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Pursuant to Article 67 paragraph 8 of the Law on Efficient Use of Energy (*Official Gazette of the RoS*, no. 25/2013),

The Minister of Mining and Energy hereby adopts the

RULEBOOK

ON DETERMINING MODEL CONTRACTS ON ENERGY SERVICES FOR IMPLEMENTATION OF ENERGY EFFICIENCY IMPROVEMENT MEASURES WHEN BENEFICIARIES ARE FROM THE PUBLIC SECTOR

Article 1

This Rulebook establishes model contracts on energy services for implementation of energy efficiency improvement measures when beneficiaries are from the public sector, specifically:

- 1) Model Contract on Energy Service for Implementation of Energy Efficiency Improvement Measures in Public Facilities and Savings in Operating Costs of such Facilities When Beneficiaries Are from the Public Sector, and
- 2) Model Contract on Energy Service for Implementation of Energy Efficiency Improvement Measures and Savings in Operating Costs of Public Lighting When Beneficiaries Are from the Public Sector.

Article 2

The model contracts referred to in Article 1 of this Rulebook are printed out along with this Rulebook and constitute its integral parts.

Article 3

This Rulebook shall come into force on the eighth day as of the date of its publishing in the *Official Gazette of the Republic of Serbia*.

Number 110-00-00050/2014-06
In Belgrade, on 16 April 2015

MINISTER
Aleksandar Antic (signed)

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**MODEL CONTRACT ON ENERGY SERVICE FOR IMPLEMENTATION OF
ENERGY EFFICIENCY IMPROVEMENT MEASURES AND REDUCTION OF
OPERATING COSTS IN PUBLIC BUILDINGS**

Concluded between

Client: _____

Address: _____

Authorized Representative: _____

Official registration number: _____

Tax Identification Number: _____

(Sub) account (of the budget): _____

- Hereinafter referred to as: **the Client**

And

The Contractor: _____

Address: _____

Authorized Representative: _____

Official registration number: _____

Tax Identification Number: _____

Current account: _____

Special purpose account: _____

- Hereinafter referred to as: **the Contractor**

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PREAMBLE

The Client has prepared the tender documentation no. ____ dtd. ____ 20__, on the basis of which it conducted a public procurement procedure [*describe the relevant public procurement procedure in which the Contract was awarded, e.g. restrictive procedure, competition dialogue, etc.*] for the services of energy efficiency improvement through energy savings and corresponding reductions in CO2 emissions, aimed at achieving savings in the operating expenditures of the public facility of the Client based on the public-private partnership. In the procedure of choosing the private partner, the Contractor has been chosen, who submitted the Bid number: _____ dtd. ____ 20__.

WHEREAS the Client is the owner [*or, alternatively: the user*] of the public facility, which is owned by [*enter the type of ownership, for example: the Republic of Serbia, a local self-government unit, autonomous province, authorities and organizations, public companies, etc.*].

WHEREAS the Contractor is the company providing energy services, which commits to execute the service aiming at providing savings in energy consumption,

WHEREAS under the law regulating public-private partnership and concessions applicable in the Republic of Serbia the Client is considered to be a Public Partner and the Contractor is considered to be a Private Partner.

WHEREAS this Contract was awarded to the Contractor in a public procurement procedure in accordance with the law governing the public procurements, namely for the purpose of realizing the public-private partnership under the applicable law regulating public-private partnership and concessions,

WHEREAS this Contract is also considered to be a Public Contract under the applicable law regulating public-private partnership and concessions,

WHEREAS by signing this Contract between the Contractor as a Private Partner and the Client as a Public Partner (hereinafter referred to as: the Contract), the Client aims at achieving energy savings and associated savings in the operating expenditures of the Contracted Facility, as specified in Appendix 1,

The Client as a Public Partner and the Contractor as a Private Partner hereby agree as follows:

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LIST OF ABBREVIATIONS

ESMs	Energy Saving Measures
EDSO	Electricity Distribution System Operator
M&V	Measurement & Verification
NGDSO	Natural Gas Distribution System Operator
NGTSO	Natural Gas Transport System Operator
PUC	Public Utility Company
RS	The Republic of Serbia
UNCITRAL	United Nations Commission on International Trade Law
VAT	Value Added Tax

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1 DEFINITIONS

The terms used in this Contract have the following meaning for the Contracting Parties:

- 1) **Accounting Period** is a period of 12 calendar months during which the achieved Energy Saving and Financial Saving in the Guarantee Period are calculated.
- 2) **Activity Log in the Implementation Period**, managed by the Contractor, is the record of all Implementation Activities conducted by Contractor, and which are verified by the Contracting Parties at the end of the Implementation Period.
- 3) **Activity Log in the Preparatory Period** is the record of all Preparatory Activities performed by the Contractor, which is kept by the Contractor and verified by the Contracting Parties at the end of the Preparatory Period.
- 4) **Additional Remuneration** is the monetary amount contracted for and exceeding the amount of the Basic Remuneration, to which the Contractor is entitled provided that it has achieved Additional Savings in the Guarantee Period, as demonstrated by the application of the M&V Plan.
- 5) **Additional Financial Savings** means the achieved Financial Savings in excess of the Guaranteed Savings.
- 6) **Adjustments** means the modifications made to the Baseline Consumption in order to neutralize routine and non-routine changes in consumption of Energy and thus provide a reliable basis for identifying Energy Savings attributable to the ESMs implemented by the Contractor.
- 7) **Annual Basic Remuneration** equals the Annual Guaranteed Savings (in case of Shared Saving, the Annual Basic Remuneration equals Annual Guaranteed Savings multiplied by the contracted percentage of the Shared Savings for the Contractor).
- 8) **Annual Guaranteed Savings** equals the Guaranteed Savings divided by the number of years in the Guarantee Period.
- 9) **Annual Savings** means the achieved Financial Savings as calculated in the approved M&V Report for a specific Accounting Period during the Guarantee Period.
- 10) **Authorized Representatives** are the representatives of the Contracting Parties, authorized to undertake actions in the name and/or for the account of the Contracting Parties. Such persons must have a legal or some other authorization/power of attorney for undertaking actions and representing the Contracting Parties, wherein the scope of their authorization in the legal transactions related hereto is established.
- 11) **Baseline Energy Consumption** means the consumption of Energy and associated rate of power input and/or capacity of the Contracted Facility occurring during the Baseline Period.
- 12) **Baseline Period** means a mutually agreed period representing the functioning of the Contracted Facility before the implementation of ESM(s).

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- 13) **Basic Remuneration** is the monetary amount contracted for, belonging to the Contractor provided it meets its contractual obligation and achieves the Guaranteed Savings during the Guarantee Period, as shown in the M&V Plan.
- 14) **Bid** is the Contractor's bid No. [*insert the bid's number*] dated [*insert date*] which was accepted by the Client and on the basis of which the public-private partnership was established hereunder (attached hereto as Appendix 3).
- 15) **Client** is the owner [*alternatively: the user*] of the Contracted Facility.
- 16) **Commissioning** is the activity of putting the installed equipment, installations and/or parts thereof in the Contracted Facility into test operation, for the purpose of verifying whether they are operational, comply with the contractual obligations and specifications and are ready for the planned use and operation. The Commissioning must be in compliance with the technical regulations and standards with respect to the construction permit or any other relevant permit required for the commencement and implementation of works, so that the operating license for the installed equipment, installations and/or parts thereof in the Contracted Facility may be properly obtained, if required.
- 17) **Contracted Facility** is a Public Facility, in which the ESMs are applied and which may consist of several public facilities or technical and technological entities and/or systems, all used by the Client.
- 18) **Contracting Parties (or the Parties)** means the Client and the Contractor.
- 19) **Contractor** is a company or an entrepreneur engaged in performing energy services, whose Bid has been chosen in the procedure of choosing the private partner and which signs this Contract with the Client.
- 20) **Contractual Period** means the period from the signing and entry into force of the present Contract up to its expiry hereunder.
- 21) **EDSO/NGDSO/NGTSO** – is an energy entity dealing with distribution/transport of electricity / natural gas in the area in which the Contracted Facility is located.
- 22) **Energy** means all forms of energy, including electricity, heat energy, water and associated consumption/use including rate of power input and/or capacity.
- 23) **Energy Saving Measures (ESMs)** are the measures taken to improve the energy efficiency and resulting in reduction of the Operating Costs in the Contracted Facility.
- 24) **Energy Savings** means reduction in consumption of Energy in the Contracted Facility.
- 25) **Energy Supplier** is an economic operator engaged in the activity of supplying Energy in the territory in which the Contracted Facility is located.
- 26) **Financial Savings** means reduction in Operating Costs of the Contracted Facility as a result of ESMs, calculated based on the Reference Energy Price.
- 27) **Guarantee Period** means the time period from the end of the Implementation Period up to the end of the Contractual Period.

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- 28) **Guaranteed Savings** means the total amount of the contracted Financial Savings during the Guarantee Period, resulting from the implementation of the ESMs (excluding the Additional Saving).
- 29) **Implementation Activities** include all activities for which the Contractor is liable hereunder in the Implementation Period, which are recorded in the Activity Log in the Implementation Period, including, *inter alia*, the construction of facilities, extension, retrofitting, adaptation and rehabilitation, as well as fitting/installation and Commissioning of installations, parts thereof, or equipment and/or software in the Contracted Facility.
- 30) **Implementation Period** is a period of conducting various activities related to the implementation of ESMs, starting on the date when the Contracting Parties verify the Activity Log by their respective signatures and seals in the Preparatory Period and ending when the Contracting Parties verify the Activity Log by their respective signatures and seals in the Implementation Period.
- 31) **Independent Variable** means a parameter that is expected to change regularly and has a measurable impact on Energy use in the Contracted Facility.
- 32) **Measurement & Verification (M&V)** means the activities and procedures conducted in order to reliably determine actual Energy Savings and Financial Savings attributable to the Implementation Activities.
- 33) **Measurement & Verification Plan (M&V Plan)** is a document containing pre-agreed activities and procedures to be conducted with the aim to identify the M&V activities related to the implemented ESMs.
- 34) **Non-routine Adjustments** mean adjustments in relation to the factors, the changes of which are usually not expected. They involve changes in any characteristics of the Contracted Facility within the measurement limits, except for the above mentioned Independent Variables, which are used for Routine Adjustments.
- 35) **Operating Cost** means the current expenditure on the ground of Energy use and maintenance of the Contracted Facilities.
- 36) **Preparatory Activities** means all activities, for which the Contractor is liable hereunder in the Preparatory Period and which it records in the Activity Log in the Preparatory Period, including, *inter alia*, the time planning, obtaining licenses/permits, opinions and technical requirements of EDSO, NGDSO, NGTSO and PUCs, elaboration of the technical documentation and the technical review of the technical documentation for ESMs in the Contracted Facility, as well as procurement of materials and equipment and undertaking of measures necessary for obtaining of a legally binding construction permit or other permits by the Client allowing for commencement of activities in the Implementation Period in line with the prevailing regulations.
- 37) **Preparatory Period** is a period of conducting of a Preparatory Activity and lasts from commencement of the Contractual Period to the verification of the Activity Log by the Contracting Parties by their respective signatures and seals in the Preparatory Period.

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- 38) **Project** refers to the public-private partnership project hereunder comprised of complete execution of the contractual obligations of the Contracting Parties throughout the Contractual Period, aimed at achieving Energy Savings, i.e. Financial Savings in the Contracted Facility.
- 39) **Public Facility** is the facility – an asset in public ownership, meaning the buildings used by the authorities, organizations and institutions of the Republic of Serbia, authorities and organizations of autonomous provinces and/or local self-government units, institutions founded by the Republic of Serbia, autonomous provinces and local self-government units, public companies, public services and other beneficiaries of the assets in public ownership.
- 40) **Reference Operating Cost** means the Baseline Energy Consumption multiplied by the Reference Energy Price plus Reference Maintenance Costs.
- 41) **Reference Maintenance Cost** means net costs as defined in the tender documentation for the maintenance of the Contracted Facility which will be affected by the implementation of the ESMs, excluding VAT, but including all the fees and other costs.
- 42) **Reference Energy Price** means a net price of any form of Energy, as defined in the tender documentation, including specific prices for units of consumption and power input units or capacities as deemed necessary, excluding VAT, but including all fees and other costs included in the energy price calculations by the Energy Supplier.
- 43) **Reporting Period** means any period of time following the implementation of an ESM for which reports on savings are prepared in line with Annex 4 (Guidelines for Determining Energy Savings). This period may be as short as the time for an instantaneous measurement of a constant quantity or long enough to reflect all the normal operating modes of a system or a facility with variable operations. It can be equal to the length of the Guarantee Period; to the duration of the period for measurement of performance (on annual basis, equivalent to the Accounting period) under this Contract; or indefinite.
- 44) **Routine Adjustments** are adjustments for any factors, related to changes of Independent Variables that influence the consumption of Energy during the Guarantee Period.
- 45) **Shared Saving** is an option for sharing the Guaranteed Savings between the Client and the Contractor according to contractually agreed percentage.
- 46) **Special-Purpose Account** is an account opened by the Contractor, in order to keep the inflows and outflows during the Project implementation separately, for the purpose of monitoring the fulfillment of the Contractor's obligations hereunder.
- 47) **Subcontractor** is any party whom the Contractor has engaged for partial execution of the ESMs hereunder, for whose works/services the Contractor shall be responsible as if they were implemented by it.

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2 SUBJECT MATTER OF THE CONTRACT

Subject matter of the present Contract is the implementation of ESMs aimed at more efficient use of Energy and corresponding reduction of CO₂ emissions, as well as to reduction of Operating Costs of the Contracted Facility.

The Contractor undertakes to implement such ESMs, by which it will ensure Financial Savings of the Contracted Facility during the Guarantee Period, in accordance with this Contract (including all the Appendices).

All the ESMs applied under this Contract must be in accordance with current legislation and applicable standards in the Republic of Serbia.

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3 AUTHORISED REPRESENTATIVES OF THE CONTRACTING PARTIES AND SUBMISSION

The Client and the Contractor shall, on the date of signing of the Contract, or within three days from the date of signing of the Contract at the latest, appoint their respective Authorized Representatives, indicating their complete contact data.

Authorized Representatives of the contracting parties must be authorized to undertake activities in the name and/or for the account of the Client or the Contractor, i.e. have the power of attorney for representing and/or acting on behalf of the Client or the Contractor in all legal transactions and technical operational related to the Contract.

Statements of the Contracting Parties which refer to the Contract shall become valid and produce effect from the date of their receipt by the other Contracting Party, provided that they were delivered to the addresses of Authorized Representatives of the Contracting Parties in accordance with the Contract. Submissions to any other address of the Contracting Parties shall have no legal effect.

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4 CONTRACT PHASES (PERIODS)

4.1 Commencement of the Contractual Period

This Contract and its Appendices shall enter into force on _____
[*alternative: when the Contracting Parties sign the Contract and, if the Contracting Parties do not sign the Contract on the same date, then the Contract shall enter into force on the date of signing by both Contracting Parties*].

The Contractual Period shall start running on the date of entry of the Contract into force in accordance with paragraph 1 of this Article.

4.2 Main periods of the Contract

The Contract has three main periods within the Contracted Period defined in accordance with paragraph 2 of Article 4.1 hereof: the Preparatory Period, the Implementation Period and the Guarantee Period.

The Preparatory Period is a period of conducting planning and designing activities pertaining to the Preparatory Activities as defined in Article 1, point 30) hereof. The Preparatory Period is a period starting from commencement of the Contractual Period and ending at the start of the Implementation Period. The Contracting Parties shall verify the finalization of the Preparatory Period by verifying the Activity Log in the Preparatory Period.

The Implementation Period is a period of conducting various activities related to implementation of ESMs pertaining to the Implementation Activities as defined Article 1, point 1) hereof. The Implementation Period is a period starting on the date when the Contracting Parties verify the Activity Log in the Preparatory Period and ending when the Contracting Parties verify the Activity Log in the Implementation Period.

The Guarantee Period is a period of utilizing the Energy saving potentials of the Contracted Facility, in course of which Energy Savings, i.e. Financial Savings are achieved due to the implemented ESMs. The Guarantee Period shall start on the date when the Contracting Parties verify the Activity Log in the Implementation Period and shall last until the end of the Contractual Period. In any case, the Guarantee Period shall not start after [*indicate date*].

4.3 Duration of the Guarantee Period

The Guarantee Period shall last for _____ [*indicate the time period*].

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5 RIGHTS AND OBLIGATIONS OF THE CONTRACTOR

5.1 Right of decision on choice of ESMs

The Contractor shall, in accordance with this Contract, including all its Appendices, decide which ESMs will be implemented in the Contracted Facility of the Client. Consequently, as long as the Contractor acts within his authorization and pursuant to the Contract, the Client must not refuse the ESMs or obstruct the activities related to the ESMs, which are specified in Appendix 3 to the Contract, except where such measures are not in accordance with current legislation, technical regulations and applicable standards in the Republic of Serbia, or other contractual obligations.

In case the Contractor concludes, before the end of the Implementation Period, that changes to ESMs:

- 1) are objectively needed for the feasibility of implementation of ESMs and/or for the compliance with the requirements prescribed by the regulations governing the areas of health and safety at work, fire protection, and environmental protection either due to the discrepancy between the relevant technical documentation and the actual state of the Contracted Facility, or for some other justifiable technical reason;

and/or

- 2) could result in a more efficient way of achieving Financial Savings, equal to or higher than the Guaranteed Savings.

The Contractor shall submit to the Client a written justified request for the purpose of obtaining the Client's approval to proceed with the implementation of proposed changes, which request shall not be unreasonably rejected by the Client and, if rejected, the Client shall provide the Contractor with written substantiated reasons for such rejection.

The Client shall submit to the Contractor the answer to the written request within 15 days as of receipt of the same, which shall (as applicable) contain reasons for the rejection.

If the Client does not respond to the written request of the Contractor within the specified period of 15 days, it shall be deemed that the request has been approved.

If the relevant changes to the ESMs are of such nature that under applicable regulations they require the amendments of this Contract, within a further period of five days as of the date when the Client approved the request referred to in paragraphs 2 and 3 of this Article, i.e. as of the date on which the Client is deemed to have approved the Contractor's request as stipulated in paragraph 5 of this Article, the Client shall initiate the procedure for obtaining necessary approvals for entering into the amendment hereof so as to include the relevant changes to ESMs in the Contract, in accordance with the law regulating public-private

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partnership and concessions and, within the same period, the Client shall submit to the Contractor a written notice regarding the legal measures undertaken in relation to that.

Within five days as of the date when the Client duly obtains the necessary approvals for the amendment hereof, the Client and the Contractor shall enter into the amendment hereof in order to include the relevant changes to ESMS in the Contract, in accordance with the law regulating public-private partnership and concessions.

During the period starting on the date when the Contractor submits to the Client the request for changes to the ESMS pursuant to paragraph 3 of this Article and ending on the date when the relevant amendment to the Contract is duly entered into in accordance with paragraphs 3 through 7 of this Article, the time periods for execution of the Contractor's contractual obligations within the Preparatory Period and/or the Implementation Period shall be suspended and any relevant dates and/or times for completion shall be adjusted accordingly i.e. extended by the period of suspension.

5.2 Obligation to provide financial means for implementation of ESMS

The Contractor undertakes to provide the necessary funds to cover the costs of the ESMS implementation in the Contracted Facility, from its own capital [*alternatively: and/or loans and/or other sources of financing*].

[Alternatively, in case the Client participates in the Project financing, too: "Funds for financing the expenses of the ESMS implementation in the Contracted Facility shall be provided jointly by the Contractor and the Client.

The Contractor undertakes to provide the funds to cover the expenses of the ESMS implementation in the Contracted Facility during (enter which periods: the Preparatory Period and/or the Implementation Period and/or the Guarantee Period) from its own capital and/or loans and/or other sources of financing).

The Client undertakes to provide funds necessary for financing the expenditures during (enter in which periods: the Preparatory Period and/or the Implementation Period and/or the Guarantee Period).

In case the Client, too, participates in the Project financing, additionally, if needed, the ratio and the scope of financing by the Contracting Parties as per particular Contractual Periods should be further specified"].

5.3 Obligation to guarantee a minimum amount of Financial Savings

Subject to provisions of Article 5.1 hereof, the Contractor accepts the risk with respect to achieving the Financial Savings as presented in the accepted Bid, on the basis of the

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analysis, which the Contractor personally conducted at the Contracted Facility. This contractual obligation is further stipulated in Section 9 hereof.

5.4 Obligation to cooperate with the Client in obtaining necessary permits and approvals

The Contractor shall, throughout the entire Contractual Period, obtain all the necessary permits/licenses and approvals for the implementation of ESMs in the name and for the account of the Client, to the extent allowable under applicable regulations. In cases where applicable regulations do not allow the Contractor to obtain such permits/licenses and approvals in the name and for the account of the Client, the Contractor shall provide all reasonable assistance to the Client in obtaining of such permits/licenses and approvals.

The Client shall cooperate in the above procedure of obtaining all the necessary permits/licenses and approvals for the completion of such tasks, as well as provide all the necessary documentation at its disposal or which it is liable to make available or which it is in a position to obtain, in compliance with the technical and other relevant regulations of the Republic of Serbia.

5.5 Regulatory compliance

The Contractor shall act in accordance with the law, technical and other regulations and fair business practices in the Republic of Serbia when performing its contractual obligations, as well as in accordance with the rules prescribed hereunder, including those set out in Article 7.3 hereof .

The Contractor shall perform its contractual obligations in a professional and responsible manner.

5.6 Obligation to conduct activities

5.6.1 Obligations of the Contractor in the Preparatory Period

Obligations of the Contractor in the Preparatory Period shall, *inter alia*, include:

1. informing the Authorized Representative of the Client on all the ESMs that are envisaged to be implemented in the Contracted Facility, before they are implemented. The Contractor shall conscientiously examine all Client's reservations and requests for changes or alternative proposals and assess their advantages and disadvantages. If the Contractor sees no objective technical or financial benefits related to such proposals, it shall inform the Client of such conclusions and shall be allowed to implement concrete ESMs as planned in its Bid and as provided for herein;

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2. as necessary, preparation and execution and/or obtaining of the technical documentation required for obtaining of requisite permits/licenses, as required under the applicable regulations, and performance of relevant activities related thereto;
3. procurement of required equipment and materials;
4. regular keeping of the Activity Log in the Preparatory Period, in accordance with Article 7.1.2 hereof;
5. conducting of activities and procedures necessary for the Client to obtain a legally binding construction permit or other permits/licenses allowing the Contractor to commence the Implementation Activities, if obtaining of such permits/licenses is necessary in the concrete case under the prevailing regulations, as well as carrying out of other Preparatory Activities.

5.6.2 Obligations of the Contractor in the Implementation Period

Obligations of the Contractor in the Implementation Period, *inter alia*, comprise the following:

1. Carrying out of construction works, fitting and installing the equipment, units and other installations or parts thereof;
2. planning and coordination of the Implementation Activities with the Authorized Representative of the Client in order to minimize disruption of the regular functioning of the Contracted Facility to the extent practicable;
3. *[design, installation, and testing of software – optional, to be included if so required under the tender documents and/or Contractor's Bid];*
4. defining operational and maintenance procedures;
5. identifying specific energy management activities;
6. *[maintenance and replacement of the existing installations, parts thereof, or equipment in the Contracted Facility – optional, to be included if so required under the tender documents and/or the Contractor's Bid];*
7. *[training of the Client's staff in operation and handling of the new equipment and installations – optional, to be included if so required under the tender documents and/or the Contractor's Bid];*
8. prompt informing of the Client in cases when the Contractor has actual knowledge of matters that may significantly impact the safety or efficient use of the Contracted Facility;
9. where applicable, obtaining standard warranties from Subcontractors, suppliers of equipment and materials for quality and proper functioning thereof;
10. acceptance of equipment and materials at the Contracted Facility;
11. regular keeping of the daily progress record of construction, the measurement book and other records required under applicable regulations;

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12. regular keeping of the Activity Log in the Implementation Period, in accordance with Article 7.1.3 hereof;
13. proper and regular disposal of defective and/or replaced installations, parts thereof and equipment of the ESMs;
14. commissioning of the performed works, installed equipment, installations and/or parts of installations, in accordance with applicable regulations;
15. conducting of all activities necessary for the obtaining of the operating license, as required under applicable regulations, and necessary for the fulfillment of other obligations related to the Implementation Activities.

5.6.3 Obligations of the Contractor in the Guarantee Period

Obligations of the Contractor during the Guarantee Period shall, *inter alia*, include:

1. performance of all necessary procedures and actions for measurement and verification and making of reports on measurement and verification according to the M&V Plan to present generated Energy Savings and Financial Savings for each three-month period;
2. maintenance of equipment and systems installed as a part of ESMs;
3. *[updating and/or upgrading of the installed software – optional, to be included if so required under the tender documents and/or the Contractor's Bid]*;
4. *[training of the Client's staff – optional, to be included if so required under the tender documents and/or the Contractor's Bid]*

5.7 Obligation of transparency

The Contractor has the obligation of transparency related to ESMs to be implemented during the entire Contractual Period and, consequently, shall have the express obligation to regularly keep the Activity Log in the Preparatory Period and the Activity Log in the Implementation Period as provided for under this Contract, as well as to keep the Client informed at all times about its activities in the following phases:

- 1) The planning and designing phase within the Preparatory Period;
- 2) The procedure of procuring the equipment the Preparatory Period;
- 3) The implementation activities, Commissioning, etc. during the Implementation Period.

The Contractor shall also open and keep a Special Purpose Account for all incoming and outgoing payments related to the fulfillment of the Contractor's obligations hereunder, as stipulated in Article 5.11 hereof .

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The Client shall at all times have the right to proceed with the checking of all contractual arrangements and costs of the Contractor incurred related hereto, through the Special Purpose Account referred to in paragraph 2 of this Article, all in accordance with the applicable law and pertinent sub-legislations regulating public-private partnership and concessions, as stipulated in Article 6.2 hereof .

5.8 Right to utilize data on the Project for commercial purposes

The Contractor shall be authorized, in compliance with the regulations relating to the Client, to freely disclose the relevant Project elements from the Contract as the reference project and to use photographs of the Contracted Facility and/or its services and works carried out on the Contracted Facility to that purpose, with the prior consent/approval of the Client, whereby shall approval shall not be unreasonably withheld, all with the aim to protect the Client's rights.

5.9 Right to assign receivables

By entering into this Contract, the Client gives its consent that the Contractor shall be authorized to assign receivables deriving from the Basic Remuneration, referred to in Article 10.2 hereof, to a financier/bank in accordance with the laws regulating public-private partnership and concessions and other applicable laws of the Republic of Serbia.

The Client shall have no other liabilities with respect to such an assignee (financier/bank). If the Guaranteed Savings are not achieved in accordance with the Contract, the Client shall have the right of recourse against the Contractor including (without limitation) through compensation/Penalties for non-achieved Guaranteed Savings.

5.10 Engagement of Subcontractor

The Contractor shall, as stated in its Bid, engage ____ [*indicate the name and registered seat of the Subcontractor*] as the Subcontractor, whose selection was approved by the Client.

The Contractor shall be accountable towards the Client for all activities or failures of any Subcontractor referred to in paragraph 1 of this Article, as if it has conducted such activities or failures itself.

During the Contractual Period, the Contractor may hire other Subcontractors not listed in the Bid if the Subcontractor, following submission of the Bid, has become insolvent for a long period of time, provided such new entity meets all the requirements stipulated for a Subcontractor and provided the Contractor receives prior approval of the Client.

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The Client shall deny his approval for engagement of the Subcontractor only if there are justifiable reasons for such denial.

5.11 Obligation of the Contractor to open a Special Purpose Account

On the date of entering into this Contract, the Contractor shall have a new Special Purpose Account opened in a commercial bank, through which it does the majority of its business operations. The Special Purpose Account will be the only account used by the Contractor for all the incoming and outgoing payments in the course of fulfillment of its obligations hereunder.

For the purpose of making transfers of funds from the budget hereunder, the Contractor shall be obliged to comply with the regulations governing the budget system.

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6 RIGHTS AND OBLIGATIONS OF THE CLIENT

6.1 Right to influence the Contractor's design

Notwithstanding Article 5.1 hereof, the Contractor shall be obligated to refrain from installation of his intended ESMs, upon written notice from the Client in the following cases:

- 1) if the Contractor, in spite of the Client's request to do so, does not demonstrate that the ESMs can be implemented according to the prevailing standards and applicable regulations in the Republic of Serbia;
- 2) if the Contractor does not act in accordance with the criteria of transparency referred to in Article 5.7 hereof related to ESMs.

In case Contractor and the Client fail to agree upon the Contractor's evidence that ESMs meet the applicable standards and regulations, the matter shall be resolved in accordance with Article 17.1 hereof.

6.2 Right of the Client to audit the Special Purpose Account of the Contractor

The Client shall, during the entire Contractual Period, have the right to control and audit the Contractor's Special Purpose Account referred to in Articles 5.7 and 5.11 hereof, in accordance with the laws and pertinent sub-legislation regulating public-private partnership and concessions.

6.3 Obligation to provide support for the design and implementation of ESMs

6.3.1 General obligations of the Client

The Client shall be obliged to:

- (1) cooperate in a reasonable manner with the Contractor in its efforts to implement and finance ESMs in the Contracted Facility and to achieve the Guaranteed Savings as presented in the Contractor's Bid and in this Contract, and
- (2) fulfill its respective contractual obligations stipulated hereunder so as to contribute to minimizing of the Contractor's implementation and operational costs during the Contractual Period. In order to accomplish this goal, the Client agrees to reasonably cooperate with the Contractor during all the phases of the Project envisaged hereunder.

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6.3.2 Obligations of the Client in the Preparatory Period

Obligations of the Client in the Preparatory Period shall, *inter alia*, include:

- (1) Submission, to the extent it is reasonably possible, of all information for the Contractor to perform its activities in a timely manner, which shall include, *inter alia*, the provision of:
 - The existing technical documentation on the Contracted Facility, as well as data on the operation and maintenance of systems and equipment in the Contracted Facility;
 - records and data concerning Energy consumption for the Contracted Facility as well as other relevant data (if not available, the Client shall request from its Energy supplier to provide them);
 - any known requirements set by regulations and/or construction (technical) requirements and restrictions that are expressly relating to the Contracted Facility, which deviate from those regularly applicable to construction;
 - any other information and/or documents as objectively required.
- (2) The Client shall make available its engineers and maintenance and operating staff for the requirements of contacting with the Contractor and any other officers, employees and agents that may have relevant knowledge, as may be reasonably required by the Contractor from time to time;
- (3) the Client shall review and either approve or with good reason reject (due to non-compliance with the applicable regulations and mandatory standards, impossibility to implement ESMS due to unexpected changes in the Contracted Facility, impossibility to implement ESMS under normal conditions that cannot be changed etc.), the technical documentation prepared by the Contractor prior to such technical documentation's formal approval in accordance with the laws and regulations regulating the area of planning and construction, in writing within 14 days as of the date of submittal of such technical documentation to the authorized Client's representatives by the Contractor. In case of a disagreement between the Client and the Contractor on the sufficiency of grounds for such rejection, the matter shall be resolved in accordance with Article 17.1 hereof ;
- (4) subject to the Contractor's valid completion of the Preparatory Activities and obtaining of a legally binding construction permit or other permits/licenses required for commencement of Implementation Activities, if prescribed under applicable regulations in the Republic of Serbia, the Client shall approve the Contractor's Activity Log in the Preparatory Period.

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6.3.3 Obligations of the Client in the Implementation period

Obligations of the Client in the Implementation Period shall, *inter alia*, include:

- (1) allow delivery of equipment and materials at the Contracted Facility;
- (2) provide unrestricted access to the Contracted Facility to the Contractor and its personnel or its Subcontractors authorized by the former, so as to be able to perform any function related to hereto during regular business hours, or at such other time as may be reasonably requested by the Contractor, provided it shall not adversely affect the process of work in the Contracted Facility;
- (3) prompt informing of the Contractor once the Client has actual knowledge of matters that may significantly affect the Contractor's or the Client's contractual obligations, or may have impact on the safety or efficient operation of the Project or the use of the Contracted Facility;
- (4) Reviewing and either approval or rejection with good reason of the relevant technical documentation, in writing, within 14 days as of the date of their submittal by the Contractor to the Authorized Representative of the Client. In case of disagreement between the Client and the Contractor concerning the grounds for such rejection, the matter shall be resolved in accordance with Article 17.1 hereof;
- (5) Accepting of certain reasonable and time-limited inconveniences for carrying out and commissioning of the works, and allow/facilitate the Contractor's execution of the work according to the agreed construction schedule;
- (6) Actively participation in the Commissioning activities of the Contractor;
- (7) to the extent under the Client's control, provide electricity, water, lifts and other services as may be reasonably required for the completion of activities by the Contractor and its Subcontractors. For covering the costs for electricity, water and other services incurred as a result of the Contractor's activities, the Contracting Parties agree that the Contractor shall pay to the Client the amount in RSD equaling [*insert the appropriate percentage*] % of all the Client's bills regarding such costs during the Implementation Period, within seven working days as of the presentation to the Contractor of each individual bill that the Client has received for such services (whereby such presentation shall be done by the Client within a time period not exceeding seven working days as of the date of the Client's receipt of any such bill);
- (8) provision of sufficient and adequate rent free space, if available, for storage of materials in the Contracted Facility;
- (9) exercising of reasonable due diligence and cooperation with the Contractor in order to protect the Project and related works, as well as materials and equipment, from damage, theft or abuse;
- (10) Approval of the Activity Log in the Implementation Period provided the Contractor properly completes the Implementation Activities and obtains the legally binding operating license or other permits/licenses required in line with the prevailing regulations.

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6.3.4 Obligations of the Client in the Guarantee Period

Obligations of the Client in the Guarantee Period shall, *inter alia*, include:

- (1) Reporting to the Contractor of any changes in the Baseline Consumption of the Contracted Facility that potentially may require Non-Routine Adjustments, as soon as possible but certainly no later than within 10 days as of the date of occurrence of such changes;
- (2) ensuring that the Contracted Facility is properly used and maintained in accordance with the guidelines jointly defined by the Client and the Contractor;
- (3) reporting to the Contractor on any breakdown or malfunctioning of ESMs, as soon as learning about such breakdown or malfunctioning;
- (4) ensuring that any subsequent adjustments by the Client or by any third party that the Client is aware of performed on the installations, parts thereof and equipment that are important for Energy consumption and performance of obligations, shall be carefully recorded and that the Contractor is informed accordingly without delay;
- (5) protection of the Contracted Facility against intentional physical damage;
- (6) submitting of or allowing the Contractor to access data necessary for the preparation of the measurement and verification reports in compliance with the approved M&V Plan;
- (7) reviewing and approving of the report on measurement and verification compiled based on the M&V Plan for the purpose of quantification and payment of Additional Remuneration or Penalties.

The Contractor shall be entitled to request compensation for damages resulting from the Client's failure to comply with its obligations set out in this Article of the Contract.

6.4 Obligation to bear costs of rehabilitation for unforeseen damages during the Contractual Period

In case that unforeseen damages, not caused by the activities of the Contractor, occur on the Contracted Facility during the Contractual Period, and the rehabilitation (repair or replacement) of which is necessary for fulfillment of the contractual obligations by the Contractor, the Client shall undertake all the measures required for rehabilitation, within the shortest reasonable time period, and shall bear costs of such rehabilitation, for which time period the fulfillment of the Contractor's contractual obligations shall be suspended to the extent their fulfillment is prevented/hampered by such unforeseen damages.

Notwithstanding the provision of paragraph 1 of this Article, the Contractor may, upon such Client's explicit request and in accordance with applicable law regulating public-private partnership and concessions and other regulations, enter into and execute the amendments hereof so as to regulate the Contractor's carrying out of any such works relating to the repair

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of the unforeseen damages referred to in paragraph 1 of this Article, whereby the rules stipulated in paragraphs 5 through 7 of Article 5.1 shall apply, *mutatis mutandi*.

The Contractor shall be entitled to request compensation for damages resulting from the Client's failure to comply with its obligations under paragraph 1 of this Article.

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7 PROCEDURES AND ACTIVITIES

7.1 The Activity Log in the Preparatory Period and the Activity Log in the Implementation Period

7.1.1 General provisions

The Contractor shall be obliged to keep the activity logs both in the Preparatory Period and in the Implementation Period.

The Activity Log in the Preparatory Period and the Activity Log in the Implementation Period must be accessible to every Authorized Representative of the Contracting Parties throughout the entire Contractual Period.

Execution of the Preparatory Activities in the Preparatory Period and of the Implementation Activities in the Implementation Period by the Contractor shall be confirmed by verification by the Authorized Representative of the Client of the Activity Log in the Preparatory Period and the Activity Log in the Implementation Period.

The Activity Log in the Preparatory Period shall be verified by the respective seals and signatures of the Contracting Parties, only once all Preparatory Activities envisaged hereby are completed i.e. the Activity Log in the Implementation Period shall be verified by the respective seals and signatures of the Contracting Parties, only once all the Implementation Activities envisaged hereby are completed. Immediately after all the Preparatory Activities envisaged hereby are completed by the Contract and have been verified by the Contracting Parties, each Contracting Party shall sign the Activity Log in the Preparatory Period.

In order to avoid any ambiguity, the verification of the Activity Log in the Preparatory Period shall not take place prior to duly obtained legally binding construction permit or other permits/licenses necessary for the commencement of construction works, if issuing of the same is required under applicable regulations, and the verification of the Activity Log in the Implementation Period shall not occur prior to proper obtaining of the legally binding operating license, if obtaining of the same is required under applicable regulations.

7.1.2 Activity Log in the Preparatory Period

The Contractor's Activity Log in the Preparatory Period shall record all Preparatory Activities of the Contractor, and especially the ones that are related to:

- 1) The planning and deadlines, obtaining of permits/licenses, approvals, opinions and technical conditions of NGDSO and/or EDSO and/or NGTSO

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and/or PUC, development of technical documentation and its technical review.

- 2) obtaining of the legally binding construction permit and/or other permits/licenses allowing for commencement of the Implementation Activities, if obtaining of such permits is required in the concrete case in accordance with applicable regulations.

7.1.3 Activity Log in the Implementation Period

The Activity Log in the Implementation Period shall record all the activities of the Contractor representing the Implementation Activities hereunder, and especially the ones that are related to:

- 1) construction works, fitting of installation of parts of installations, equipment in the Contracted Facility, maintenance, and replacement of installations or parts thereof, or equipment in the Contracted Facility, proper disposal of the faulty and/or replaced installations, parts thereof and equipment, expert supervision over the works, technical inspection of the works;
- 2) *[designing, installation, testing and commissioning of software – optional, to be included if so required under the tender documents and/or the Contractor's Bid];*
- 3) *[introducing of operating and maintenance procedures – optional, to be included if so required under the tender documents and/or the Contractor's Bid];*
- 4) *[training of the Client's staff in operation and handling of the new equipment and installations – optional, to be included if so required under the tender documents and/or the Contractor's Bid];*
- 5) all activities related to implementation of the M&V Plan;
- 6) Commissioning of the works carried out, installed equipment, installations and/or a part of installations, in accordance with/if prescribed under applicable regulations;
- 7) Technical acceptance of the works and activities necessary for the Client's obtaining of legally binding operating license, as prescribed under applicable regulations and other obligations required for the Implementation Activities.

7.2 Incentives, grants and rebates

The Contracting Parties undertake to mutually reasonable cooperate when applying for any grants, incentives, financing, reliefs or rebates. The Contractor shall reasonably apply for or provide assistance to the Client in applying for any incentives, financing, refunds, and commercial discounts to which ESMs are eligible and which could reduce the investment costs defined in Appendix 3 (the Contractor's Winning Bid).

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7.3 Important criteria for performance of Preparatory Activities and Implementation Activities

The Preparatory Activities and the Implementation Activities of the Contractor shall be deemed completed under the Contract only if they are in compliance with the quality criteria specified in the Contract (including Appendix 3), which shall be confirmed by the Client's signature in the Activity Log in the Preparatory Period, i.e. in the Activity Log in the Implementation Period.

The Preparatory Activities and the Implementation Activities should in particular (but without limitation) comply with the following criteria:

- 1) the activities should be executed in accordance with the law, technical and other regulations of the Republic of Serbia and for such activities the relevant permits/licenses, approvals and consents must be obtained, as well as the expert supervision over the works, technical inspection and acceptance of works must be conducted and, as required, the relevant legally binding construction permit, operating license and other permits/licenses necessary for construction and subsequent usage of the Contracted Facility must be obtained;
- 2) selection of the optimum solution in accordance with the requested operating characteristics, taking into account the existing situation and the conditions of use and, in particular, the estimated costs of maintenance of the applied ESMs after the expiry of the Contract, which must not be unreasonable;
- 3) functional compliance with the existing installations and components in the Contracted Facility;
- 4) compliance with technical conditions of NGDSO and/or EDSO and/or NGTSO and/or PUC for the purpose of realizing service connections to the said grids, if the Contracted Facility is connected to the electric power and/or gas networks of the local EDSO, and/or NGDSO, and/or NGTSO, and/or regional heating network, and/or water supply/heating network of the PUC;
- 5) respecting of the currently valid regulations and prevailing standards of comfort and other relevant standards for the concrete Contracted Facility;
- 6) structural compliance with the investment structure defined in the Contract (Appendix 3 hereto);
- 7) uniformity of the quality and proper functioning of the implemented ESMs without hidden (legal and physical) deficiencies/faults and other material deficiencies; and
- 8) performance of technical activities in such a manner that the users of the Contracted Facility are not limited in the use of the Contracted Facility more than necessary for conducting of such activities.

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7.4 Obstacles to the implementation of ESMs

The Contractor shall make all reasonable efforts to identify obstacles to the ESMs implementation and to propose the method of elimination of such obstacles as soon as promptly as possible. The Contractor shall not be held responsible for any obstacles that could not have been objectively identified during the Preparatory Period, even with application of the required level of due diligence by the Contractor.

7.5 Proper disposal of faulty and/or replaced installations

The Contractor shall perform, at his own cost, the disposal of installations, parts thereof or other equipment and material of all kinds, which are defective/faulty or replaced during the Implementation Period and/or during maintenance of the applied ESMs in the Contracted Facility, in accordance with the positive regulations on the disposal of municipal, hazardous and other waste, except if the Client indicates that it prefers to use them for other purposes.

In the case that the Client wants to sell such equipment or material, the benefits from such sale shall be retained entirely by the Client.

In the case that the Client wants to reuse the equipment or material in another facility, not included herein, no compensation shall be due to the Contractor.

7.6 Training *[this Article is used only if training is envisaged in the concrete case]*

The training of the Contracted Facility personnel shall be conducted and completed prior to acceptance by the Client of the Activity Log in the Implementation Period. *[However, there are situations where it is necessary to also conduct training after the Client's acceptance of the Activity Log in the Implementation Period, which can be noted and included in the appropriate Appendix hereto. If there are charges for unscheduled training, such charges should be included in this section.]*

The Contractor shall provide ongoing training whenever needed for upgraded or replaced equipment *[define the period]*, including new software versions. The Contractor's obligation to provide such ongoing training shall continue for two months after the expiry of the Guarantee Period or the termination of this Contract.

7.7 Minutes of Audit

Immediately upon finalization of the Implementation Activities except for the Commissioning, and prior to the Commissioning referred to Article 7.8 hereof, the Contracting Parties shall jointly audit all the ESMs installed by the Contractor under the

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Contract (including its Appendices), in order to confirm their readiness for the Commissioning and they will prepare and sign the Minutes of Audit, as the proof of the performed audit. These Minutes form a separate Appendix to the Contract, and shall correspond in the form and substance to Appendix 5 hereto.

If the ESMs are not ready for the Commissioning, the Contractor shall bring ESMs into such condition, at its own cost, in which they shall be ready for the commissioning, by repairing all deficiencies and faults within a month from the date when the audit referred to in the paragraph 1 of this Article was performed.

In case the Contractor fails to perform the activities from paragraph 2 of this Article within the time contracted for, such activities may be undertaken by or on behalf of the Client, and the Contractor shall, in such a case, be liable to compensate the Client for the value of non-implemented ESMs in the period until such deficiencies and faults are remedied but not longer than for a period of six months, as well as to compensate the Client for all damage incurred, costs, fees, losses in energy savings.

The Client may not condition any existing claim of the Contractor by requesting remedy of all deficiencies and faults of ESMs.

In any case, the Contractor's obligation to compensate the Client pursuant to this Article may not exceed the amount of actual damage suffered by the Client.

7.8 Commissioning of implemented ESMs

The Client shall be obliged to allow the Commissioning of ESMs only after their completion and elimination of deficiencies and faults, as evidenced by the Client's signature on the Minutes of Audit.

For the avoidance of any doubt, commencement of the Guarantee Period shall not start until:

1. the Commissioning is duly completed,
2. all deficiencies and faults of ESMs determined during the Commissioning are eliminated or removed (if any),
3. the legally binding operating license is obtained, if such a requirement is stipulated in the applicable regulations, and
4. the Contracting Parties verify the Activity Log in the Implementation Period.

7.9 Transfer of title

The title on the installations, parts thereof, or equipment, which the Contractor shall install or otherwise incorporate in the Contracted Facility during the implementation of ESMs shall be transferred to the Client upon the Contracting Parties' verification of the Activity Log in the Implementation Period and commencement of the Guarantee Period, unless otherwise set forth in the applicable regulations.

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In case that in the Guarantee Period the Contractor is obligated to install equipment, installations, or parts thereof at his own cost, the title on such ESMs shall be transferred to the Client upon the verification of such activities by the Contracting Parties (by their respective signatures and seals on a separate document), unless otherwise regulated in the applicable regulations.

7.10 Measurement & Verification

The Contractor must perform all the M&V activities based on the M&V Plan that shall be a part of the Contractor's Bid and approved by the Contracting Parties and prepared following the Guidelines for Determining Energy Savings attached as Appendix 4 hereto. The M&V Plan may be additionally adjusted during the Preparatory Period and the Implementation Period based on mutual agreement of the Contracting Parties.

While performing M&V activities, the Contractor shall act in line with the following fundamental principles of good M&V practice, which shall imply in particular the following:

1. M&V Reports should be accurate, as specified in the M&V Plan;
2. the reporting on Energy Savings and Financial Savings should consider all the effects of the Project;
3. where judgments are made about uncertain quantities, the M&V procedures should be designed in such a way to assess both Energy Savings and Financial Savings;
4. Reporting on the Project's efficiency should be consistent taking into account:
 - different types of ESMs;
 - different periods of time for the same Project;
5. The determination of Energy Savings and Financial Savings should reflect measured performance parameters, while other less critical or predictable parameters may be estimated.
6. All M&V activities should be clearly and fully disclosed and transparent.

The M&V reports shall be prepared by the Contractor every three months during the Guarantee Period. Such reports shall be sent to the Client no later than 30 days after the end of the three-month period covered by the relevant M&V Plan. The following procedure for approval of the M&V Plan will be observed:

- the report shall be approved by the Client no later than 15 days after its receipt by the Client (unless subject to objections by the Client);
- if the Client has objections on the conclusions in the report, the Client shall inform the Contractor accordingly within 15 days upon receipt of the report. The Client shall provide the Contractor with reasons for its objections;
- the Contractor shall, within the following 15 days, as of the receipt of the Client's objections, make the necessary amendments and report and inform the Client accordingly.

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If the Client contests the conclusions of the M&V Plan again, the Parties shall settle their disagreements in accordance with Article 17.1 hereof.

7.11 Maintenance of ESMs

The Contractor shall guarantee for good performance of the works and for proper functioning of all the items hereunder (including, without limitation, installations, parts thereof and equipment), in compliance with Article 8 hereof. For the purpose of providing proper operating conditions in the Contracted Facility aimed at achieving the Energy Savings, during the Contractual Period, the Contractor undertakes to maintain the ESMs installed or built-in in the Contracted Facility in accordance with the prevailing regulations and standards contracted for and in accordance with the design of maintenance of installations and the facility, which shall form an integral part of the design documentation and which shall not restrict the competitiveness when procuring spare parts for ESMs, or the replacement of ESMs.

The Contractor shall apply all technical, administrative and organizational measures during the Contractual Period on any works, installations, parts thereof and equipment, forming part of ESMs in order to maintain or restore their respective working condition.

In case that after the commencement of the Guarantee Period and until the end of the Contractual Period a defect or deficiency is established in functioning of any of the works, installations, parts thereof, and/or equipment, which are part of the implemented ESMs, the costs of replacement and rectifying of other damage resulting as a consequence of such deficiency in functioning of the implemented ESMs (damage to the Contracted Facility, impossibility to implement other ESMs, etc.) shall be borne by the Contractor.

7.12 Final verification document

On the date when the Guarantee Period expires in accordance with this Contract, and provided that all contractual obligations have been duly fulfilled, the Contracting Parties shall sign the final verification document confirming that all the contractual obligations stipulated hereunder have been fully fulfilled.

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8 WARRANTY FOR GOOD PERFORMANCE AND PROPER FUNCTIONING OF ITEMS

The Contractor guarantees good performance of all the works performed under this Contract and proper functioning of items subject hereof (including, without limitation, installations, parts of installations and installed equipment), as well as that such works and items are: (a) brand new and of good quality (b) free of any defects in design, material or workmanship, and (c) that they are suitable for the intended use.

The Contractor guarantees to the Client good performance of all the works and proper functioning of the items from the commencement of the Guarantee Period until the end of the Contractual Period. In case of equipment replacement, the newly installed equipment must be at least of the same quality as the replaced one and it shall be subject to the guarantee provided in accordance with Art. 11.1.1 and Art. 11.1.2 hereof.

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9 DETERMINING ACHIEVED ENERGY SAVINGS, FINANCIAL SAVINGS AND GUARANTEED SAVINGS

9.1 Methodology for establishing Achieved Energy Savings and Financial Savings

9.1.1 General provisions

Establishing whether the Guaranteed Savings have been achieved shall be based on the comparison of the measured and verified Financial Savings, based on the M&V Plan and Guaranteed Savings.

A detailed description of the methodology for calculation of Energy Savings and Financial Savings for all ESMs is given in the M&V Plan as agreed by the Contracting Parties in accordance with this Contract. The calculation formulas include a method to compare Operating Costs, that would have been incurred had ESMs not been implemented ("Reference Operating Costs") with the Operating Costs after the ESMs implementation during the Guarantee Period.

9.1.2 Reference currency

All monetary values calculated on the basis of the Contract will be disclosed in _____ [*specify the currency - RSD or Euro, as per the tender documentation*].

9.1.3 Reference energy price

For the needs of the present Contract, the Reference Price of Energy shall mean a net price for every form of Energy stipulated in the tender documents, including specific prices for consumption and power input units or of capacity as deemed necessary, excluding VAT but including all the fees and other costs included in the energy price calculations by the Energy Supplier.

The Reference Price of Energy shall remain constant throughout the Guarantee Period. Thus, Energy price variations during the Guarantee Period shall have no impact on the calculation of the Contractor's performance and its remuneration. The same shall apply for the changes in applicable taxes (with the exception of VAT) that refer to Energy consumption, if the same are included in the Reference Energy Price.

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9.1.4 Baseline adjustments

Adjustments for the Guarantee Period shall ensure exact measurement of Energy Savings against the commitments undertaken by the Contractor. On the basis of the M&V Plan, two types of adjustments shall be made:

- a. Routine adjustments – for all the factors that have impact on Energy expected to change routinely during the Reporting Period.
- b. Non-routine adjustments – for those factors that have impact on Energy, which are not usually expected to change. During the Reporting Period the Client shall check whether such static factors have been changed.

9.2 Guaranteed Savings

The Contractor guarantees that the application of ESMs from the commencement until the end of the Guarantee Period shall reduce the Operating Costs for the Contracted Facility at least in the amount of the Guaranteed Saving, equaling:

_____ [indicate reference currency- RSD/Euro].

On the basis of the Contract, the Client shall not be entitled to additional claims against the Contractor, except the Guaranteed Savings, and penalties for failing to fulfill contractual obligations.

The Annual Guaranteed Savings shall equal the Guaranteed Savings divided by the number of years of the Guarantee Period.

[Optional: the Guaranteed Savings shall be divided between the Client and the Contractor according to the agreed Shared Savings Portion (“SSP”) whereby:

_____ (specify the percentage) is the percentage belonging to the Client (SSP_{Client})

_____ (specify the percentage) is the percentage belonging to the Contractor (SSP_{Contractor})]

9.3 Frequency of determining the achieved Guaranteed Savings

The level of achieving Guaranteed Saving shall be controlled once in three months, in order to facilitate the annual review and to allow for a prompt reaction in case of underperformance or to initiate additional Non-routine Adjustments, as necessary.

9.4 Additional Financial Savings

Additional Financial Saving is a positive difference between the Financial Savings achieved in an Accounting Period and the Annual Guaranteed Savings. Additional Financial

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Savings shall be the basis for Additional Remuneration in accordance with Article 10.3 hereof.

9.5 Non-achieved Guaranteed Savings attributable to underperformance of the Contractor

Non-achieved Guaranteed Savings is the negative difference between the Financial Savings achieved in an Accounting Period and the Annual Guaranteed Savings. Non-achieved Guaranteed Savings shall be the basis for calculation of Penalties in accordance with Article 10.4 hereof.

9.6 Non-achieved Guaranteed Savings attributable to the Client

If the ESMs do not generate the anticipated Financial Savings for the reasons created by the Client or under its control of which shall, *inter alia*, include:

1. An unlawful act, omission, breach or delay in performance of the Contract by the Client;
2. A delays, for which the Contractor is entitled to an extension of a deadline;
3. removal or unauthorized modifications of ESMs by the Client;
4. changes of or damage to the Contracted Facility or to the Client's equipment and systems or their operation, which substantially impact the implementation of the Project or the Contractor's costs in relation the implementation of the Project in the manner envisaged in the Preparatory Activities, and such matters shall be addressed in the following manner:
 - in the event of a temporary failure to achieve Energy Saving and Financial Savings (in a period shorter than or equal to 90 consecutive days), the calculation of the Financial Savings shall be based on an estimate of what would have been achieved had such an event not occurred;
 - in the event of permanent failure to achieve Energy Savings and Financial Savings (over a period exceeding 90 consecutive days), the Contractor shall adjust the Baseline Consumption by the amount calculated to neutralize the effect of such circumstances and the Financial Savings.

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10 REMUNERATION

10.1 General Provisions

The remuneration to the Contractor shall consist of the Basic Remuneration and the Additional Remuneration.

After the approval of the Activity Log in the Implementation Period, the Contractor shall be entitled to the remuneration for the entire duration of the Guarantee Period.

10.2 Annual Basic Remuneration

If the Financial Savings in an Accounting Period equal the Annual Guaranteed Savings, as demonstrated by the application of the M&V Plan, it shall be deemed that, by the implementation of ESMs in the Contracted Facility, the Contractor has become entitled to the annual **Basic Remuneration** for that Accounting period.

The Annual Basic Remuneration shall equal the Annual Guaranteed Saving.

[Optional: In case that sharing of the Guaranteed Savings is agreed in Article 9.2, the Annual Basic remuneration is calculated according to the formula:

$$\text{Annual Basic Remuneration} = \text{Annual Guaranteed Savings} \times \text{SSP}_{\text{Contractor}}.$$

10.3 Additional Remuneration

If Additional Savings are achieved in the Accounting period, as demonstrated by the application of the M&V Plan, the Contractor is entitled to an **Additional Remuneration**.

The amount of the Additional Remuneration shall be calculated according to the formula:

$$(\text{FSCP} - \text{AGS}) \times \text{RB} [\%]$$

where:

FSCP = Financial Savings in the Accounting period

AGS = Annual Guaranteed Saving

RB = *[please specify percentage_____]* % of the Contractor's share in achieved Additional Savings.

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10.4 Compensation in case of non-achieved Guaranteed Savings (“Penalties”)

In case of non-achieved Guaranteed Saving in an Accounting Period attributable to the under-performance of ESMs implemented by the Contract, as demonstrated by the application of the M&V Plan, the Contractor shall be charged with **Penalties**.

The amount of Penalties shall be calculated for each Accounting Period, according to the formula:

$$(AGS-FSCP) \times 2$$

where:

AGS = Annual Guaranteed Saving

FSCP = Financial Savings in the Accounting period

[In case that the sharing of the Guaranteed Savings is agreed in Article 9.2, the amount of Penalties shall be calculated according to the formula:

$$(AGS - FSCP) \times SSP_{Contractor} \times 2]$$

The evaluation of Energy Savings and Financial Savings shall be submitted by the Contractor after each Accounting Period but not later than within 10 days after the approval of the fourth quarterly M&V Report throughout the Guarantee Period.

The total amount of Penalties shall be paid not later than within _____ [*choose between 15 and 30*] days after the approval of the Energy Savings and Financial Savings by the Contracting Parties.

For each Accounting period in the duration of 12 months during the Guarantee Period, the payment of an advanced remuneration shall be made at the end of each month, in the amount of one twelfth of the Annual Basic Saving, as defined in Article 10.2 hereof, which shall amount to _____ [enter the reference currency RSD or Euro], increased for VAT and excluding any other claims.

At the end of the Accounting period the Contractor shall submit the annual M&V Report in line with the M&V Plan.

On the basis of the submitted annual report:

- 1) the Client shall pay the Additional Remuneration to the Contractor in accordance with Article 10.3 hereof ;
- 2) the Contractor shall pay Penalties to the Client in accordance with Article 10.4 hereof, or
- 3) the Financial Savings in the Accounting Period shall equal the Annual Guaranteed Savings already covered by the monthly Basic Remuneration during the Accounting period.

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10.5 Terms of payment

The Client agrees to pay all undisputed amounts due to the Contractor under this Contract within _____ [choose between 15 and 30] days from the date of receipt of the invoice from the Contractor.

The Client agrees to pay to the Contractor interest on uncontested pecuniary claims which have not been settled within 45 days from the date of receipt of the invoice, in the amount stipulated by the law regulating default interest rate.

The Contractor shall be entitled to request from the Client compensation for a delay in settling the uncontested pecuniary claims in the amount stipulated by the law regulating time limits for settlement of pecuniary claims in commercial transactions between legal entities in the public and private sectors.

The Contractor shall be entitled to request from the Client compensation for all the costs incurred in its commercial transactions as a result of the delay in settling the uncontested pecuniary claims by the Client.

Under the terms and conditions stipulated in this Contract, the Client shall be entitled to offset any claims due to it by the Contractor for any uncontested claims due to the Contractor by the Client.

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11 SECURING THE FULFILMENT OF OBLIGATIONS FROM THE CONTRACT

11.1 Securing the fulfillment of Contractor's obligations

11.1.1 Purpose, type and amount of security

For securing the **execution of activities in the Preparatory Period and in the Implementation Period** the Contractor shall provide a performance bond to the amount of _____ [*select from 5% to 10%*] of the amount of the Guaranteed Savings in accordance with Article 9.2 hereof. The value of the performance bond shall be calculated according to the following formula:

$$GS \times (\text{select a number between } 0.05 \text{ and } 0.10)$$

Where:

GS = Guaranteed Saving in accordance with Article 9.2 hereof.

The Contractor shall provide and submit to the Client the original of the performance bond referred to in paragraph 1 of this Article no later than 30 days upon signing of the Contract, with the validity expiring one month from the commencement of the Guarantee Period.

For securing the **fulfillment of Guaranteed Saving** and for securing the payment of Penalties in the case of failure to achieve the Guaranteed Savings during the Guarantee Period, the Contractor shall provide a performance bond to the amount of 5% of the Guaranteed Saving. The total value of the performance bond shall be calculated according to the formula:

$$GS \times 0.05$$

Where:

GS = Guaranteed Savings in accordance with Article 9.2 hereof.

The Contractor shall provide and submit to the Client the original of the performance bond referred to in paragraph 3 of this Article no later than on the date of commencement of the Guarantee Period. The validity of the performance bond shall start running on the date of expiry of the performance bond referred to in paragraph 1 of this Article and shall expire one month upon expiry of the Guarantee Period. In case the Contractor fails to provide such original performance bond securing the fulfillment of the Guaranteed Savings until the date of the commencement of the Guarantee Period at the latest, the Client shall be entitled to activate the performance bond referred to in paragraph 1 of this Article.

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11.1.2 Basic data on performance bond

The Contractor shall provide the bank guaranties referred to in Article 11.1.1 hereof, which are:

- 1) issued to the Client's name,
- 2) unconditional,
- 3) irrevocable,
- 4) payable on the first demand, and
- 5) specify an exclusive jurisdiction for the settlement of disputes that may arise under or in relation to the guarantee according to the Client's head office/place of business.

11.1.3 Return of the performance bond

Within eight days as of the date of expiry of the performance bond ensuring the execution of activities in the Preparatory Period and in the Implementation Period, i.e. the performance bond ensuring the achievement of the Guaranteed Savings, the respective performance bond shall be returned to the Contractor.

11.2 Securing the fulfillment of the Client's obligations

For securing the payment of the Basic Remuneration and Additional Remuneration to the Contractor, pursuant to Section 10 hereof, the Client shall submit [*choose the instrument*]:

- Authorization for debiting the sub-account of the budget of the consolidated account of the Treasury
and/or
- Promissory notes [*insert the concrete type of promissory note and, as required, other details, too*].

Authorizations for debiting the sub-account of the budget of the consolidated account of the Treasury shall be issued by the Client, and the status data are on the Client shall be verified by the Ministry of Finance –the Treasury Department of the Republic of Serbia.

The Client shall submit to the Contractor the promissory notes, properly certified and signed by the Authorized Representative of the Client, as well as any other documentation in accordance with the regulations of the Republic of Serbia required in relation to the promissory notes. The number of issued promissory notes must be equal to the number of mandatory payments of the Basic Remuneration to the Contractor, during the Guarantee Period.

After expiry or termination of the Contract, the Contractor shall return to the Client unused authorization for debiting the sub-account of the budget and/or promissory notes.

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12 LIABILITY

12.1 The Client's right of compensation for damages caused by the Contractor

The Contractor shall pay compensation for all the damages (including, without limitation, damage incurred due to or related to any loss, injury or death) caused by it or by persons acting upon its instructions (not excluding the authorized persons of the Client or its employees) or damages incurred by failure to achieve the Guaranteed Savings.

12.2 The Client's right to compensation for failure of the Contractor to fulfil obligations from the Bid and the Contract

If, after the signing of the Contract, it is established that the Contractor has failed to meet the requirements set forth in the Bid and the Contract, i.e. the obligations arising out of this Contract, the breach of which represents the basis for the Client's unilateral termination of this Contract in line with Article 16.2 of the Contract, the Client shall be entitled to the amount calculated in the following way:

$$GS \times 0.03$$

Where:

GS = Guaranteed Savings in accordance with Article 9.2 hereof.

In the event the actual damage suffered by the Client due to or related to such breach is greater than the amount of penalties established in line with paragraph 1 of this Article, the Client reserves the right to claim, from the Contractor, the total amount of damages suffered.

12.3 The Contractor's right to compensation for failure of the Client to provide support during the implementation of ESMs

If the Client intentionally or by gross negligence fails to fulfil its contractual obligation to cooperate in accordance with Article 6.3 hereof, the breach of which represents the basis for the Contractor's unilateral termination of the Contract referred to in Article 16.2 hereof, the Client shall:

- 1) Compensate the Contractor for all the damages incurred due to such acts or omissions;
- 1) Pay for the implemented ESMs as evidenced by the verified Activity Log in the Preparatory Period and the Activity Log in the Implementation Period, as well as

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- 2) Pay all the remunerations for the implemented ESMs for the period from the start of the Guarantee Period until the moment of unilateral termination of the Contract.

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13 INSURANCE

13.1 Responsible party

The Contractor shall contract for, for the entire duration of the Contractual Period, the insurance of ESMs to their replacement value against fire and all other risks regularly covered under a comprehensive policy. The Client and the Contractor shall be joint holders of the policy.

In addition, the Contractor shall procure joint insurance policies made out to the Contractor and the Client, for the following insured events, specifically with the following sums insured:

- 1) Damage to the Contracted Facility – maximum insured sum [*enter*], and
- 2) Personal injury or death – maximum insured sum [*enter*].

The costs for the aforementioned insurances shall be borne by the Contractor.

If the Contractor fails to contract for the insurances referred to in paragraphs 1 and 2 of this Article, up to the date of the start of the Contractual Period and fails to submit to the Client the evidence of the insurances concluded and premiums paid, the Client shall be entitled to independently conclude the said insurances, while the costs of the insurances paid by the Client shall be deemed to be the Client's claims against the Contractor, which the Contractor shall pay to the Client within 15 days from the due date.

The Contractor shall, promptly after contracting the insurance and, in any event, no later than at the start of the Preparatory Period, submit to the Client in writing a list of all the terms and conditions of the insurance. Both the Contracting Parties shall comply with all the terms and conditions from the insurance policies.

13.2 Damage

If ESMs are damaged by exposure to insured risks and it is possible to repair or replace them, the proceeds of the insurance policy shall be used for the repair or replacement and the Contractor shall make good any shortfall.

13.3 Termination due to damage to the Contracted Facility

Without prejudice to any other provision hereof, in the event the Contracted Facility is damaged beyond repair, this Contract shall be terminated with immediate effect.

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14 DISPOSAL OF THE CONTRACTED FACILITY

14.1 No restrictions of the right of disposal

The Client shall be entitled to freely dispose of the Contracted Facility in whole or in part and towards one or several contracting parties.

Disposal of the Contracted Facility by the Client shall not affect the rights and obligations of the Contractor under this Contract.

In the procedure of disposal of the Contracted Facility, the Client shall transfer all of its rights and obligations under the Contract to a third party, in the necessary form and with the consent of the Contractor to such transfer, which is given by signing this Contract.

In the case of disposal of the right to the Contracted Facility, the Client shall transfer to the third party the obligation to protect the rights of the Contractor (including, without limitation, any intellectual property rights, such as copyright, patent rights, and rights on trade mark or model) in accordance with the law, as well as any possible ownership right over certain items, if such right exists with respect to this Contract.

14.2 Mutual consent on compensation for harmful effects

In case of occurrence of harmful effects relating to the disposal of the Contracted Facility pursuant to this Section hereof, the Contracting Parties shall first negotiate to reach a mutual agreement on an adequate determination of the compensation to the Contractor for such harmful effects, if and when the latter suffers damage due to the said reason.

In case the mutual agreement referred to in paragraph 1 of this Article requires amendments and supplements to this Contract, in accordance with applicable law regulating public-private partnership and concessions and other regulations, the Contracting Parties shall conclude the relevant amendment of this Contract, whereby the rules stipulated in Article 5.1 paragraphs 5 to 7 hereof shall be accordingly applied.

14.3 Compensation for the Contractor

In case the agreement referred to in Article 14.2 hereof is not reached, and the Contracted Facility is the subject matter of disposal to a third party or if the taking on of obligations from the Contract occurs and due to the same reasons the contractual relationship between the Client and the Contractor regarding the Contracted Facility ceases, the Contractor shall be entitled to remuneration for the executed activities aimed at achieving ESMs, and thereby to the execution of the contractual obligations, in accordance with the following calculation:

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- 1) If the Contractor has not yet implemented ESMs in the Contracted Facility or a part of the Contracted Facility, which was disposed of, and to the extent of the ceasing of the legal relationship between the Client and the Contractor regarding the given part of the Contracted Facility, the Contractor shall be put into the position as if the predicted effects of ESMs have been achieved for the specific part;
- 2) If the Contractor has already installed all the ESMs in the Contracted Facility or a part of the Contracted Facility, which was disposed of, and to the extent of the ceasing of the legal relationship between the Client and the Contractor regarding the Contracted Facility, the Contractor shall be put into the position as if all the ESMs have been implemented in full and as if the predicted effects of the Savings measures have been fully achieved in that Facility.

Subject to imperative regulations of the Republic of Serbia, thus agreed value shall be deemed to be the entire remuneration belonging to the Contractor in the case referred to in points 1) and 2) of this Article, respectively.

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15 FORCE MAJEURE

The failure of the Contracting Parties to meet any of the obligation or provisions hereof shall not give rise to a claim by one Contracting Party against the other, nor shall it be deemed as a breach hereof, if such failure is a consequence of force majeure.

Force majeure, pursuant to paragraph 1 of this Article, shall imply any unforeseen or unavoidable event beyond the control of the Contracting Parties. In any event, force majeure shall include any event, circumstance or a combination of events and circumstances falling outside the scope of regular events and circumstances, beyond the control of a Contracting Party, that is, events and circumstances not caused by the fault or negligence of the Contracting Party, which occurred on or following the date of conclusion of this Contract, which have an impact on the exercising of rights and fulfilment of obligations stemming out of this Contract, and the impact of which, despite reasonable care, the Contracting Parties could not have been foreseen, prevented, eliminated or mitigated.

The Contracting Party affected by the force majeure shall provide a written notice to the other Contracting Party of the events and/or circumstances constituting the force majeure pursuant to this Article as soon as it is objectively possible after the occurrence of such event and/or circumstance, in which notice such Contracting Party shall indicate which of its respective obligations it is prevented to fulfil during the course of such events and/or circumstances. After submitting the said notice to the other Contracting Party, the affected Contracting Party shall continue to notify the other Contracting Party in writing on any further material developments of events and/or circumstances representing the force majeure hereunder, as soon as reasonably possible, as well as of the reasonably expected date when the affected Contracting Party will be able to continue fulfilling its respective obligations.

In cases of occurrence of events or circumstances representing force majeure pursuant to this Article, the implementation of this Contract shall be temporarily postponed. Additionally, obligations hereunder shall be temporarily suspended until the cessation of events and circumstances representing the force majeure.

Following the cessation of effects of force majeure, the term of this Contract shall be extended for a period of time equivalent to the period of the effect of force majeure.

In case of duration of effects of force majeure within a continuous period in excess of 180 days, either Contracting Party shall be entitled to unilaterally terminate this Contract with immediate effect.

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16 TERMINATION OF THE CONTRACT

16.1 Expiry and Termination of the Contract

The Contract shall expire at the moment of completion of the Guarantee Period, except in respect of specific obligations, which, in accordance with the provisions hereof, shall remain in effect for a certain time period following the expiry of the Guarantee Period.

Neither Contracting Party shall be entitled to terminate the Contract unilaterally before its expiry, except for justified reasons as set out in Article 16.2 hereof.

Termination of the Contract shall not affect any other legal remedies available to the Contracting Parties in compliance with this Contract.

16.2 Termination of the Contract due to justified reasons

The Contracting Parties may terminate the Contract unilaterally only for justified reasons. The following cases shall be deemed to be justified reasons:

1. Justified reasons on the part of the Client:
 - The Contractor continuously (within a period of [*three*] months or longer) fails to apply the defined or agreed criteria or standards - Appendix 4 (Winning Bid) hereto, and
 - The Contractor becomes or is reasonably deemed to be insolvent, or is not able to fulfil its due obligations for other reasons, or is under preliminary bankruptcy proceedings or bankruptcy proceedings, or is subject to voluntary or forced liquidation or under a similar procedure in the relevant jurisdiction; and
2. Justified reasons on the part of the Contractor: The Client intentionally or by gross negligence fails to meet its contractual obligation to cooperate (Article 6.3 hereof), or fails to make payment of the remuneration to the Contractor (under Section 10 hereof) for more than three consecutive months.

16.3 Termination notice

The unilateral termination of the Contract and all other activities related to the termination (notifications, establishing of the deadline for extension of the Contract validity and other) must be made solely in writing, with one-month's notice.

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16.4 Damage compensation on the ground of unilateral termination

In case the Client terminates the Contract in accordance with the provisions regulating justified reasons for unilateral termination of the Contract as set out in Article 16.2 hereof, the Client shall be entitled to compensation as envisaged in Article 12.2 hereof.

In case the Contractor terminates the Contract in accordance with the provisions regulating justified reasons for unilateral termination of the Contract as set out in Article 16.2 hereof, the Contractor shall be entitled to compensation as envisaged in Article 12.3 hereof.

If one of the Contracting Parties unilaterally terminates the Contract without justification and contrary to the provisions regulating justified reasons for unilateral termination of the Contract as set out in Article 16.2 hereof, the other Contracting Party shall be entitled to compensation for all forms of damages resulting from such unilateral termination of the Contract.

[Optional, instead of the previous paragraph: In case one of the Contracting Parties requests a unilateral termination of the Contract although the other Contracting Party duly fulfils its contractual obligations, the Contracting Party which requested the termination of the Contract shall pay to the other Contracting Party penalties amounting to 10% of the value of the total ESMs contracted for, as well as to compensate it for all the damages incurred.]

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17 SETTling OF DISPUTES AND APPLICABLE LAW

17.1 Resolution of technical disagreements

In case of disagreements between the Contracting Parties that are of a technical nature, as referred to in the provisions of Articles 6.1, 6.3.2 point (3), 6.3.3 point (4), 7.10 paragraph 3 and 7.12 hereof, the subject matter of disagreement shall be forwarded for a final resolution to a third-party - expert or, where applicable, to a certified entity, jointly appointed by the Contractor and the Client within 15 days as of the date of occurrence of the subject disagreement. If, within the specified time period of 15 days, the Contracting Parties fail to agree on joint appointment of such third-party - expert, the President [*specify the relevant selected body, e.g. of the Foreign Trade Court of Arbitration within the Serbian Chamber of Commerce*] shall appoint such party. The third party so appointed shall settle the disagreement within 30 days as of the date of submission of the request for settling of the disagreement to the third party by the Contractor and/or the Client. The decision of the said third party shall be binding upon the Parties, and the remuneration for the third party's work on resolving the subject matter of disagreement shall be paid by the losing party while each Contracting Party shall bear the costs of their respective legal advisors and other costs not representing the remuneration for the third-party's work.

During the period, starting on the date when the Contractor and/or the Client submit to the third party referred to in paragraph 1 of this Article the request to resolve the subject matter of disagreement and ending on the date when the third party issues the decision, the time-limits for fulfilment of obligations by the relevant Contracting Party shall be suspended, unless the court of jurisdiction decides otherwise.

Subject to imperative provisions of the law of the Republic of Serbia, each Contracting Party, before or during a procedure of settling of technical disagreements, shall be entitled to apply to a court having the jurisdiction and to request handing down of a temporary injunction or other measure where such a measure is necessary for protection of its interests during the procedure of settling of a technical disagreement.

17.2 General disputes resolution

The Contracting Parties will resolve in an amicable manner all disputes, disagreements or claims arising from or in connection with the Contract or non-fulfilment of contractual obligation, termination or nullity of the Contract.

a) VERSION FOR LOCAL CONTRACTS:

Should the Contracting Parties fail to resolve in an amicable manner all disputes, disagreements or claims arising from or in connection with the Contract or non-fulfilment of

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contractual obligations, termination or nullity of the Contract, the same shall be resolved by the competent court in _____ [*seat of the court*].

b) VERSION FOR INTERNATIONAL CONTRACTS (ad hoc arbitration):

If the Contracting Parties fail to resolve in an amicable manner all disputes, disagreements or claims arising from or in connection with the Contract or non-fulfilment of contractual obligations, termination or nullity of the Contract, the same shall be settled by the arbitration on the basis of prevailing arbitration rules of UNCITRAL adopted by the General Assembly of the UN in 1976, including the revised rules of 2010.

The authority to appoint the arbitrators shall be the [*Foreign Trade Court of Arbitration within the Chamber of Commerce and Industry of the Republic of Serbia*].

Unless the Contracting Parties agree otherwise, the arbitration board shall consist of three arbitrators. Each Contracting Party shall appoint one arbitrator, while the two appointed arbitrators shall appoint the third arbitrator, who shall preside over the arbitration board. If necessary, either Contracting Party may request assistance from the Foreign Trade Court of Arbitration of the Serbian Chamber of Commerce, in which case it shall be the body which shall appoint the arbitrators.

The seat of the arbitration shall be in [*Belgrade*].

The arbitrators shall apply the [*Serbian*] substantive law.

The arbitration proceeding shall be conducted in the [*English*] language.

c) VERSION FOR INTERNATIONAL CONTRACTS (institutional arbitration):

If the Contracting Parties fail to resolve in an amicable manner all disputes, disagreements or claims arising from or in connection with the Contract or non-fulfilment of contractual obligations, termination or nullity of the same, the same shall be settled by the Foreign Trade Court of Arbitration of the Serbian Chamber of Commerce, by applying their own rules.

The seat of arbitration shall be in [*Belgrade*].

The arbitrators shall apply the [*Serbian*] substantive law.

The arbitration proceeding shall be conducted in the [*Serbian*] language.

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18 FINAL PROVISIONS

18.1 Entire Contract

The Appendices hereto, which are integral parts hereof are:

- Appendix 1 Contracted Facility
- Appendix 2 Basic Data on Each Facility within the Contracted Facility
- Appendix 3 The Contractor's Winning Bid
- Appendix 4 Guidelines for Establishing Energy Savings
- Appendix 5 Template of the Minutes of Audit

The Contracting Parties consensually state that they have handed over to each other the documents that constitute the Appendices referred to in paragraph of this Article, filled out prior to or on the date of conclusion hereof, unless another time-limit is stipulated for that purpose hereunder, or that they shall fill them out according to the time schedule that shall follow from the fulfilment of obligations of the Contracting Parties during the validity period of the Contract, where and if the obligation to fill out an Appendix, subject to its purpose, exists.

In case of any discrepancy between the Articles of the Contract and its Appendices, the Articles of the Contract shall prevail.

18.2 Counterparts

This Agreement has been made in [*insert the number of copies*] identical counterparts, [*insert the number of copies*] of which shall receive each Contracting Party.

[*Insert the place and date of signing of the Contract*]

For the Client:

For the Contractor:

(stamp and signature of the Authorized Representative)

(stamp and signature of the Authorized Representative)