

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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

the Minister Mining and Energy hereby adopts the

RULEBOOK

ON DETERMINING MODEL CONTRACTS ON ENERGY SERVICES FOR IMPLEMENTATION OF ENERGY EFFICIENCY IMPROVEMENT MEASURES FOR USERS IN 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 for Users in 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 for Users in the Public Sector.

Article 2

Model contracts referred to in Article 1 hereof 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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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

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**

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS	9
1 TERMS	10
2 SUBJECT MATTER OF THE CONTRACT	15
3 AUTHORISED REPRESENTATIVES OF THE CONTRACTING PARTIES AND SUBMISSION	16
4 CONTRACT PHASES (PERIODS)	17
4.1 Commencement of the Contractual Period	17
4.2 Main periods of the Contract	17
4.3 Duration of the Guarantee Period	17
5 RIGHTS AND OBLIGATIONS OF THE CONTRACTOR	18
5.1 Right of decision on choice of ESMS	18
5.2 Obligation to provide financial means for implementation of ESMS	19
5.3 Obligation to guarantee a minimum amount of Financial Savings	19
5.4 Obligation to cooperate in obtaining necessary licences/permits and approvals	20
5.5 Regulatory compliance	20
5.6 Obligation to conduct activities	20
5.6.1 Obligations of the Contractor in the Preparatory Period	20
5.6.2 Obligations of the Contractor in the Implementation Period	21
5.6.3 Obligations of the Contractor in the Guarantee Period	22
5.7 Obligation of transparency	22
5.8 Right to utilize data on the Project for commercial purposes	23
5.9 Right to assign receivables	23
5.10 Engagement of Subcontractor	23
5.11 Obligation of the Contractor to open a Special Purpose Account	24
5.12 Obligation of the Contractor to pay remuneration to the EDSO	24

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

6	RIGHTS AND OBLIGATIONS OF THE CLIENT	25
6.1	Right to influence the Contractor's design	25
6.2	Right of the Client to audit the Special Purpose Account of the Contractor	25
6.3	Obligation to provide support for the design and implementation of ESMs	25
6.3.1	General obligations of the Client	25
6.3.2	Obligations of the Client in the Preparatory Period	26
6.3.3	Obligations of the Client in the Implementation Period	27
6.3.4	Obligations of the Client in the Guarantee Period	28
6.4	Obligation to bear costs of rehabilitation for unforeseen damages during the Contractual Period	29
7	PROCEDURES AND ACTIVITIES	30
7.1	The Activity Log in the Preparatory Period and the Activity Log in the Implementation Period	30
7.1.1	General provisions	30
7.1.2	Activity Log in the Preparatory Period	30
7.1.3	Activity Log in the Implementation Period	31
7.2	Incentives, grants and rebates	31
7.3	Important criteria for performance of Preparatory Activities and Implementation Activities	32
7.4	Obstacles to the implementation of ESMs	33
7.5	Proper disposal of faulty and/or replaced installations	33
7.6	Training [<i>this article is used only if the training is envisaged in the concrete case</i>]	33
7.7	Minutes of Audit	33
7.8	Commissioning of implemented ESMs	34
7.9	Transfer of title	34
7.10	Measurement & Verification	35
7.11	Maintenance of ESMs	36
7.12	Final inspection before the expiry of the Contractual Period	36
7.13	Final verification document	37

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

8	WARRANTY FOR GOOD PERFORMANCE AND PROPER FUNCTIONING OF ITEMS	38
9	DETERMINING ACHIEVED ENERGY SAVINGS, FINANCIAL SAVINGS AND GUARANTEED SAVINGS	39
9.1	Methodology for establishing achieved Energy Savings and Financial Savings	39
9.1.1	General provisions	39
9.1.2	Reference currency	39
9.1.3	Reference energy price	39
9.1.4	Baseline adjustments	40
9.2	Guaranteed Savings	40
9.3	Frequency of determining the achieved Guaranteed Savings	40
9.4	Additional Financial Savings	40
9.5	Non-achieved Guaranteed Savings attributable to under-performance of the Contractor	41
9.6	Non-achieved Guaranteed Savings attributable to wrongful acts of the Client	41
10	REMUNERATION	42
10.1	General Provisions	42
10.2	Annual Basic Remuneration	42
10.3	Additional Remuneration	42
10.4	Compensation in case of non-achieved Guaranteed Savings (“Penalties”)	43
10.5	Payment of remuneration	43
10.6	Terms of payment	44
11	SECURING THE FULFILLMENT OF OBLIGATIONS FROM THE CONTRACT	45
11.1	Securing the fulfillment of Contractor’s obligations	45
11.1.1	Purpose, type and amount of security	45
11.1.2	Basic data on performance bond	46
11.1.3	Return of performance bond	46
11.2	Securing the fulfilment of the Client’s obligations	46

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

12	LIABILITY	48
12.1	The Client's right of compensation for damages caused by the Contractor	48
12.2	The Client's right to compensation for failure of the Contractor to fulfill obligations from the Bid and the Contract	48
12.3	The Contractor's right to compensation for failure of the Client to provide support during the implementation of ESMS	48
13	INSURANCE	50
13.1	Responsible party	50
13.2	Damage	50
13.3	Termination due to damage to the Contracted Facility	50
14	DISPOSAL OF THE CONTRACTED FACILITY	51
14.1	No restrictions of the right of disposal	51
14.2	Mutual consent on compensation for harmful effects	51
14.3	Compensation for the Contractor	51
15	FORCE MAJEURE	53
16	TERMINATION OF THE CONTRACT	54
16.1	Expiry and Termination of the Contract	54
16.2	Termination of the Contract due to justified reasons	54
16.3	Termination notice	54
16.4	Damage compensation on the ground of unilateral termination	55
17	SETTLING OF DISPUTES AND APPLICABLE LAW	56
17.1	Resolution of technical disagreements	56
17.2	General disputes resolution	56
18	FINAL PROVISIONS	58
18.1	Entire Contract	58
18.2	Counterparts	58

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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, competitive dialogue, etc.*] for 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 lighting as 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 [*alternatively: the user*] of the public facility, which is owned by [*enter in whose ownership it is, for example: of the Republic of Serbia, a unit of local self-government, 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 in the Republic of Serbia, the Client is considered to be a Public Partner and the Contractor is considered to be a Private Partner,

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

WHEREAS this Contract was awarded to the Contractor in a public procurement procedure in accordance with the regulations governing the public procurement in the Republic of Serbia, specifically for the purpose of realizing the public-private partnership in line with the regulations governing public-private partnership and concessions,

WHEREAS this Contract is at the same time considered to be a public contract under the 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 savings in energy and associated savings in the operating expenditures of the Contracted Facility, as specified in Appendix 1,

WHEREAS, prior to the signing of this Contract, on [enter the date] the Client and [enter the full business name of the relevant electricity distribution company, i.e. its branch], entered into the Cooperation and Support Agreement, the main elements of which in the form and substance correspond to the draft Cooperation and Support Agreement, which is an integral part hereof, as Appendix 7.

The Client as a public partner and the Contractor as a private partner hereby agreed as follows:

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

LIST OF ABBREVIATIONS

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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

1 TERMS

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

- 1) **Accounting Period** is a period of 12 calendar months during which the achieved Energy Savings and Financial Savings in the Guarantee Period are calculated.
- 2) **Activity Log in the Implementation Period**, managed by the Contractor, is the record of all the Implementation Activities conducted by the Contractor, and which are verified by the Contracting Parties at the end of the Implementation Period.
- 3) **Activity Log in the Preparatory Period**, managed by the Contractor, is the record of all the Preparatory Activities performed by the Contractor, and which are verified by the Contracting Parties at the end of the Preparatory Period.
- 4) **Additional Remuneration** is the contracted for monetary amount exceeding the amount of the Basic Remuneration, to which the Contractor is entitled if having achieved Additional Savings within 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 Savings, the Annual Basic Remuneration equals Annual Guaranteed Savings multiplied by the contracted for percentage of the Shared savings belonging to the Contractor).
- 8) **Annual Guaranteed Savings** equals Guaranteed Savings divided by the number of years of 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 authorizations 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.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

- 12) **Baseline Period** is a mutually agreed time period representing the functioning of the Contracted Facility prior to the implementation of ESMs.
- 13) **Basic Remuneration** is the contracted for monetary amount, 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. [enter the bid number] dated [enter the date], which was accepted by 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 of 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 in respect to the construction permit or any other relevant permit required for the commencement and carrying out of works, so that the operating licence for the installed equipment, installations and/or parts thereof in the Contracted Facility may be properly obtained if required.
- 17) **Contracted Facility** is the Public Lighting System (Grid), in which the ESMs are applied and which can consist of several sections of the lighting grid delimited by switches or any other physical or operational delimitation of their component parts, used by the Client.
- 18) **Contracting Parties** (or **Parties**) are the Client and the Contractor.
- 19) **Contractor** is a company or an entrepreneur engaged in performing energy services, the Bid of which 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 the expiry of the same.
- 21) **Electricity Distribution System Operator (EDSO)** is an energy entity dealing with transmission/distribution/transport or sale of the electricity in the area in which the Contracted Facility is located.
- 22) **Energy** denotes all the 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 to improve energy efficiency, i.e. activities by which savings in Operating Costs in the Contracted Facility are achieved.
- 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.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

- 26) **Financial Savings** means reduction in Operating Costs of the Contracted Facility as a result of ESMs, calculated based on the Reference Operating Cost.
- 27) **Guarantee Period** means the time period from the end of the Implementation Period up to the end of the Contractual Period.
- 28) **Guaranteed Savings** means the total amount of the contracted for Financial Savings during the Guarantee Period, resulting from the implementation of ESMs.
- 29) **Implementation Activities** include all the 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 of 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 Implementation Period.
- 31) **Independent Variable** means a parameter that is expected to change regularly and has a measurable impact on consumption of Energy in the Contracted Facility (such as operating hours, operating conditions, and periodic changes in patterns of use of relevant facilities).
- 32) **Measurement & Verification (M&V)** are 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** is the current expenditure on the ground of Energy use and maintenance of the Contracted Facility.
- 36) **Preparatory Activities** means all the 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 licences/permits, opinions and technical requirements of the EDSO 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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

and undertaking of measured necessary for obtaining the legally valid construction permit or other permits by the Client allowing for commencement of activities in the Implementation Period in line with 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.
- 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 lighting facility – an asset in public ownership of the Republic of Serbia (pursuant to the regulations governing public property), meaning the facilities that serve for illumination of road infrastructure and other areas in public use, and which are used by citizens, authorities, organizations, and institutions of the Republic of Serbia, authorities and organizations of autonomous provinces, of the local self-government units, public companies, public services and other beneficiaries of assets in public ownership of the Republic of Serbia
- 40) **Reference Operating Cost** means the Baseline Energy Consumption multiplied by the Reference Energy Price plus Reference Maintenance Costs.
- 41) **Reference Maintenance Costs** means net costs as, defined in the tender documentation, for maintenance of specific part of the Contracted Facility, which will be influenced 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 consumption and power input units or capacities as deemed necessary, excluding VAT, but including all the 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 the Appendix 4 (Instructions 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 Savings** is an option for sharing the Guaranteed Savings between the Client and the Contractor according to contractually agreed percentage.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

- 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 fulfilment 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 itself.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

2 SUBJECT MATTER OF THE CONTRACT

The subject matter hereof is the implementation of ESMs aimed at more efficient use of Energy and corresponding reduction of CO₂ emissions as well as to reduction of the 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 hereunder must be in accordance with applicable positive regulations and standards in the Republic of Serbia.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

3 AUTHORIZED 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 operations 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 other Contracting Party, provided that they were delivered to the addresses of Authorized Representatives of the Contracting Parties in compliance with the Contract. Submission to any other address of the Contracting Parties shall have no legal effect.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

4 CONTRACT PHASES (PERIODS)

4.1 Commencement of the Contractual Period

This Contract and its Appendices shall enter into force on _____ [*another option: 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 the 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: 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 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 the implementation of ESMs pertaining to the Implementation Activities, as defined in 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 the date*].

4.3 Duration of the Guarantee Period

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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 of its Appendices, decide which ESMs will be implemented in the Contracted Facility of the Client. Consequently, as long as the Contractor acts within its authorization and pursuant to this Contract, the Client must not refuse acceptance of, or hinder any actions related to ESMs specified in Appendix 3 hereto, except in case they are not in compliance with relevant positive regulations, technical regulations and applicable standards in the Republic of Serbia, or other contractual obligations.

In the 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 meeting of 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 rejection.

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

If the relevant changes to the ESMs are of such a nature that, under applicable regulations, they require the amendment 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 in line with 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-

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

private 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 - 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 time periods shall be extended for a period equivalent to the period of suspension.

5.2 Obligation to provide financial means for implementation of ESMs

The Contractor undertakes to provide the funds for financing the expenditures of the Project, from its own capital [*alternatively: and/or loans and/or other sources of financing*].

[Alternatively, in case the Client participates in the Project financing:

"Funds for financing the expenses of implementation of ESMs in the Contracted Facility shall be provided by the Contractor and the Client jointly.

The Contractor undertakes to provide funds for financing the expenses of implementation of ESMs in the Contracted Facility during (enter in 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 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 analysis, which the Contractor personally conducted at the Contracted Facility. This contractual obligation is further stipulated in Section 9 hereof.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

5.4 Obligation to cooperate in obtaining necessary licences/permits and approvals

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

The Client shall cooperate in the above procedure of obtaining all the necessary permits/licences and approvals by which completion of such tasks is approved, as well as provide all the necessary documentation available to it or which it is liable to, based on technical and other relevant regulations of the Republic of Serbia, or in a position to obtain.

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 the 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 benefit 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 hereunder;
- 2) As necessary, preparation and execution and/or obtaining of the technical documentation required for obtaining of requisite permits/licences, as needed

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

under 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 the legally valid construction permit or other permits/licences allowing the Contractor to commence the Implementation Activities, if obtaining of such permits/licences 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 shall, *inter alia*, include:

- 1) Carrying out of construction works, fitting and installing the equipment, units, and other installations or parts thereof;
- 2) Planning and coordinating 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) [*Programming, installation, and testing of software – optional, to be included if so required in the tender documentation and/or the 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 in the tender documentation and/or the 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 in the tender documentation and/or the 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 of standard warranties from Subcontractors, suppliers of equipment and materials for efficiency, quality, and proper functioning;
- 10) Acceptance of equipment and materials at the Contracted Facility;
- 11) Regular keeping of the daily progress record, the programme and progress record, and other records required under applicable regulations;
- 12) Regular keeping of the Activity Log in the Implementation Period, in accordance with Article 7.1.3 hereof;

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

- 13) Proper and regular disposal of defective and/or replaced installations, parts thereof, and equipment of ESMs, in line with applicable regulations of the Republic of Serbia ;
- 14) Commissioning of the works carried out, installed equipment, installations and/or a part of installations, in line with/if prescribed under applicable regulations, including the verification of the illumination level following instructions stated in Appendix 6 ;
- 15) Conducting of all the activities necessary for the obtaining of the operating licence, as required under applicable regulations, and needed for fulfilment 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 the 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) [*Operation and maintenance of equipment and systems installed as a part of ESMs - optional, to be included if maintenance is required under the tender documentation and/or the Bid*];
- 3) Verification and validation of operating, preventive, and emergency maintenance for each installed ESM as defined in the operating and maintenance procedures;
- 4) [*Updating and/or upgrading of the installed software – optional, to be included if so required under the tender documentation and/or the Bid*];
- 5) [*Training of the Client's staff – optional, to be included if so required under the tender documentation and/or the 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, in line with that, shall have the express obligation to regularly keep the Activity Log in the Preparatory Period and the Activity Log in the Implementation Period in accordance with 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 within the Preparatory Period;
- 3) The implementation activities, Commissioning, etc. during the Implementation Period.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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

The Client shall at all times have the right to proceed with the checking of all the 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-legislation 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 such approval shall not to be unreasonably delayed, all with the aim to protect the Client's rights.

5.9 Right to assign receivables

By the conclusion of 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 law 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 specified in the 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 the 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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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.

The Client shall deny its 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 conclusion of this Contract, the Contractor shall have a new Special Purpose Account opened in the commercial bank, through which it does the majority of its business operations. The Special Purpose Account shall be the only account used by the Contractor for all the incoming and outgoing payments in the course of fulfilment 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.

5.12 Obligation of the Contractor to pay remuneration to the EDSO

The Contractor shall be obliged to regularly pay remunerations to [*insert the full business name of the relevant electricity distribution company, i.e. its branch*] as the EDSO, for all services rendered by the respective EDSO in connection with the implementation of this Contract, which services are defined in the Cooperation and Support Agreement concluded between the respective EDSO and the Client, as mentioned in paragraph 8 of the Preamble hereof and having the substance and form identical to the one provided in Appendix 7 hereto.

If, during the Contractual Period, the relevant EDSO ceases to provide services mentioned in the previous paragraph and another entity commences provision of such services (either as a result of amendment of positive regulations or for other reasons), the Contractor shall take all the reasonable and timely measures and activities, and the Client shall provide all the necessary assistance and support, so as to conclude a new Cooperation and Support Agreement with any such new entity, whereby such Agreement shall also have the substance and form identical to the one given in the text attached as Appendix 7 hereto, specifically with the main purpose to provide for continuous provision of relevant services and without interruptions.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

6 RIGHTS AND OBLIGATIONS OF THE CLIENT

6.1 Right to influence the Contractor's design

Notwithstanding Article 5.1 of the Contract, the Contractor shall be obliged to restrain from implementation of 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 ESMs can be implemented according to the prevailing standards and positive 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) Reasonably cooperate 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) Fulfil its contractual obligations stipulated herein so as to contribute to the minimizing of the Contractor's implementation and operational costs within the Contractual Period. For the purpose of accomplishing this goal, the Client agrees to reasonably cooperate with the Contractor during all the phases of the Project envisaged hereunder.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 the 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 information (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 documentation 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 representative by the Contractor. In case of 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 the legally valid construction permit or other permits/licences required for commencement of Implementation Activities, if prescribed under applicable regulations in the Republic of Serbia, the Client shall approve the Activity Log in the Preparatory Period.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 of the Client;
- 2) Provide unrestricted access to the Contracted Facility to the Contractor and its personnel or to Subcontractors authorized by the former, so as to be able to perform any function related hereto during regular business hours, or at such other time as reasonably requested by the Contractor, provided it does not affect the operation of 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 implementation 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 work, and allow/facilitate the Contractor's carrying out of the work according to the agreed construction schedule;
- 6) Active 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 RSD amount equalling [*insert the appropriate percentage*] % of all the Client's bills regarding such costs during the Implementation Period, within 7 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 valid

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

operating licence or other permits/licences required in line with the prevailing regulations.

- 11) *[Ensure operating, preventive, and emergency maintenance for each installed ESM as per the defined operating and maintenance procedures – in the case maintenance is not required from the ESCO].*

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 on any changes in the Baseline Consumption of the Contracted Facility that potentially 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 defined jointly by the Client and the Contractor;
- 3) Enabling free access to the Contracted Facility for the purpose of maintenance, which shall imply removal of branches of trees, plants, parked vehicles, drop counters, taxi stations, temporary placed objects, etc.;
- 4) Ensuring the assistance of the local traffic police office if the temporary interruption or additional regulation of traffic is needed during the maintenance of the Contracted Facility;
- 5) Ensuring the assistance of other utility services if needed during the maintenance of the Contracted Facility;
- 6) Reporting to the Contractor on any breakdown or malfunctioning of ESMs as soon as learning about such breakdown or malfunctioning;
- 7) Ensuring that any subsequent adjustments by the Client or by any third party that the Client is aware of on the installations, parts thereof and equipment that are important for Energy consumption and performance of obligations, shall be carefully recorded and the Contractor shall be informed without delay;
- 8) Protection of the Contracted Facility from intentional physical damage;
- 9) Submitting of or allowing the Contractor to access data necessary for the preparation of the reports on measurement and verification in compliance with the approved M&V plan;
- 10) 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 the Additional Remuneration or Penalties.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

11) *[Conducting of operating, preventive and emergency maintenance for each installed ESM as per the defined operating and maintenance procedures – in case maintenance is not requested from the ESCO].*

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.

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

In case 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 fulfilment 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 fulfilment of the Contractor's contractual obligations shall be suspended to the extent their fulfilment 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, conclude the amendment hereof so as to regulate the Contractor's carrying out of any such works relating to the repair of the unforeseen damages referred to in paragraph 1 of this Article, whereby the rules stipulated in Article 5.1 paragraphs 5 to 7 hereof shall be accordingly applied.

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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 the 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 Contractor and have been verified by the Contracting Parties, each Contracting Party shall sign the Activity Log in the Preparatory Period.

For the avoidance of any doubt, the verification of the Activity Log in the Preparatory Period shall not occur prior to obtaining of the legally valid construction permit or other permits/licences necessary for 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 valid operating licence, 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 the Preparatory Activities of the Contractor, and particularly the ones that are related to:

- 1) Time planning and deadlines, obtaining of permits/licenses, approvals, opinions, and technical requirements of the EDSO and/or _____ *[indicate the interested parties: the owner of posts/inventories, the entity maintaining the public lighting*

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

grid, etc.] and/or PUCs, elaboration of technical documentation and its technical review;

- 2) Obtaining of the legally valid construction permit and/or other permits/licences allowing for commencement of the Implementation Activities, if obtaining of such permits is required in the concrete case under 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 particularly the ones that are related to:

- 1) Construction works, fitting and 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) *[Programming, installation, testing, and commissioning of software – optional, to be included if so required under the tender documentation and/or the Contractor's Bid];*
- 3) *[Introducing of operating and maintenance procedures – optional, to be included if so required under the tender documentation 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 documentation and/or the Contractor's Bid];*
- 5) All the activities related to the 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 the legally valid operating licence, 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 reasonably 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 hereto (Winning Bid).

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 hereto), 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, 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 valid construction permit, operating licence, and other permits/licences 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 particularly estimated costs of maintenance of the applied ESMs after the expiry of the Contract, which costs must not be unreasonable;
- 3) Functional compliance with the existing installations and components in the Contracted Facility;
- 4) Compliance with technical requirements of the EDSO and/or _____ *[indicate the interested parties: the owner of posts/inventories, the entity maintaining the public lighting grid, etc.]* and PUCs for the purpose of realizing service connection to the said grids, if the Contracted Facility is connected to the grid of the local EDSO;
- 5) Respecting of the positive 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.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

7.4 Obstacles to the implementation of ESMs

The Contractor shall make all reasonable efforts to identify obstacles to the implementation of ESMs and to propose the method of elimination of such obstacles 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 its 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 – optional. Insert only if the ESCO is in charge of the maintenance during the guarantee period]*, in accordance with the positive regulations on the disposal of municipal, hazardous and, other waste, except if the Client indicates that it wants to use them for other purposes.

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

In case 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 the 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

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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 shall form a separate Appendix to the Contract, and shall correspond in the form and substance of Appendix 5 hereto.

If 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 the deficiencies and faults within 30 days from the date when the audit referred to in paragraph 1 of this Article was performed.

In case the Contractor fails to perform the activities referred to in 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 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 or 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) All the ESMs are performing as planned, notably with regard to energy efficiency and operating performance,
- 2) The Commissioning is properly completed,
- 3) All the deficiencies and faults of ESMs identified after the Commissioning are eliminated or remedied (if any),
- 4) The legally valid operating licence, if obtaining of the same is stipulated in the applicable regulations, and
- 5) 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 into the Contracted Facility during the implementation of ESMs shall be transferred to the Client upon the verification of the Activity Log by the Contracting Parties

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

in the Implementation Period and the commencement of the Guarantee Period, unless otherwise regulated by the applicable regulations.

In case the Contractor is obliged, during the Guarantee Period, to install equipment, installations, or parts thereof at its 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 Instructions 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 defined in the M&V Plan;
- 2) The reporting on Energy Savings and Financial Savings should take into account all the effects of the Project;
- 3) Where judgments are made about uncertain quantities, M&V procedures should be designed to in such as way as to assess both Energy Savings and Financial Savings;
- 4) Reporting on the Project's effectiveness should be consistent between:
 - 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 the M&V activities should be clearly and fully disclosed and documented.

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 months period covered by the relevant M&V report. The following procedure for adoption of the M&V Report shall be observed:

- The report shall (unless subject to objections of the Client) be approved by the Client no later than within 15 days after its receipt by the Client;
- If the Client has objections on the conclusions from the report, the Client shall inform the Contractor thereon within 15 days as of the date of receipt of the report. The Client shall provide the Contractor with reasons for its objections;

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

- The Contractor shall, within the following 15 days as of the receipt of the Client's objections, make the necessary amendments and report thereon back to the Client.

If the Client again does not agree with the conclusions of the M&V Report, 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 work and for proper functioning of all the parts 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 Energy Savings, during the Contractual Period, the Contractor undertakes to maintain ESMs installed or fitted 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 of replacement of ESMs.

The Contractor shall apply all the technical, administrative, and organizational measures, during the Contractual Period, on any works, installations, parts thereof, and equipment, which are a part of ESMs for the purpose of maintenance or restoration of their adequate 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 the functioning of any of the works, installations, parts thereof, and/or equipment, which are a part of the implemented ESMs, the costs of replacement and remedying 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 inspection before the expiry of the Contractual Period

Three months before the end of the Contractual Period, the Parties shall jointly inspect ESMs. At the moment of carrying out the inspection, all of the installed ESMs must have ____ [*specify % in the tender documentation*] of the remaining useful life stipulated in the manufacturers' instructions.

In case of disagreement between the Contractor and the Client as to remaining useful life, or as to the compliance with this Article of the Contract (Final Inspection before the Expiry of the Contractual Period), the matter shall be resolved in accordance with Article 17.1 hereof.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

7.13 Final verification document

On the date when the Guarantee Period expires hereunder, if all the contractual obligations have been fulfilled, the Contracting Parties shall sign the final verification document in which they will confirm that all the contractual obligations hereunder have been fully fulfilled.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 hereunder (including, without limitation, installations, parts thereof, and installed equipment) as well as that such works and items (a) are new and of good quality, (b) are free from defects in design, material, and workmanship; and (c) are fit for the purpose.

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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 the 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 implementation of ESMs during the Guarantee Period.

9.1.2 Reference currency

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

9.1.3 Reference energy price

Reference Energy Price, for the purposes hereof, shall mean a net price in the tender documentation for electricity, 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 Energy Price shall be kept constant throughout the Guarantee Period. Therefore, Energy price variations during the Guarantee Period shall have no impact on the calculation of the Contractor's performance and its remunerations. The same shall apply for the changes of applicable taxes (with the exception of VAT) that apply to the consumption of electricity if the same are included in the Reference Energy Price.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 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 of the Guarantee Period shall reduce Operating Costs for the Contracted Facility, at least to the amount of Guaranteed Savings, equalling:

_____ [specify the reference currency RSD/EUR]

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

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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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

9.5 Non-achieved Guaranteed Savings attributable to under-performance 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 line with Article 10.4.

9.6 Non-achieved Guaranteed Savings attributable to wrongful acts of the Client

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

- 1) An unlawful act, omission, breach or delay in performance of the Contract by the Client;
- 2) A delay, 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 to 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 Savings and Financial Savings (within the less than 90 consecutive days), the calculation of Financial Savings shall be based on an estimate of what would have been achieved had such a circumstance not occurred;
 - In the event of permanent failure to achieve Energy Savings and Financial Savings (within a period in excess of 90 consecutive days), the Contractor shall adjust the Baseline Consumption by an amount calculated to neutralize the effect of such circumstances on the Financial Savings.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 Savings.

[Optional: In case that sharing of Guaranteed Savings is agreed in Article 9.2, the Annual Basic Remuneration shall be calculated as:

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

10.3 Additional Remuneration

If Additional Savings are achieved in an Accounting Period, as demonstrated by the application of the M&V Plan, the Contractor shall be 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 Savings

RB = [specify the percentage _____] % of the Contractor's share in the Additional Savings.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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

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

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

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

where:

FSCP = Financial Savings in the Accounting Period

AGS = Annual Guaranteed Savings

[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 no 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 no later than within _____ *[choose between 15 and 30]* days after the approval of the Energy Saving and Financial Savings by the Contracting Parties.

10.5 Payment of remuneration

As of the commencement of the Guarantee Period, the Contractor shall be entitled to the Basic Remuneration. 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, to the amount of one twelfth of the Annual Basic Savings, as defined in Article 10.2 hereof, which shall amount to _____ *[enter the reference currency RSD or EUR]*, 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, either:

- 1) The Client shall pay the Additional Remuneration to the Contractor in line with Article 10.3 hereof;
- 2) The Contractor shall pay Penalties to the Client in line with Article 10.4 hereof;

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

- 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.

10.6 Terms of payment

The Client agrees to pay all undisputed due claims to the Contractor hereunder 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, to the amount stipulated by the law regulating default interest rate.

The Contractor shall be entitled to request from the Client compensation for failure to make timely undisputed payments, to the amount stipulated by the law regulating deadlines for settlement of pecuniary claims in commercial transactions between the public sector and the private sector entities.

The Contractor shall be entitled to request from the Client compensation for all the costs borne in its commercial transactions as a result of late payment of undisputed pecuniary claims by the Client.

Under to the terms hereof, the Client shall be entitled to offset any claims due to it from the Contractor, against any undisputed claims that become due by it to the Contractor.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

11 SECURING THE FULFILLMENT OF OBLIGATIONS FROM THE CONTRACT

11.1 Securing the fulfilment 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 an amount between 5% and 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 formula:

$$GS \times (\textit{select the number between 0.05 and 0.10})$$

where:

GS = Guaranteed Savings in accordance with Article 9.2.

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 within 30 days after the signing of the Contract, with the validity expiring one month from the commencement of the Guarantee Period.

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

$$GS \times 0.05$$

where:

GS = Guaranteed Savings in line 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 after the end of the Guarantee Period. In case the Contractor fails to provide such original performance bond securing the achievement 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.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

11.1.2 Basic data on performance bond

The Contractor shall provide the performance bonds referred to in Article 11.1.1 hereof, which shall:

- 1) Be made out to the Client,
- 2) Be unconditional,
- 3) Be irrevocable,
- 4) Be payable on the first demand,
- 5) Specify an exclusive jurisdiction for the settlement of disputes arising from or related to the performance bond according to the Client's head office/place of business.

11.1.3 Return of performance bond

Within eight days as of the 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 fulfilment 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 notes and, as required, other details*].

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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 this 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 hereof, 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.

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 the previous paragraph, 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;
- 2) 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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

- 3) 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.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

13 INSURANCE

13.1 Responsible party

The Contractor shall contract for, for the 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.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

14 DISPOSAL OF THE CONTRACTED FACILITY

14.1 No restrictions of the right of disposal

Subject to applicable regulations of the Republic of Serbia, 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, and 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 of 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:

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

- 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 Saving 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.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 line 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 (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.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 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 contracted for ESMs, as well as to compensate it for all the damages incurred.]

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 revised rules of 2010.

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

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.

Translations of the original text of the document are provided by the EBRD only for the convenience of the reader. Whilst the EBRD has taken reasonable care to ensure the authenticity of the translation, the EBRD does not warrant or endorse the accuracy of the translation. Reliance upon any such translation shall be at the reader's own risk. Under no circumstances shall the EBRD, its employees or agents be liable to the reader or anyone else for any inaccuracy, error, omission, deletion, defect and/or any alteration of any content of the translation, regardless of cause, or for any damages resulting therefrom. In the event of any discrepancy or contradiction between the English translation and the original version, the original version shall prevail.

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 Winning Bid
- Appendix 4 Instructions for Establishing Energy Savings
- Appendix 5 Template of the Minutes of Audit
- Appendix 6 Guidelines for Verification of Quality of Maintenance and Illuminance Level
- Appendix 7 Draft Cooperation and Support Agreement

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 Term of the Contract, where and if the obligation to fill out an Appendix, subject to its purpose, exists.

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)