circumstances. as performance events or has caused A

(g) any introduction or imposition of any legal or regulatory requirement or practice inhibiting or prohibiting the free conversion by the Producer of RSD into Euros, or the remittance by the Producer of foreign currency from Serbia to any other country, or any other event which affects the availability of foreign currency or foreign exchange to the Producer.

Article 22

A "Natural Force Majeure Event" includes any Force Majeure Event not constituted or caused by, a Political Force Majeure Event, including:

(a) earthquake, cyclone, lightning, fire, explosion, vandalism or chemical contamination, epidemic or plague, subsidence, heave, landslip, collapse, hurricane, storm, flood, drought, strong winds, extreme weather or environmental conditions, meteorites, loss or damage in the course of marine, rail, road or air transit impact, volcanic eruption, explosion including nuclear explosion, radioactive or chemical contamination or ionising radiation originating from a source outside Serbia or other sudden acts of the elements on a level that exceeds the design criteria of the Facility or affects the ability of the Producer to erect the Facility; or

(b) any event, circumstance or combination of events or circumstances in Article 21(a), (b), (c) or (d) above that occurs outside Serbia and does not directly involve Serbia.

Article 23

The Affected Party may not claim relief for a Force Majeure Event unless and until it has given notice to the non-Affected Party of the Force Majeure Event of the events or circumstances constituting the Force Majeure Event, the likely duration of such events or circumstances and their consequences, and of the obligations or performance which is thereby delayed or prevented. Any such notice shall be given as soon as is reasonably practicable after the occurrence of the relevant event or circumstances.

After delivering a notice pursuant to the above paragraph, the Affected Party shall keep the other Party informed of material developments relating to such Force Majeure Event, providing notice, as soon as possible, of when it anticipates being able to resume performance of its obligations under this Agreement.

Article 24

The Affected Party shall use its reasonable endeavours to:

(a) mitigate and/or overcome the effects of any Force Majeure Event; and

(b) ensure resumption of normal performance of this Agreement as soon as reasonably practicable.

Article 25

Subject to Article 24, on the occurrence and during the continuance of a Force Majeure Event the Affected Party will not be liable for any failure or delay in performing its obligations under this Agreement to the extent that such failure or delay in performance has been caused or contributed to by one or more Force Majeure Events. The Affected Party will have the burden of proving that the circumstance, event or combination of circumstances or events constitutes a valid
Force Majeure Event and that it has exercised reasonable diligence and efforts to mitigate the effects of any alleged Force Majeure Event.

Notwithstanding any other provision of this Agreement, neither Party shall be entitled to claim relief from its liability to make payments under this Agreement by reason of a Force Majeure Event and the Purchaser shall be required to pay for any Deemed Output arising as a consequence of a Political Force Majeure Event.

The protection against Force Majeure set out in this provision is intended to be the sole remedy of the parties for unforeseen events and circumstances, to the exclusion of any and all other remedies available at law. In particular but without limitation, the Parties acknowledge and agree that Articles 133-135 of the Law in Contracts and Torts (1978) shall not apply to this Agreement.

Article 26

If a Force Majeure Event has occurred and been continuing in respect of which the Producer is the Affected Party and as a result of which:

(a) the Commercial Operations Date has not occurred by the date falling 12 months after the date in Article 5; or

(b) no Electrical Output has been delivered to the Purchaser for 12 months,

the Producer may terminate this Agreement by giving 1 month’s written notice to the Purchaser.

AUTHORISED PERSONS

Article 27

The Parties to this Agreement agree to exchange lists of persons authorised to exchange information and perform activities relevant for the execution of this Agreement (the "List of Authorised Persons").

The initial List of Authorised Persons referred to in Paragraph 1 of this Article shall be provided in Annex 4, which is an integral part of this Agreement.

The Parties hereto undertake to notify each other in writing and in due time of any change to the data regarding authorised persons.

TERMINATION OF THE AGREEMENT

Article 28

The Purchaser may give notice of its intention to terminate this Agreement on the occurrence of any of the following events (each a "Producer Event of Default") (except where caused in whole or material part by a Purchaser Risk Event):

(a) Abandonment by the Producer;
(b) the initiation of the bankruptcy procedure of the Producer as such term is defined in the Bankruptcy Law (Official Gazette of the Republic of Serbia, No. 104/09);

(d) any breach by the Producer of this Agreement (other than any breach referred to in the other paragraphs of this Article), which materially and adversely affects the Purchaser's performance or enjoyment of its rights under this Agreement and which is not remedied within forty (40) Business Days after receipt by the Producer of notice from the Purchaser, stating that a material breach or default under of this Agreement has occurred and is continuing and identifying the material breach or default in question in reasonable detail and requiring the Producer to rectify the same; or

(f) the revocation or cancellation of any Consents for failure by the Producer to comply with its conditions where such conditions were within the control of the Producer, which is not remedied within [●] Business Days after receipt by the Producer of notice from the Purchaser, identifying the revocation or cancellation in question in reasonable detail and requiring the Producer to rectify the same.

For the avoidance of doubt, the Purchaser may not terminate this Agreement for any other reasons, including any reason arising under general law.

Without derogating from the generality of the above, the Purchaser hereby waives any right to terminate this Agreement and the Producer is hereby completely excused from any liability in case of changed circumstances (rebus sic stantibus), material and legal defects of performance, non-performance or late performance as well as any act committed by the Purchaser in simple negligence, unless explicitly stated otherwise in this Agreement.

Article 29

The Producer may give notice of its intention to terminate the Agreement on the occurrence of any of the following events (each a "Purchaser Event of Default"):

(a) the Purchaser's failure to pay any amount due and payable to the Producer under this Agreement, or the Guarantor's failure to pay any amount under the Guarantee, in each case within five (5) Business Days following notice from the Producer to the Purchaser stating that such payment is overdue;

(b) the initiation of the bankruptcy procedure of the Purchaser as such term is defined in the Bankruptcy Law (Official Gazette of the Republic of Serbia, No. 104/09);

(c) any material breach or material default by the Purchaser of this Agreement or the Direct Agreement (other than any breach or default referred to in the other paragraphs of this Article) which is not remedied within [●] Business Days after notice from the Producer to the Purchaser, stating that a material breach or default has occurred under this Agreement or the Direct Agreement and is continuing, and identifying the material breach or default in question in reasonable detail;

(d) any Purchaser Risk Event occurs resulting in:
(i) any material undertaking or obligation of the Purchaser under this Agreement, the Guarantee or the Direct Agreement becoming unenforceable, invalid, or void; or

(ii) it becoming unlawful or impossible for the Producer (or its Lenders) to make or receive any payment, to perform any obligation or to enjoy or to enforce any material right or material benefit under this Agreement the Guarantee or the Direct Agreement;

where, in each case, the effect continues for more than 180 Days; or

(e) the Guarantee ceasing to be in full force and effect at any time.

Article 30

Following receipt of a notice of intention to terminate in accordance with the terms of this Agreement, this Agreement shall terminate on the date specified in such notice (the "Termination Date"), which date shall not be earlier than the date that is ten (10) Business Days following the date on which such notice is delivered to the other Party or later than thirty (30) Days following the date of such delivery.

The Parties shall continue to perform their respective obligations under this Agreement pending the final resolution of any Dispute raised by the receiving Party, in accordance with Schedule 2 (Resolution of Disputes) to this Agreement, of a notice of intention to terminate, provided that notice of a Dispute has been delivered to the Party serving the notice prior to the Termination Date.

Article 31

On any termination of this Agreement by the Producer pursuant to Article 29, Termination Compensation shall be payable as follows:

(a) in the event of termination as a result of a Producer Event of Default neither the Purchaser nor the Producer will be liable to the other for any payment of any amount of Termination Compensation; and

(b) in the event of termination as a result of a Purchaser Event of Default or Political Force Majeure Event the Termination Compensation payable to the Producer shall be the amount indicated in paragraph 1 of Schedule 9 (Termination Compensation).

Subject to the above, on the expiration or termination of this Agreement, the Parties shall have no further obligations or liabilities hereunder except for those obligations and liabilities that (a) arose prior to such termination, or (b) are expressly stated or by implication intended in this agreement to survive such termination.

Each Party acknowledges that the payment obligations in Article 31 of this Agreement are reasonable, and represent a genuine pre-estimate of loss. Each Party waives the right to contest those payments as unreasonable, disproportionate or penalizing.

Article 32
The right of the Non Defaulting Party to be paid Termination Compensation under Article 31 shall be its sole remedy to the exclusion of any other remedy under the law governing the Agreement or otherwise, and shall be in full and final satisfaction of its rights in relation to its termination of the Agreement pursuant to Articles 28, 29 and 30.

Article 33

Except as may otherwise be set forth in this Agreement, remedies are cumulative, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by such Party.

Article 34

Each party shall be liable for the non-performance of its obligations hereunder and for any immediate and direct damages and losses that it may cause, whether intentionally or in the performance or failure to perform this Agreement, subject to the provisions of this Agreement providing remedies for certain breaches. No Party shall in any circumstances be liable for any indirect damages or losses caused to another Party, provided, however, that this Article 34 shall not in any way limit or affect any contractual remedy or payment expressly established in this Agreement. No special, punitive, indirect or consequential damages shall be payable by a Party as a consequence of any breach or other act under this Agreement.

Article 35

Each of the Purchaser and the Producer unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitutes a private and commercial act. In furtherance of the foregoing, should any proceeding (including any arbitration proceeding) be brought against it or its assets in any jurisdiction, no immunity from such proceedings (or any form of relief claimed in such proceedings) will be claimed by or on behalf of itself or with respect to its assets (other than assets related to its sovereign functions) and it consents to any such relief and waives any right of immunity that it or any of its assets now has or may acquire in the future in any jurisdiction in connection with any such proceedings. The Purchaser agrees that this Article shall also apply to the Republic of Serbia and its assets.

NOTIFICATIONS

Article 36

The Parties to this Agreement shall exchange written notifications, i.e. they are obliged to notify each other via the postal service, fax or electronic mail about any change to the facts relevant to the execution of their respective contractual obligations under or in connection with this Agreement.

The contact details shall be:

If to the Purchaser:

[Notice details]
If to the Producer:

[Notice details]

Any Party may by notice change the address, email address and/or facsimile number to which such notices and communications to it are to be delivered or mailed.

Article 37

The submission of documents and information shall be conducted within working hours on Business Days.

The submission of documents shall be deemed to be delivered in the following cases:
- on the day of the delivery of registered mail if the delivery is carried out via the postal service;
- when the notice is delivered by hand or by courier; or
- if received during business hours on a Business Day for the receiving Party, when the notice is transmitted by facsimile or email to the receiving Party's facsimile number or email account; and
- if received after business hours or on a day that is not a Business Day for the receiving Party, on the receiving Party's first Business Day following the date the notice is transmitted by facsimile or email to the receiving Party's facsimile number or email account.

CONFIDENTIALITY

Article 38

The Parties shall treat the terms of this Agreement and all information provided under or in connection with this Agreement (“Confidential Information”) as confidential and shall not disclose Confidential Information without the prior written consent of the other Party, save that consent shall not be required for disclosure:

(a) to directors, employees or Affiliates of a Party, provided that they in turn are required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Article 38;

(b) to persons professionally engaged by a Party, provided that they in turn are required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Article 38 to the extent required by any Competent Authority having jurisdiction over that Party (including the Authority);

(c) to any bank, other financial institution or rating agency to the extent required in relation to the financing of a Party's business activities, provided that the bank, other financial institution or rating agency, as the case may be, is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Article 38;

(d) to the extent required by any applicable laws, judicial process or the rules and regulations of any recognised stock exchange, or to any Expert to the extent necessary for the resolution of any Dispute arising under this Agreement;
(e) to any intending assign of the rights and interests of a Party under this Agreement or to a person intending to acquire an interest in a Party or that Party’s Affiliate holding company provided that the intending assignee or acquirer in turn is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Article 38;

(f) to the extent required by the System Operator for the purposes of the performance of this Agreement; or

(g) to the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this Article 38.

THE EFFECT OF THE AGREEMENT

Article 39

The Agreement shall be binding upon the legal successors (including assigns or transferees) of the Parties hereto.

The Parties may not assign this Agreement without the consent of the other Party, save that in the case of the Producer, it may assign the agreement by way of security to any Lenders from time to time (and the preceding paragraph shall apply to any successors of the Producer resulting from the enforcement of such security).

The Purchaser shall enter into a Direct Agreement substantially in the form set out in Schedule 8 (Form of Direct Agreement) with any Lenders of the Producer from time to time.

The Parties agree that a Party that intends to initiate a status change in accordance with the law regulating the legal status of economic entities shall notify the other Party hereto of this intent within eight (8) Business Days of the date of adopting the draft decision on changing its legal status.

The Party undergoing the change of legal status shall immediately furnish the other Party to this Agreement with an official record of the change of legal status issued by the Business Registers Agency of Serbia.

The legal successor of a Party to this Agreement and the other Party hereto shall adjust the relevant provisions of this Agreement following the legal effectiveness of the status change in accordance with law as soon as practicable.

Article 40

Without prejudice to the Purchaser’s obligations in respect of Deemed Output and Increased Costs, if in the course of the term of this Agreement, the conditions concerning the incentives for the production of electrical power from renewable energy sources change in any Law, the Parties hereto shall use reasonable endeavours to conform the relevant provisions of this Agreement with such changes of Laws as soon as practicable by way of an Annex to this Agreement or amendment of the relevant Schedule, as applicable, in each case, provided that any Increased Cost (including loss of revenue) incurred by the Producer as a result is compensated through the provisions of the Deemed Output and Increased Costs provisions of this Agreement. In the event of any Dispute as to the amendments to be made to this Agreement (or the cost or revenue impact of such changes) the matter shall be
referred to Expert Resolution in accordance with the provisions of Schedule 2 (Resolution of Disputes).

**FINAL PROVISIONS**

**Article 41**

This Agreement shall be governed by and construed in accordance with [English] law. Subject to the express referral of any matter to the Expert under Schedule 2 (Resolution of Disputes) of this Agreement or the Parties’ subsequent agreement to refer any other matter to the Expert, the Parties submit to the exclusive jurisdiction of the [English] courts for the purposes of any dispute under or in connection with this Agreement.

Recognising their joint interest in the execution of the obligations under this Agreement, the Parties hereto undertake to resolve all issues in an amicable manner.

Any dispute that the Parties cannot resolve amicably shall be resolved in accordance with Schedule 2 (Resolution of Disputes).

**Article 42**

The Parties hereto agree that each Party shall bear its own expenses concerning the execution of this Agreement.

**Article 43**

This Agreement is executed in six identical copies, three copies to be retained by each Party to the Agreement.

This Agreement, together with all instruments entered into by the Parties pursuant to and as contemplated in this Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any agreements, understandings and/or representations previously given or made with respect thereto other than those included in this Agreement.

PRODUCER

Purchaser
SCHEDULE 1
Definitions

“Abandonment” means the voluntary cessation of operation of the Facility, and the permanent withdrawal of all, or substantially all, personnel by the Producer from the Facility for a period of six (6) months;

“Affected Party” means the Party adversely affected by a Force Majeure Event;

“Affiliate” shall mean, in relation to any legal entity, any other legal entity or entity that controls, is controlled by or is under the common control with such legal entity, it being understood that “control” means the ability to direct the management or policies of such other legal entity, whether by means of the ownership of shares or other securities with voting rights or any other means;

“Business Day” means each day between and including Monday to Friday, excluding public holidays in Serbia;

“Calculation Period” has the meaning given to it in Article 16 of this Agreement;

“Certificate of Origin” means the public document used by the Producer to prove that the electric power generated at the Facility is produced from renewable sources or combined heat and power generation;

“Change in Law” has the meaning given to it in Schedule 3 (Change in Law) to this Agreement;

“Commencement Date” shall have the meaning given to it in Article 4;

“Commercial Operations Date” means the date on which the last Commissioning Test is passed;

“Commissioning Period” means in relation to the Facility, the period from and including the date that the Commissioning Tests commence up to the Commercial Operations Date;

“Commissioning Tests” means in relation to the Facility, the tests described in Schedule 4 (Commissioning Tests) and “Commissioning Test” means any one of them;

“Connection Contract” means the contract which governs the connection of the Facility to the distribution network, including the technical conditions for the connections of systems and the points of connection, the method of calculating delivered electric power, costs for the connection of the Facility to the distribution network and the deadline for the connection of the Facility to the distribution network;
“Consents” means approvals, consents, authorisations, notifications, concessions, acknowledgements, agreements, licenses, permits, decisions, rights or similar items required to be obtained from any public sector entity for the purposes of the Project including the construction, financing, ownership, operation and maintenance of the Facility;

“Decree” means the Decree on Incentive Measures for Electricity Generation using Renewable Energy Sources and for Combined Heat and Power (CHP) Generation applied in the period from 1 January 2010 to 31 December 2012, until replaced with a Decree referred to in paragraph 1, Article 53 of the Law on Energy;

“Deemed Output” means, in any Calculation Period, the volume of electrical power (in kWh) not generated and delivered by the Facility to the Delivery Point in that Calculation Period due to a Purchaser Risk Event, which, in the case of Intermittent Facilities shall be based on the P50 output pro rated for the relevant period;

“Default Interest Rate” means [●];

“Delivery Point” means the bus bars at the point of interconnection of the Facility to the Grid System as further specified in Schedule 10 (Delivery Point);

“Dispute” means any dispute or disagreement of any kind whatsoever between the Purchaser and the Producer in connection with or arising out of this Agreement;

“Electrical Output” means in relation to the Facility the net electrical power, expressed in kWh, delivered to the Delivery Point by the Producer (i) during commissioning of the Facility, and (ii) following the Commercial Operations Date of the Facility, in each case as measured by the Metering System;

“Energy Law” means the Law on Energy (Official Gazette of the Republic of Serbia, No. [●]);

“Energy Permit” means the permit required under the Laws of Serbia for the construction of the Facility;

“Equity” shall mean the capital of the Producer or contributions attributable to its shareholders in respect of their investment in the Producer (including indebtedness for money borrowed by the Producer from the shareholders or their Affiliates);

“EUR” and “euro” denote the single currency of the Participating Member States;

“Event of Default” means a Purchaser Event of Default or a Producer Event of Default;

“Expert” means any person who may be appointed from time to time by agreement between the Producer and the Purchaser to make a decision on or to settle any
dispute between the Producer and the Purchaser pursuant to Schedule 2 (Resolution of Disputes);

“Facility” means the generation plant, on-site switchyard or substations and all balance of plant up to the Delivery Point, as further described in Annex 1, to be located at [●];

“Finance Documents” means the loan agreements, notes, indentures, security agreements, guarantees, swaps, insurance products and other documents relating to the financing of the Project or any part thereof;

“Finance Parties” means any person or entity, bank or financial institution providing commercial debt, export credit agency-backed, or otherwise insured, hedging contracts, agreements or other hedging arrangements bond or capital market financing or refinancing under the Finance Documents to the Producer, and their permitted successors and assigns, including any agent or trustee for such person or entity but excluding any Affiliate of the Producer;

“Force Majeure Event” has the meaning given to it in Article 17 of this Agreement;

“Grid System” means the transmission or distribution facilities through which the electrical power of the Facility will be received and transmitted by the Purchaser to users of electrical power;

“Guarantee” means the Guarantee of the performance by the Purchaser of its obligations under this Agreement entered into by the Producers with the Guarantor;

“Guarantor” means the [Government of Serbia];

“Increased Cost” means the sum (without double counting) of:

(i) the amount of any cost, claim, charge, liability or expense incurred by the Producer as a result of a Purchaser Risk Event including arising (a) prior to the Commercial Operations Date, including any construction cost or losses or financing cost arising as a result of delay, (b) in the nature of operation, maintenance or finance expenses, including insurance and foreign exchange expenses (c) in restoration or repair of the Facility, (d) in or towards compromise, settlement or discharge of any claim against the Producer including any claim for payment of, or related to a claim for payment of, any tax, or (e) by way of expert's or advisers fees or expenses; and

(ii) the amount of any revenue lost or concession, relief, tax holiday, allowance, exemption, incentive, benefit or guarantee not being available to the Producer as a result of a Purchaser Risk Event;
“Intermittent Facilities” means any Facility which is reliant on an intermittent energy source such as wind, solar or small hydro facilities;

"Laws" means any federal, national, provincial or local law, orders, rules, regulations, bye-laws, statutory orders, statutory reversionary orders, executive orders, decrees, policies, judicial decisions, notifications, administrative decisions or other similar directives made pursuant thereto, or legally binding instructions, policies, guidelines, codes (industry or otherwise) or standards issued by any executive, legislative, judicial or administrative entity, as any of them may be amended from time to time;

“Longstop Date” means the [fourth] anniversary of the date of confirmation of the Producer’s status as a Privileged Producer.

“Lender” means any person, company, bank or other financial institution at any time providing finance in connection with the Project or a Party;

“List of Authorised Persons” has the meaning given to it in Article 27 of this Agreement;

“Metering System” means the main metering system at the Delivery Point;

“Month” means a calendar month according to the Serbian calendar;

"Participating Member State" means any member state of the European Community that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union;

“Parties” means the parties to this Agreement;

“Performance Bond” means an on demand performance bond required under Article 64A of the Energy Law;

“Planned Maintenance” has the meaning given to it in Article 11 of this Agreement;

“Predictable Facilities” means any Facility other than an Intermittent Facility;

“Privileged Producer” means a producer that uses renewable energy sources to produce electricity and has fulfilled the requirements under the Laws of Serbia to be awarded the status of privileged producer by the ministry in charge of energy sector activities in Serbia;

“Project” means the development, design, engineering, manufacture, procurement, financing, construction, permitting, completion, testing, commissioning, insurance,
ownership, operation and maintenance of the Facility and all activities incidental thereto;

“Prudent Operating Practice” means the practices which would reasonably and ordinarily be expected from a skilled and experienced generator of electrical power from the relevant type of renewable resource and engaged in the same type of undertaking under the same or similar circumstances to those pertaining in Serbia;

“Purchaser Event of Default” has the meaning given to it in Article 29 of this Agreement;

“Purchaser Risk Event” means:

(a) a Natural Force Majeure Event affecting the Purchaser;
(b) a Political Force Majeure Event affecting either Party;
(c) a breach by the Purchaser of this Agreement; or
(d) the curtailment or unavailability, in whole or in part, of the Grid System to accept at the Delivery Point the Electrical Output for any reason, including any instability in the voltage or frequency or other constraint affecting the Grid System.

“P50 Output” means the forecast average annual energy output of the Facility, determined by a reputable technical consultant, which has a 50 per cent. probability of exceedance;

“RSD” means the lawful currency for the time being of the Republic of Serbia;

“System Operator” means the operator of the Grid System;

“Tax” means all forms of taxation, duties, imposts, levies and rates however imposed and applicable pursuant to the Laws of Serbia;

“Term” has the meaning given to it in Article 4 of this Agreement;

“Termination Date” has the meaning given to it in Article 30 of this Agreement;

“Total Debt Outstanding” means the total Debt outstanding to the Finance Parties under the Finance Documents (including principal, interest due, fees, break-funding and hedging breakage costs);

“Value Added Tax” means any value added tax or any replacement or other tax levied by reference to value added.
SCHEDULE 2
Resolution of Disputes

1. Introduction

The Parties to this Agreement agree that Disputes arising out of or in relation to the Agreement (including any question regarding its existence, validity or termination of this Agreement or the consequences of its nullity), shall be resolved in accordance with the provisions of this Schedule 2.

In the event that any Dispute arises between the Parties, or this Agreement deems there to be a Dispute, the Party wishing to declare a Dispute will deliver to the other Party a notice identifying the issue in Dispute.

2. Dispute Resolution by the Expert

2.1 Any Dispute between the Parties arising out of or in relation to this Agreement which the Parties agree in writing should be determined by an Expert will be dealt with by an Expert with appropriate professional qualifications, independent of the parties and with no interest in the Dispute, appointed in accordance with this paragraph 2.1. A Party wishing to make such referral shall notify the other Party in writing (the "Notice") of its intention to initiate such proceedings, setting out its reasons and requesting a meeting to discuss the appointment of an Expert.

2.2 Appointment of Expert

2.2.1 If the Parties fail to agree on the appointment of an Expert within fourteen (14) days of the receipt by the receiving Party of the Notice, an Expert will be appointed by [President/Chairman etc. of technical body for the resolution of disputes in Serbia]/[ICC Centre of Expertise for the Appointment of Independent Experts].

2.3 If the Expert resigns or becomes incapable of performing the functions of an Expert after his appointment and before his or her decision has been rendered a replacement Expert will be jointly appointed in accordance with the procedure set forth in this paragraph.

2.4 Decision of Expert

2.4.1 The Expert shall act as an expert and not as an arbitrator.

2.4.2 The Parties may, within twenty (20) days of the Expert appointment, make written submissions to the Expert. The Expert may, but is not obliged to do so, send copies of one party's submissions to the other

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7 Where any Affiliate of the Producer is not a Serbian resident person or Serbian body corporate, or the Finance Parties are not Serbian bodies corporate, ICC shall be used.
party for comment. If requested by the Expert, the Parties will make available to the Expert any documents or other materials that the Expert, in its absolute discretion considers necessary or helpful in reaching his determination or decision.

2.4.3 The Expert will endeavour to make his determination or decision within thirty (30) days of his or her appointment, and, except in case of manifest error, that determination or decision shall be final and binding on the parties, unless otherwise specified in this Agreement. The Expert shall give reasons for his or her decisions.

2.4.4 Any sum payable as a result of the Expert’s determination or other decision will be payable within five (5) Business days of the Parties receiving notification of the same. In the event that payment is not made within this period, the defaulting payee shall in addition be liable to pay interest from the due date to the date of payment calculated at the Default Interest Rate.

2.4.5 The Expert will, subject to the provisions set out in paragraphs 2.4.6 and 2.4.7, determine which Party will bear the costs, or apportion the costs, in respect of the reference.

2.4.6 If the Expert determines or otherwise decides a Dispute or disagreement in a manner entirely consistent with a Party’s initial position on the Dispute or disagreement, the Expert will determine that the other Party will bear the costs.

2.4.7 The Expert will determine that any Party that fails to comply with his determination or decision will bear the costs of any further process necessary to enforce the decision or determination.

2.4.8 The right to have Disputes determined by an Expert will survive termination of this Agreement.

3. **Resolution by Parties**

3.1 Except for matters that are reserved by this Agreement to be resolved by the Expert under paragraph 2.1 of this Schedule 2, within thirty (30) days of delivery of a notice of a Dispute, the Parties will attempt in good faith to settle such Dispute by discussions between those representatives of each Party with the appropriate decision making authority to resolve the Dispute.

3.2 In the event that such representatives are unable to reach agreement within thirty (30) days, or such longer period as the Producer and the Purchaser may agree then either Party may commence arbitration of the Dispute in accordance with paragraph 4 (Arbitration) of this Schedule 2.
4. **Arbitration**

4.1 Any Dispute arising from or connected with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) which is not resolved pursuant to paragraph 3 *(Resolution by Parties)* of this Schedule 2, or which is not required by this Agreement to be determined by an Expert, shall be referred to and finally resolved by arbitration under the *[ICC Rules] or other applicable rules for Serbia*\(^8\) and such rules are deemed to be incorporated by reference into this paragraph (the "Rules").

4.2 The tribunal shall consist of three arbitrators who shall be appointed in accordance with the *[ICC Rules]*. The seat of the arbitration shall be *[City, Country]*, and the language of the arbitration shall be *[English]*.

4.3 The Parties agree that the arbitral tribunal shall have power to award on a provisional basis any relief that it would have power to grant on a final award.

4.4 The Parties exclude any rights to refer points of law or to appeal to the courts.

4.5 During the course of any arbitration under this Agreement:

4.5.1 the Parties will to the maximum extent possible continue to perform their respective obligations under this Agreement, and

4.5.2 neither Party will exercise any other remedies arising under this Agreement with respect to the matters in Dispute.

4.6 If any Dispute arises which:

4.6.1 raises issues substantially the same as, or connected with, issues raised in a Dispute which has already been referred to arbitration (an "Existing Dispute"); or

4.6.2 arises out of substantially the same facts as are the subject of an Existing Dispute (in either case, a "Related Dispute"),

the arbitral tribunal appointed or to be appointed in respect of such Existing Dispute shall also be appointed as the arbitral tribunal in respect of any Related Dispute. An Existing Dispute means a Dispute in respect of which a Request for Arbitration (as defined in the Rules) has already been made.

4.7 In order to facilitate the comprehensive resolution of Existing Disputes and Related Disputes where, pursuant to paragraph 4.6 above, the same arbitral tribunal has been appointed in relation to two or more Disputes, upon request of any party to an arbitration pursuant to this paragraph, being a party to each of the Disputes, the arbitral tribunal for the Existing Dispute may consolidate

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\(^8\) Where any Affiliate of the Producer is not a Serbian resident person or Serbian body corporate, or the Finance Parties are not Serbian bodies corporate, ICC shall be used.
that arbitration with the arbitration for the Related Dispute(s). The arbitral tribunal shall not consolidate such arbitrations unless it determines that:

4.7.1 there are issues of fact or law common to the arbitrations so that a consolidated proceeding would be more efficient than separate proceedings; and

4.7.2 no party would be materially prejudiced as a result of such consolidation whether through undue delay or otherwise.
"Change in Law" means the occurrence of any of the following after the date of this Agreement:

1. the enactment of any new Laws;
2. the repeal, modification or re-enactment of any existing Laws;
3. the Producer not having or enjoying (for any reason) any incentive, exemption, waiver, benefit or guarantee set out under the Laws of Serbia;
4. the commencement of any Laws which have not yet entered into effect as of the date of this Agreement;
5. a change in the interpretation or application of any Laws;
6. the imposition of a requirement for a Consent where such requirement did not exist as at the date of this Agreement;
7. the grant of any Consent on terms and conditions which:
   (i) are contrary to the Laws;
   (ii) prejudice the Producer's ability to carry out the Project;
   (iii) prejudice the financial interest of the Producer, its Lenders, investors or contractors; or
   (iv) prejudice the security documents forming part of the Finance Documents;
8. after the date of grant of any Consent, a change in the terms and conditions attaching to such Consent or the attachment of any new terms and conditions to such Consent;
9. any Consent not being granted on a timely basis on application therefore having been duly made;
10. save in the case of a Consent which is revoked on the ground of breach by the Producer, any Consent ceasing to remain in full force and effect, or if granted for a limited period, not being renewed on a timely basis on application therefore having been duly made, or being renewed on terms and subject to conditions which are less favourable to the Producer, the Lenders, investors or contractors than those attached to the original Consent; or
11. the imposition of any Tax or any change in the application of any Tax (including, without limitation, the time or rate at which such Tax is payable).
SCHEDULE 4
Commissioning Tests

[Details of all tests to be carried out to satisfy that the Commercial Operations Date has been met are to be laid out. This includes tests under the agreements and contracts constituting the Project]
SCHEDULE 5
Metering Requirements

[Insert relevant legislative requirements and regulations with respect to reading and operating Metering Systems.]
SCHEDULE 6
Technical and Safety Requirements

[Include details of any technical and safety provisions with which the project has to comply.]
SCHEDULE 7
Quality of Electrical Output

[Specify the key qualitative parameters in relation to electrical output only, such as voltage, frequency, fault ride-through]
THIS AGREEMENT (this “Agreement”) is dated 20[●] and made between:

1. [THE GOVERNMENT OF THE REPUBLIC OF SERBIA], represented by [●] and the [●] (“GoS”);
2. The EPS Public Enterprise (Electric Power Industry of Serbia), Belgrade, Carice Milice 2, Tax Identification Number, account number, as the Purchaser of electrical power, represented by [●], General Manager (“Purchaser”);
3. [Insert name and details of Privileged Producer] (“the Producer”); and
4. [Insert name of Facility Agent] and their successors and permitted assignees (the “Agent”),

Together the “Parties”.

BACKGROUND:

(A) [Insert description of process pursuant to which the entry into the PPA was authorised by the relevant government department and the project] (“Project”).

(B) The Producer and the Purchaser have entered into a power purchase agreement dated [●] relating to the sale of electricity from the Producer to the Purchaser (the “PPA”). The GoS has acknowledged the PPA.

(C) The GoS, the Producer and the Project Company have also entered into a guarantee dated [●] (the “Guarantee”) pursuant to which the GoS guarantees the obligation of the Purchaser under the PPA.

(D) The Agent and lenders are proposing to enter into a [insert description of core finance document] and other finance documents (as defined in the [insert description of core finance document]) (together the “Finance Documents”), pursuant to which the lenders will, subject to the terms and conditions of such documents, make available loan facilities to finance the implementation and operation of the Project. It is a condition precedent to the availability of funding under the Finance Documents that the Parties enter into this Agreement.

(E) GoS and the Purchaser have accordingly agreed to enter into this Agreement to facilitate the financing for the implementation and operation of the Project.

IT IS AGREED as follows:

1. Consent to Security

Promptly on receipt of a notice from the Producer, in the form attached in Appendix 1, GoS and the Purchaser will acknowledge receipt of notice of, and
consent to, the grant of the security referred to therein in the form set out in Appendix 2.

2 Payment of Monies under the PPA and the Guarantee

(a) The Producer irrevocably instructs each of the GoS and the Purchaser to, and GoS and the Purchaser each agree to, pay the full amount, without set-off, deduction or withholding, of any sum which it is obliged at any time to pay to the Producer under or in respect of the Guarantee or the PPA (as applicable) to the account details provided in the notice delivered pursuant to Clause 1 above or as otherwise directed in writing by the Agent.

(b) The authority and instruction contained in Clause 2(a) shall not be revoked or varied by the Producer without the prior written consent of the Agent, copied to the GoS and the Purchaser.

3 Guarantee

(a) GoS and the Purchaser each undertake to and for the benefit of the Agent to fully comply with the terms and conditions of and perform their respective obligations, undertakings and agreements under the Guarantee as if those obligations, undertakings, agreements and all other terms relating thereto were fully set out in this Agreement, save that any enforcement by the Agent of those obligations, undertakings and agreements will be governed by Clauses 11 (Governing Law) and 10(f) (Dispute Resolution) of this Agreement.

(b) The Agent and the Producer confirm that any payment by GoS and the Purchaser under Clause 3(a) shall, to that extent, discharge their liability to perform the same payment obligation under the Guarantee, as applicable, such that there shall be no double recovery in respect of the same payment obligation, undertaking or agreement.

(c) GoS and the Purchaser each agree that their obligations under the Guarantee (including as restated under this Agreement) shall be continuing obligations notwithstanding the exercise by the Agent of any of its rights under the Finance Documents.

(d) The GoS and the Purchaser each acknowledge and agrees that, until the lenders have been fully and irrevocably repaid and have no further commitments or obligations to make advances in respect of the Project (the “Final Payment Date”), they may not assign any of their rights or obligations under the PPA or the Guarantee without the prior written consent of the Agent.
4 Amendments to PPA

(a) Neither the GoS or the Purchaser will, prior to the Final Payment Date, amend or otherwise vary the terms of the PPA or the Guarantee without the prior written consent of the Agent.

(b) The Purchaser will not, prior to the Final Payment Date, purchase any power generated by the Producer other than pursuant to the PPA without the prior written consent of the Agent.

5 Step-in Rights

(a) The Agent shall notify the GoS and the Purchaser as soon as reasonably practicable after an event occurs permitting enforcement of the Lenders security.

(b) The Purchaser shall notify the Agent as soon as reasonably practicable after it becomes aware of any breach of, or other event entitling them to terminate, the PPA (together with an enforcement event, a “Project Default”).

(c) The Purchaser shall give the Agent prior written notice (a “Step-In Notice”) of its intention to deliver a notice of termination of the PPA to the Producer under Article 28 of the PPA and shall not serve notice terminating the PPA until the later of:

(i) 120 days after the date of the Step-in Notice; or

(ii) provided that the Agent is complying with their obligation under paragraph (d) below and the Agent (or a Step-in Entity) is diligently pursuing a permanent remedy to the circumstances giving rise to the breach or right to terminate, 240 days after the date of the Step-in Notice; or

(iii) provided that the Agent has issued a notice under Clause 5.2(e) below and are complying with their obligation under paragraph (f) below, such longer period as may be necessary to complete enforcement of their security;

(“Step-In Period”).

(d) Following receipt of a Step-in Notice, the Agent shall co-operate and liaise with the GoS and the Purchaser (and with the Project’s sponsors, if appropriate) on the approach to remedying the circumstances giving rise to the breach or right to terminate. Where the Step-in Period is expected to extend beyond 120 days, the Agent will take due regard of the impact of the Producer’s non-performance on the Purchaser and shall seek to exercise their rights under the Finance Documents so that any reasonable measures (not involving material cost) to mitigate such impact (and in particular the restoration of expected plant capacity) are taken by the Producer, the Agent or any Step-in Entity.
(e) If a Project Default has occurred, the Agent may, but is under no obligation to:

(i) make any payment or perform any act required to be made by the Producer with the same effect as if made by the Producer; or

(ii) issue a notice to the Purchaser, with a copy to the Producer, requiring the PPA to be transferred to the person specified in the notice (the **Step-In Entity**) and the GoS and the Purchaser hereby consent to any such transfer and shall assist the Agent to ensure that the PPA, the Guarantee and all consents and licences required for the operation of the Project are transferred to the Step-in Entity without variation and not terminated as a result of any such transfer.

(f) The Step-In Entity will be obliged to remedy or cause the Producer to remedy any breach of the PPA that is outstanding and of which the Agent had prior written notice at the time of transfer of the PPA, within a reasonable period of time.

(g) The Step-In Entity may, at any time, give notice to the Purchaser requiring the Purchaser to:

(i) release it from its obligations under the PPA, whereupon the Step-In Entity will re-transfer the PPA to the Producer; or

(ii) transfer the PPA to a third party notified to the Purchaser by the Step-In Entity (provided that such third party will also have access to the Project to permit it to perform its obligations thereunder), and the Purchaser and GoS will assist with any such transfer as contemplated in Clause 5(e) above.

(h) The Step-In Entity will be liable for performance of the PPA during the period in which it is a party to the PPA, but not otherwise.

(i) Any Step-in Entity or third party transferee (referred to in paragraph (g) (ii) above) should have, or have access to, through contract or otherwise, the financial and technical capability necessary to perform the Producer’s obligations under the PPA. The Agent shall give notice to, consult with, and seek the approval of, the GoS and the Purchaser as to the identity of such persons prior to the exercise of their rights under Clause 5 (e)(ii) or (g)(ii) above. The GoS and the Purchaser may only object to any proposed Step-in Entity or third party transferee on the grounds that it does not have, or does not have access to, the financial and technical capability (through contract or otherwise) necessary to perform the Producer’s obligations under the PPA. If the GoS and the Purchaser have not given notice to the Agent within 30 days of being notified of the identity of the proposed Step-in Entity that they do not approve of the identity of the proposed Step-in Entity, they
will be deemed to have approved the identity of the proposed Step-in Entity. If the GoS and the Purchaser notify the Agent that it does not approve of the Step-in Entity and the Agent disputes such disapproval, such dispute shall be resolved in accordance with the relevant dispute resolution procedure under the PPA during the continuation of which the 120 and/or 240 day period in paragraph (c) above shall continue.

6 Subordination of Claims

Until the Final Payment Date, each of GoS and the Purchaser (each a “Claiming Party”) waives in respect of any claim it has against the Producer for any reason (each a “Relevant Claim”) any right, entitlement or power to petition for, initiate, facilitate or support any steps taken with a view to any winding up, bankruptcy, composition insolvency, reorganisation, dissolution or similar proceedings in respect of:

(a) the Producer, or
(b) for so long as the Guarantee remains in place the GoS undertakes to discharge the Purchaser’s obligations under the PPA, the Purchaser;

and shall pay to the Agent any amount it receives in contravention of this provision.

7 Sovereign Immunity

Each of GoS and the Purchaser unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Agreement constitutes a private and commercial acts. In furtherance of the foregoing, should any proceeding (including any arbitration proceeding) be brought against it or its assets in any jurisdiction, no immunity from such proceedings (or any form of relief claimed in such proceedings) will be claimed by or on behalf of itself or with respect to its assets and it consents to any such relief and waives any right of immunity that it or any of its assets now has or may acquire in the future in any jurisdiction in connection with any such proceedings. GoS agrees that this Clause shall also apply to the Republic of Serbia and its assets.

8 Duration

This Agreement will commence on the date hereof and will continue in full force and effect until the Final Payment Date, without prejudice to any accrued rights and obligations existing at the date of termination.

9 Changes to the Parties

None of GoS, the Purchaser or the Producer may assign, transfer, novate or otherwise dispose of all or any of their respective rights, benefits or obligations under this Agreement or any Transaction Document without the prior consent of the Agent.
10 Miscellaneous

(a) Any communications to be made under or in connection with this Agreement will be made in writing and, unless otherwise stated, may be made by fax or registered courier to, in the case of GoS, the Purchaser and the Producer, the addresses etc set out in the PPA, and, in the case of the Agent, as follows:

Address: [●]
Fax No: {●}
Attention: [●]

or any substitute address, fax number or department or officer as the Party may notify to the other Parties on not less than five Business Days’ notice.

(b) The Parties agree that:

(i) any communication or document to be made or delivered pursuant to this Agreement will be effective only when actually received by the addressee and then only if it is expressly marked for the attention of the department or officer identified in this paragraph;

(ii) any notice given by GoS, the Purchaser, or the Producer under this Agreement will be irrevocable.

(c) This Agreement may not be amended, waived, supplemented or otherwise unless in writing and signed by or on behalf of the Parties.

(d) No failure to exercise, nor any delay in exercising, on the part of the Agent of any power, right or remedy under this Agreement will operate as a waiver, nor will any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

(e) Nothing in the Guarantee or PPA will prejudice or limit the rights, powers or benefits of the Agent under this Agreement and in the event of any conflict between the terms of the Guarantee or PPA and the terms of this Agreement, then the terms of this Agreement will prevail.

(f) The provisions of paragraphs [●] of Schedule 1 of the PPA shall be incorporated by reference into this Agreement as if set out in full herein, and as if reference therein to this “Agreement” were to this Agreement, references to “Parties” were to the Parties and provided that a dispute under this Agreement shall not be “Related Dispute” of any Dispute under the PPA and shall be governed by English law. The Parties hereby, to the fullest extent permitted by law, irrevocably waive any right to challenge or contest the validity or enforceability of this
arbitration agreement or any arbitration proceeding or award brought in conformity with this Clause 10(f), including any objection based on venues or inconvenient forum, or on the invalidation of any part of, or the entirety, of this Agreement or any contractual obligation resulting hereunder.

(g) The provisions of Clause 10(f) in no way impair the Agent’s prerogative of resorting to the judicial courts having jurisdiction so as to obtain interim or conservatory measures for its rights pending the rendering of the arbitral award.

(h) Any Party may petition any court having jurisdiction to enter judgement upon the arbitration award. At the request of any Party, the arbitrator will cause such arbitration award to be filed with the [relevant judicial authority] of [The Republic of Serbia]. Any monetary award will include interest from the date of any breach or other violation of this Agreement to the date on which the award is paid, at a rate determined by the tribunal.

(i) Unless a contrary indication appears, any reference in this Agreement to:

(i) an agreement includes a deed and instrument;

(ii) an agreement, deed, instrument, licence, code or other document (including this Agreement), or to a provision contained in any of these, will be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;

(iii) an “amendment” includes a supplement, novation, replacement, assignment or re-enactment (and “amended” will be construed accordingly);

(iv) “consent” also includes an approval, authorisation, exemption, decree, filing, licence, order, permission, recording or registration (and references to obtaining consents will be construed accordingly);

(v) any “obligation” of any person under this Agreement or any other agreement or document will be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Agreement or, as the case may be, that other agreement or document (and “due”, “owing”, “payable” and “receivable” will be similarly construed);

(vi) a “permitted assign” and/or “permitted transferee” means in respect of the Agent, a person to whom the Agent, may and
does transfer and assign its rights and/or obligations under the Finance Documents.

(vii) the “winding-up” of a person also includes the amalgamation, reconstruction, reorganisation, administration, dissolution, liquidation, merger or consolidation of that person, and any equivalent or analogous procedure under the law of any jurisdiction;

(viii) use of the singular will include the plural and vice versa;

(ix) the words “include” and “including” are to be construed without limitation.

11 Governing Law

The Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

In witness whereof this Agreement has been executed and delivered as a deed on the date first stated above.

Signatories

The Government of the Republic of Serbia

By:

[Agent]

By:

The EIS Public Enterprise (Electric Power Industry of Serbia) –

By:

[•], [Name of the Privileged Power Producer]By:
Appendix 1: Producer’s Financial Close Notice

To:
The Government of the Republic of Serbia, represented by the [●]; and
EPS Public Enterprise (Electric Power Industry of Serbia) - , C.P. 137, Carice Milice 2, Belgrade, Serbia

Dear Sirs

Direct Agreement: Financial Close Notice

We refer to the Direct Agreement entered into between [the Producer], yourselves and [insert name of Agent] dated ..... (the “Direct Agreement”). Terms defined in the Direct Agreement have the same meaning in this notice.

We hereby give notice to the GoS and the Purchaser that:

(a) the account details referred to in Clause 2(a) are as follows:

[insert details of Proceeds Account]

(b) all of the conditions precedent to financial close under our Finance Documents with the [insert name of Agent] (other than your acknowledgement of this letter) have been satisfied or waived; and

(c) under the terms of the Finance Documents, we have granted various security interests to the lenders over our rights under the PPA and the Guarantee for the payment of all the liabilities or indebtedness of or moneys borrowed or owing by[●] and to the lenders under the Finance Documents.

Please acknowledge receipt of this notice in the form of the notice set out as Appendix 2 of the Direct Agreement.

For and on behalf of [Name of the Privileged Power Producer]
Appendix 2 : GoS and the Purchaser Financial Close notice

To:
[Insert name of Agent]

; and

[Insert name of Producer], [City], [Country]

Dear Sirs

Direct Agreement: Financial Close Notice

We refer to the Direct Agreement entered into between the undersigned and yourselves dated ..... (the “Direct Agreement”). Terms defined in the Direct Agreement have the same meaning in this notice.

GoS and the Purchaser confirm that all of the “Conditions Precedent” listed in Clause 2.1.1 and 2.1.2 of the PPA have either be satisfied or waived in accordance with Clause 2.1 of the PPA and that the PPA is in full force and effect.

GoS and the Purchaser each acknowledge receipt of a notice from Cabeolica dated .... in the form set out in Appendix 1 of the Direct Agreement.

GoS and the Purchaser each acknowledge and consent to the grant of the security referred to in paragraph (b) of that notice.

GoS and the Purchaser each confirm that they have not had, and will not take or seek to take any security interest in respect of any asset of the Producer or over its shares at any time during the term of the Direct Agreement.

GoS and the Purchaser each represent to the Agent that they have not previously received notice of any other security interest granted in respect of the Producer’s rights under the Guarantee or PPA (as applicable).

........................................
........................................

For and on behalf of the Government of the Republic of Serbia, represented by [●];

........................................

For and on behalf of The EPS Public Enterprise (Electric Power Industry of Serbia),
Carice Milice 2, Belgrade, Serbia
SCHEDULE 9
Termination Compensation

1. **Purchaser Event of Default or Political Force Majeure Event**

The Termination Compensation payable to the Producer following a Purchaser Event of Default or Political Force Majeure Event, shall be an amount equal to:

(a) the sum of the following amounts:

(i) the Total Debt Outstanding on the Termination Date;

(ii) an amount equal to the Equity contributed on the date of the notice of termination less the sum of all distributions or returns of capital (however characterised) which have been made in respect thereof on or prior to the date of notice of termination; and

(iii) an amount sufficient to compensate the Producer in present value terms for the return on equity [being [●]%] it would have received over the remainder of the Term if this Agreement had not been terminated.

2. **Adjustments**

2.1 Any undisputed amounts owed by the Producer to the Purchaser pursuant to this Agreement as at the date of the notice of termination shall be deducted from any amounts to be paid by the Purchaser to the Producer pursuant to this Schedule 9.

2.2 The amounts due to the Producer from the Purchaser in accordance with this Agreement on the date of the notice of termination shall be added to the amounts that the Purchaser must pay to the Producer in accordance with this Schedule 9.
SCHEDULE 10
Delivery Point

[Insert single line diagram]