

**Draft of:  
01 November 2010**

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**Concession Agreement**

between

**The State of Montenegro**  
acting through the **Ministry of Economy**

and

**[Sponsor]**

Dated [•] 2011

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## **Schedules**

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- 1 Project Development Plan

**THIS CONCESSION AGREEMENT** (this “**Agreement**”) is made as of the [•] day of [•] [2011] (the “**Execution Date**”) in [•], based on decision on granting the concession [•] issued by the Parliament of Montenegro no. [•] dated [•], by and between:

- (1) The State of Montenegro represented by the Ministry of Economy (the “**Grantor**”); and
- (2) [**Sponsor**] (the “**Concessionaire**”, as defined in the Schedule 1), a [•] organized under the laws of [•], with its principal office at [•], as the grantee.

Each of the Grantor and the Concessionaire is hereinafter referred to individually as a “**Party**” and, collectively, as the “**Parties.**”

### **RECITALS**

- A. The State of Montenegro intends as a matter of policy to involve the private sector in a project of constructing hydropower plants for the purpose of exploitation of hydro-energetic potential of the Morača River, that includes:
  - (i) the design, research, engineering, financing, construction, operation, maintenance, and rehabilitation of hydropower plants on the Morača River by the Concessionaire and the transfer of such hydropower plants to the Grantor following the expiration of the Concession Period (as hereinafter defined);
  - (ii) the design, research, engineering, financing, and construction of the transmission lines necessary to connect those hydropower plants to PRENOS’s (as hereinafter defined) transmission network by the Concessionaire, and the transfer of such transmission lines to PRENOS in accordance with the Agreement on Operation and Maintenance of the Transmission Network (as hereinafter defined);
  - (iii) the design, research, engineering, financing, and construction of any roads that are required to be relocated or any new roads that are necessary to replace any roads that are rendered unusable by the Morača HPPs (as hereinafter defined), the Morača Transmission Lines (as hereinafter defined), or the inundation of the Inundated Areas (as hereinafter defined) by the Concessionaire, and the transfer of such roads to the Grantor;
  - (iv) the expropriation by the Grantor of all lands required in connection with the development of the Morača HPPs, the Morača Transmission Lines, or the Project Roads (as hereinafter defined) or with the inundation of the Inundated Areas; and
  - (v) preservation by the Grantor of the site of the Morača Monastery,(the “**Project**”);
- B. Simultaneously with the entry by the Grantor and the Sponsor as Concessionaire into this Agreement, the Sponsor is entering into the Sponsor Support Agreement with the Grantor

- C. The Sponsor will form a wholly-owned special purpose business organization under the Laws of Montenegro (as hereinafter defined), and thereafter novate this Agreement to the Company (as hereinafter defined), following which the Company in the capacity of the Concessionaire will undertake the Project; and
- D. The Grantor is entering into this Agreement to encourage private investment in the electric power sector in Montenegro and to provide certain support and incentives to the Concessionaire in connection with the development of the Project.

**NOW, THEREFORE**, Parties hereby agree as follows:

## **Article 1 Definitions; Interpretation**

### **1.1 Definitions**

In this Agreement, unless the context otherwise requires, capitalized terms shall have the meanings given to them in Schedule 1.

### **1.2 Interpretation**

- (a) In this Agreement, unless a clear contrary intention appears:
  - (i) the singular number includes the plural number, and vice versa;
  - (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
  - (iii) reference to any gender includes each other gender;
  - (iv) reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
  - (v) references to any legislation or legislative provision include references to any statutory modification or re-enactment of such legislation or legislative provision and any legislative provision substituted for that legislation or legislative provision;
  - (vi) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section, Schedule, or other provision hereof;



- (vii) “including” (and with correlative meaning “include” or “includes”) means including without limiting the generality of any description preceding such term;
  - (viii) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”; and
  - (ix) references to documents, instruments, or agreements shall be deemed to refer as well to all addenda, exhibits, schedules, or amendments thereto.
- (b) Captions and headings in this Agreement are for reference only and do not constitute a part of the substance of this Agreement and shall not be considered in construing this Agreement.
  - (c) References in the body of this Agreement to Articles, Sections, and Schedules (and Annexes thereof) are to Articles and Sections of and Schedules (and Annexes thereof) to this Agreement, unless stated otherwise. References in any Schedule to Articles, Sections, and Annexes are references to Articles, Sections, and Annexes of that Schedule, unless stated otherwise. References in any Schedule (or Annex thereto) to Articles and Sections of the Agreement are references to the body of this Agreement, unless stated otherwise.
  - (d) In carrying out its obligations and duties, and in providing estimates under this Agreement, each Party shall have an implied obligation of good faith.
  - (e) Except as otherwise indicated in this Agreement, references to time are references to Central European Standard Time or Central European Summer Time, as then applicable.
  - (f) This Agreement was negotiated by the Parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof.
  - (g) To the extent there exists a conflict between any provisions of this Agreement and any Schedule or Annex, the provisions of this Agreement shall prevail.

## **Article 2**

### **Effective Date**

#### **2.1 Effectiveness**

This Agreement shall commence and become effective on the Execution Date. This Agreement shall, unless otherwise terminated, terminate upon the expiration of the Concession Period ( the “**Term**”).

**Article 3**  
**Grant of Concession Rights and Implementation of the Project**

**3.1 Formation of the Company**

The Sponsor shall form a business organization pursuant to the Laws of Montenegro for the purpose of undertaking the Project (the “**Company**”) not later than sixty (60) Days following the Execution Date.

**3.2 Novation of the Concession Agreement**

Not later than ten (10) Days following the formation of the Company pursuant to Section 3.1, the Grantor, the Sponsor, and the Company shall execute a novation agreement, substantially with the content attached as Schedule 4 (the “**Novation Agreement**”), for the purposes of novating this Agreement from the Sponsor to the Company.

**3.3 Grant of Concession Rights**

The Grantor hereby grants the Concessionaire the right to:

- (a) design, research, engineer, finance, construct, operate, maintain, undertake the Rehabilitation of, and (upon the expiration of the Concession Period) transfer the Morača HPPs to the Grantor;
- (b) design, research, engineer, finance, and construct the Morača Transmission Lines, and until the transfer of the Morača Transmission Lines to PRENOS in accordance with Section 3.14; and
- (c) sell the capacity of, the net electrical output of, the ancillary and system services generated by, and any Emission Reductions from, the Morača HPPs to any purchaser thereof during the Concession Period,

in each case in accordance with the Laws of Montenegro, the Environmental Standards, the Consents, this Agreement, and the other Project Agreements (such rights collectively, the “**Concession Rights**”).

**3.4 No Discrimination; No Expropriation**

- (a) The Grantor shall not, and shall ensure that no Public Authority shall, take any action that would materially and adversely affect the Concessionaire or its ability to fulfill its obligations under this Agreement or the Project Agreements based upon reasons of foreign ownership or control of the Concessionaire, and the Grantor shall, and shall ensure that other Public Authorities shall, treat the Concessionaire no less favorably than it treats any other entity doing similar

business in Montenegro, in accordance with the provisions of Article 8 of the Constitution of Montenegro.

- (b) Neither the Grantor nor any Public Authority shall expropriate, nationalize, or, except as hereinafter provided, compulsorily acquire (or take or otherwise permit any action or series of actions which either alone or when taken together has substantially the same effect as any of the foregoing) any material portion of the Project, the shares of the Concessionaire, or any of its assets, rights, or interests, whether in whole or in part; provided, however, that the foregoing shall not prohibit any actions taken by the Grantor, any Public Authority, or PRENOS pursuant to their respective rights and obligations arising under this Agreement or the Project Agreements.

### **3.5 Financing**

#### **3.5.1 Approval Rights; Financing Documents; Refinancings**

- (a) The Grantor shall have the right to approve the Lenders, and the interest rate, financing and commitment fees, insurance requirements, and other material terms and conditions of the Financing Documents and the indebtedness due thereunder. The Concessionaire shall provide the Grantor with final drafts of the Financing Documents for his approval at least thirty (30) Days prior to the anticipated date of Financial Closing. The Grantor shall render decision and inform the Concessionaire thereof within fifteen (15) days following the receipt of such documents.
- (b) No later than five (5) Business Days after Financial Closing (or closing of any Refinancing) the Concessionaire shall deliver to the Grantor a copy of all Financing Documents executed by the Concessionaire at or prior to Financial Closing or at or prior to the closing of any Refinancing together with a certificate certifying that such copies are true, accurate and complete copies of such Financing Documents.
- (c) After Financial Closing (or the closing of any Refinancing), the Concessionaire shall provide the Grantor with a copy of any modification or amendment to the Financing Documents within ten (10) Business Days of the execution or effectiveness thereof.
- (d) The Concessionaire shall not enter into any Refinancing, or otherwise enter into any material amendment to the Financing Documents, without the prior written consent of the Grantor.
- (e) Subject to Section 3.5.1(d), the Concessionaire shall undertake Refinancings as required by Section 11.3.
- (f) The Concessionaire shall take all actions that are necessary to comply with the Lender Guidelines.

### **3.5.2 Notification of the Grantor Equity Contributions; Certification**

- (a) The Concessionaire shall inform the Grantor if any equity required to be contributed by the Sponsor pursuant to the Financing Documents is not contributed within three (3) Business Days of the due date therefor.
- (b) Upon the contribution by the Sponsor of all amounts required to be contributed by the Sponsor under the Financing Documents as equity to the Concessionaire, the Concessionaire shall deliver to the Grantor a certificate, certified by its independent auditors, stating that all such amounts have been contributed.

### **3.6 Obligation to Achieve Financial Closing; Notice of Delay**

- (a) The Concessionaire shall cause the occurrence of Financial Closing by the Required Financial Closing Date.
- (b) Upon the occurrence of Financial Closing, the Concessionaire shall promptly give or cause to be given to the Grantor notice of the occurrence of Financial Closing.
- (c) Promptly upon learning any information suggesting Financial Closing will not occur by the Required Financial Closing Date, the Concessionaire shall notify the Grantor of such delay.

### **3.7 Liquidated Damages for Delay or Failure to Achieve Financial Closing; Notice of Delay**

- (a) If the Concessionaire is in breach of its obligation under Section 3.6(a) to achieve Financial Closing by the Required Financial Closing Date, then the Concessionaire shall pay to the Grantor as liquidated damages for each Day thereafter from and after the Required Financial Closing Date until the Day on which Financial Closing is actually achieved a Daily amount equal to twenty-seven thousand seven hundred seventy-eight Euros (€27,778); provided, however, that the Concessionaire's payment of liquidated damages pursuant to this Section 3.7 shall not exceed five million Euros (€5,000,000).
- (b) Promptly upon learning any information suggesting Financial Closing will not occur by the Required Financial Closing Date, the Concessionaire shall notify the Grantor of such delay.
- (c) If a Concessionaire Event of Default occurs prior to Financial Closing and the Grantor terminates this Agreement following such Concessionaire Event of Default, then the Concessionaire shall pay to the Grantor as liquidated damages the amount of five million Euros (€5,000,000).
- (d) The Concessionaire's obligation to pay liquidated damages pursuant to Section 3.7(a) and Section 3.7(c) shall be secured by the Financing Security posted by the

Sponsor pursuant to Section 6.3 (*Financing Security*) of the Sponsor Support Agreement.

### **3.8 Land and Land Rights**

#### **3.8.1 Acquisition of Land**

- (a) The Parties acknowledge that it will be necessary for the Concessionaire to have certain rights over the Project Sites, the Inundated Areas, and the Staging Areas in order to enable the Concessionaire to carry out its obligations under the Project Agreements.
- (b) In the event that the Grantor does not own any part of the lands that will constitute the Project Sites, the Inundated Areas, or the Staging Areas, then the Grantor shall, at its sole cost and expense, acquire (and/or lease, in the case of the Staging Areas) such lands, or appropriate rights in such lands, by agreement with private landowners or by expropriation in accordance with the Law on Expropriation, and upon the acquisition (and/or lease, in the case of the Staging Areas) of such lands or such rights in such lands by the Grantor, such lands or such rights in such lands shall become subject to the rights of the Concessionaire described in Section 3.8.2.

#### **3.8.2 Grant of Land Rights to the Concessionaire**

- (a) The Grantor hereby undertakes to deliver into peaceful possession of the Concessionaire, with the right to possess and use, without disturbance from the Grantor or any third parties and free of any Encumbrances:
  - (i) Morača HPPs Sites not later than 9 months upon Financial Closing and until the expiry of the Term or the termination of this Agreement in accordance with its terms;
  - (ii) the Inundated Areas not later than 24 months upon Financial Closing and until the expiry of the Term or the termination of this Agreement in accordance with its terms;
  - (iii) Staging Areas not later than 9 months upon Financial Closing and until the Commercial Operations Date or the termination of this Agreement in accordance with its terms;
  - (iv) Project Roads Routes not later than [●]<sup>1</sup> months upon [●]<sup>2</sup> and until the date when the Concessionaire transfers Project Roads pursuant to Section 3.15 (c) or the termination of this Agreement in accordance with its terms;

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<sup>1</sup> Deadline depends on technical solution

<sup>2</sup> Deadline depends on technical solution

- (v) Morača Transmission Lines Routes not later than [●]<sup>3</sup> months upon [●]<sup>4</sup> until the date on which the Concessionaire transfers the Morača Transmission Lines to PRENOS pursuant to Section 3.14 (a) (i) or the date of termination of this Agreement in accordance with its terms,

and such rights shall not be subject to the payment by the Concessionaire to the Grantor of any rent, tax, or other fee or revenue producing measure whatsoever, other than the Concession Fee and the Revenue Sharing Fee.

- (b) The Grantor and the Concessionaire shall sign the Delivery Protocol of the Project Sites, Inundated Areas and Staging Areas.

### **3.9 Separate Accounting**

The Concessionaire shall ensure that all costs of the Project (including the activities and costs of the Concessionaire in connection with the Project) and any other activity or business of the Concessionaire other than the Project are accounted for separately and properly, except as approved by the Grantor or ERA.

### **3.10 Negative Undertakings**

#### ***3.10.1 No Other Business Undertakings***

The Company shall not, without the prior written consent of the Grantor, except (in the case of Sections 3.10.1(b), 3.10.1(c), and 3.10.1(d) only) where the cumulative value of the investments or outlays made by the Company does not at any time exceed three million Euros (€3,000,000):

- (a) engage in or carry on any business other than the Project or as expressly permitted in the Project Agreements;
- (b) acquire any business or form, acquire or have an interest in any subsidiary or joint venture;
- (c) acquire any share or loan capital, or any security or other investment or interest in, any other person or company;
- (d) engage in any business or activity, in partnership or joint venture or otherwise with any other person, enter into any contract, make any investment or acquire any asset or incur any liability whether contingent or otherwise except as contemplated in and permitted by or incidental to the Project;
- (e) enter into any profit-sharing or royalty agreement or other similar arrangement whereby its income or profits are, or might be, shared with any other person or

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<sup>3</sup> Deadline depends on technical solution

<sup>4</sup> Deadline depends on technical solution

enter into any management contract or similar arrangement whereby its business or operations are managed by any other person other than:

- (i) pursuant to the Project Agreements;
- (ii) as contemplated in and permitted by or incidental to the Project; or
- (iii) in respect of any business or service that is ancillary to or incidental to the Project and which is either immaterial in the context of the overall Project or that has been previously approved in writing by the Grantor.

### **3.10.2 Maintenance of Status**

The Concessionaire shall not undertake or permit any corporate restructuring, or change of the legal form, or change in the jurisdiction of its incorporation without the Grantor's prior written consent, which consent shall not be unreasonably withheld or delayed.

### **3.11 Transactions with Affiliates**

The Company shall not enter into any transaction or agreements for the sale of capacity, net electrical output, or ancillary and system services with an Affiliate other than a Permitted Affiliate Transaction.

### **3.12 Capital Structure of the Company**

The Company shall ensure that its debt to equity ratio shall not exceed sixty percent (60%) debt to forty percent (40%) equity at any time during the Term.

### **3.13 Realization of Revenue**

The Company shall have the right to export electricity generated by the Morača HPPs in accordance with the Laws of Montenegro and all revenues achieved in such export shall be deemed as Project Revenues.

### **3.14 Transfer of Morača Transmission Lines**

The Concessionaire will:

- (i) grant PRENOS the right to operate, maintain, and use the Morača Transmission Lines, in each case as an integrated part of the PRENOS Transmission System; and
- (ii) transfer all of its rights, title, and interest in and to the Morača Transmission Lines to PRENOS,

in each case in accordance with the Agreement on Operation and Maintenance of the Transmission Network, in exchange for the compensation determined and payable thereunder over a period of up to twenty (20) Years, all in accordance with the Energy Law.

### **3.15 Road Relocation and Construction**

The Concessionaire shall:

- (a) relocate those sections of the existing road from Podgorica to Kolasin and any other existing roads that will be rendered unusable by the Project;
- (b) construct any new road necessary to restore access to any existing properties
  - (i) that are not expropriated,
  - (ii) whose existing access road will be rendered unusable by the Project, and
  - (iii) that will not be rendered unusable by the Project,

in each case in accordance with the Technical Requirements, the Project Development Plan, the Environmental Standards, and the Laws of Montenegro; and

- (c) transfer all of its rights, title, and interest in and to the Project Roads to the Grantor promptly upon the completion of the relocation or construction and obtaining of the respective occupancy permits, as applicable, of such Project Roads by the Concessionaire.

### **3.16 Participation of the Grantor**

The Grantor shall actively participate in the Project by investing in assets outside the Company, including by:

- (a) financing the acquisition (or lease, in the case of the Staging Areas) of any portion of the Project Sites, the Inundated Areas, and the Staging Areas that are not owned by the Grantor as of the Execution Date in accordance with Section 3.8.1;
- (b) granting the Concessionaire the right to use the Project Sites, the Inundated Areas, and the Staging Areas pursuant to Section 3.8.2; and
- (c) preservation of the site of the Morača Monastery.



### **3.17 Appointment of the Independent Engineer**

- (a) Not later than sixty (60) Days following the Execution Date, the Grantor shall appoint the Independent Engineer to observe the progress of the design, research, engineering, financing, construction, operation, maintenance, and Rehabilitation, as applicable, of the Project Facilities, for the purpose of confirming to the Grantor that such design, research, engineering, construction, operation, maintenance, and Rehabilitation are being performed in compliance with the Technical Requirements, the Project Development Plan, and the other requirements of the Project Agreements in accordance with the highest professional standards and duty of care to the Grantor.
- (b) The Concessionaire shall grant the Independent Engineer such access to the Project Sites, the Inundated Areas, and the Staging Areas as is necessary for the Independent Engineer to carry out the duties of the Independent Engineer specified in Section 3.17(a).
- (c) The costs and remuneration to which the Independent Engineer is entitled under the terms and conditions of the Independent Engineer's appointment shall be borne by the Concessionaire.

### **3.18 Compensation of EPCG for EPCG Technical Documentation<sup>5</sup>**

The Grantor shall at its own cost:

- (a) procure in favour of the Concessionaire the right to use EPCG's technical documentation as of the Execution Date;
- (b) within 5 days from Financial Closing establish free of charge, transferrable, permanent royalty-free sub-license to the Concessionaire over any and all patents, design rights, copyrights, and other proprietary information or other intellectual property right that EPCG has in or over the EPCG Technical Documentation, to the extent permitted by the rights EPCG has in the EPCG Technical Documentation without obtaining the consent of any third party.

All rights on EPCG's technical documentation established in favour of the Concessionaire shall be established on as-is basis without any explicit or implied representation or warranty on accuracy, truthfulness or completeness thereof or its fitness for any particular purpose.

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<sup>5</sup> Depending on technical solution

### **3.19 Exploration works upon Execution Date**

The Concessionaire shall, in the period from the Execution Date until the Construction Start Date, perform all or any required works in accordance with the Laws of Montenegro, in order to determine conditions of the Project Sites, Inundated Areas and Staging Areas.

The Concessionaire shall, upon the Grantor's request, prior to the performance of such works, obtain appropriate insurance required by the Article 18 of the Agreement and deliver to the Grantor the evidence that such insurance is provided in accordance with the Section 18.3.

The Concessionaire shall inform in writing the Grantor of such intended works timely in advance and shall bear all the costs of carrying out such works.

Without prejudice to any other provision of this Agreement, prior to the Construction Start Date, the Concessionaire shall be deemed to have, and warrants that it has:

- (a) inspected and examined to its satisfaction Project Sites, Inundated Areas and Staging Areas and its surroundings and, where applicable, any existing structures or works on, over or under the Project Sites, Inundated Areas and Staging Areas;
- (b) satisfied itself as to the nature of the geological, geotechnical, sub-surface conditions climatic, hydrological, environmental and general conditions of the Project Sites, Inundated Areas and Staging Areas, the nature of the ground, the form and nature of Project Sites, Inundated Areas and Staging Areas;
- (c) satisfied itself as to:
  - (i) the means of communication with and access to and through the Project Sites, Inundated Areas and Staging Areas and the accommodation it may require;
  - (ii) the precautions and times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties;
  - (iii) the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement;
- (d) gathered all information necessary to perform its obligations under this Agreement, including:
  - (i) information as to the nature, location and condition of the Project Sites, Inundated Areas and Staging Areas (including hydrological, geological, geo-technical, sub-surface, climatic, hydrological and environmental conditions); and
  - (ii) information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures;

- (e) thoroughly examined, reviewed, checked and satisfied itself as to the adequacy, correctness and suitability of all EPCG Studies which the Concessionaire has adopted or made use of or which the Concessionaire intends to adopt or make use of;
- (f) generally obtained for itself all necessary information as to:
  - (i) the risks, contingencies and all other circumstances which may influence or affect its ability to realize the Project; and
  - (ii) any other factors which would have affected its decision to enter into this Agreement or the terms on which it would have done so.

## **Article 4 Consents**

### **4.1 Applications by the Concessionaire for Consents**

#### **4.1.1 *Concessionaire to Submit Applications***

The Concessionaire shall make or cause to be made, in a timely fashion, all applications (whether initial or renewal applications) for the Consents in the Prescribed Consent Form and with the Prescribed Consent Fee to the appropriate Public Authority and shall diligently pursue all such applications. The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the Laws of Montenegro applied in a non-discriminatory manner.

#### **4.1.2 *Non-Discrimination***

The use of the term “non-discriminatory” or “discriminatory” in this Agreement is not intended to disable or limit in any way the Grantor or any Public Authority from making rational distinctions between parties or from using measures, establishing conditions, or enforcing requirements that are, in each case, intended or designed to advance the purposes of the Consents or program being implemented by the Grantor or Public Authority.. It is intended, however, to prohibit the use of Public Authority, over the Consents, inter alia, to deprive the Concessionaire of the benefits of this Agreement by the application of a higher standard to the Concessionaire alone, or together with others in a small class, than to others similarly situated because of, for example, its foreign ownership, or to gain commercial or political advantage.

### **4.2 Status of Consent Applications**

- (a) The Concessionaire shall deliver to the Ministry of Economy at least quarterly reports listing its schedule for submitting Consent application forms or renewal

application forms, the status of any Consent applications then outstanding, notifications of the granting or denial of any Consent or Consent renewal, and notifications of any violations of any Consent.

- (b) Each report shall include copies of all applications and notifications discussed in the report that have not been provided with a previous report. The first Section of each report shall also summarize any problems regarding any material Consent or Consent application that may affect the Concessionaire's performance under this Agreement.
- (c) In the event of any Lapse of Consent, the Concessionaire shall submit to the Grantor a report pursuant to this Section 4.2 within three (3) Business Days after becoming aware thereof.

#### **4.3 The Grantor Support to Obtain Consents**

- (a) Subject to the Concessionaire's timely submission of reports required by Section 4.2, upon request of the Concessionaire, the Grantor shall, and shall cause PRENOS to, support and use all reasonable efforts to expedite consideration of the Concessionaire's applications for Consents or reissuances thereof filed pursuant to Section 4.1, and the timely issuance thereof or reissuance of a Consent subject to a Lapse of Consent by any Public Authority.
- (b) Any request for support under this Section 4.3 shall be made by the Concessionaire and shall be accompanied by copies of the application for the Consent, any notice that the issuance or reissuance of the Consent was denied or deferred, and a statement of the Concessionaire's efforts in obtaining the issuance or reissuance of the Consent to date.

#### **4.4 Conditions to Consents**

The Grantor or any Public Authority may attach such non-discriminatory terms and conditions to the issuance or renewal of any of the Consents as are in accordance with the Laws of Montenegro, and the attachment of such terms and conditions shall not in and of itself constitute a breach of this Agreement by the Grantor, a Force Majeure Event under Article 23 (unless it constitutes a Change in Law), or a Grantor Event of Default under Section 21.2. The Concessionaire shall abide by all such terms and conditions. If the Concessionaire fails to abide by any term or condition of any Consent, then the Grantor or any Public Authority may exercise any power pursuant to the Laws of Montenegro in respect of such failure and such exercise shall not of itself constitute a breach of this Agreement by the Grantor, a Force Majeure Event under Article 23, or a Grantor Event of Default under Section 21.2; provided, however, that,

- (a) with respect to all such Consents issued by the Grantor or any Public Authority, the Grantor shall not, and the Grantor shall (provided that the Grantor has such authority under the Laws of Montenegro) ensure that no such Public Authority

shall, terminate prior to its expiration date or revoke any such Consent earlier than the later of:

- (i) thirty (30) Days after delivery to the Concessionaire of written notice by the Grantor or such Public Authority of such failure; and
  - (ii) the period of time, if any, that must expire under the Laws of Montenegro or the relevant Consent prior to early termination or revocation of any such Consent.
- (b) Nothing in this Section 4.4 shall limit the Grantor or any Public Authority from:
- (i) taking any action in relation to a breach of, or non-compliance with, a Consent (other than termination or revocation) that it is entitled to take under the Laws of Montenegro; or
  - (ii) requiring the Concessionaire to cease operating the Morača HPPs.

## **Article 5**

### **Appointment and Use of Contractors**

#### **5.1 Appointment and Use of Contractors**

##### ***5.1.1 Use of Contractors for Construction, Operation, and Maintenance***

The Concessionaire shall design, research, engineer, finance, construct, operate, maintain, and undertake the Rehabilitation of, as applicable, the Project Facilities; provided, however, that the Concessionaire may contract with:

- (a) the EPC Contractor to design, research, engineer, and construct the Morača HPPs and the Morača Transmission Lines;
- (b) the Road Works Contractor to relocate or construct, as applicable, the Project Roads;
- (c) the Rehabilitation EPC Contractor to undertake the Rehabilitation; and
- (d) the O&M Contractor to operate and maintain the Morača HPPs;

in each case in accordance with Section 25.13.

##### ***5.1.2 Operation of the Morača HPPs by the Concessionaire***

Notwithstanding anything contained in this Article 5 to the contrary, the Concessionaire shall be entitled to engage its own personnel and operate the Morača HPPs or, if the O&M Agreement then in effect has expired or been terminated by the Concessionaire in

accordance with its terms, engage some or all of the personnel of the former O&M Contractor and operate the Morača HPPs with prior notice to the Grantor.

## **Article 6 Construction of the Project**

### **6.1 Construction of the Project Facilities**

- (a) The Concessionaire shall take all actions necessary to achieve the Construction Start Date not later than 30 Days upon the Day on which the Delivery Protocol from Section 3.8.2. (b) was signed with respect to Morača HPPs Sites, Staging Areas, Project Roads Routes and Morača Transmission Lines Routes
- (b) The Concessionaire shall provide the Grantor with a copy of the notice to proceed issued under the EPC Contract within three (3) Business Days of the Construction Start Date together with a certificate stating that the Construction Start Date has been achieved.
- (c) The Concessionaire shall ensure that the EPC Works and the Road Works shall be carried out with all proper skill and care and in all material respects in accordance with:
  - (i) this Agreement, including the Technical Requirements and the Project Development Plan;
  - (ii) the Agreement on Operation and Maintenance of the Transmission Network;
  - (iii) the Transmission Network Connection Contract;
  - (iv) the Laws of Montenegro;
  - (v) the Connection Approval;
  - (vi) the Consents;
  - (vii) the Environmental Standards;
  - (viii) Prudent Utility Practices;
  - (ix) sound engineering and construction practices, including such engineering and construction practices as are required by the applicable standards and codes of Montenegro, or, in the absence of applicable Montenegrin codes and standards, such practices as are required by applicable internationally recognized standards and codes, such as the ASTM, ISO, DIN, BS, SS, EN, and similar standards and codes;

- (x) any applicable Lender Guidelines; and
- (xi) the Environmental Impact Assessment, including any environmental impact mitigation measures contained therein,

as applicable, so that:

- (A) the dams, civil, and structural components of the Morača HPPs shall be reasonably expected to provide a useful life of not less than one hundred (100) years from and after the Commercial Operations Date,
- (B) the electrical and mechanical systems of the Morača HPPs shall be reasonably expected to provide a useful life of not less than fifty (50) years from and after the Commercial Operations Date,
- (C) the Connection Facilities shall be reasonably expected to provide a useful life of not less than fifty (50) years from and after the Commercial Operations Date, and
- (D) the Morača Transmission Lines shall be reasonably expected to provide a useful life of not less than fifty (50) years from and after the Commercial Operations Date.

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- (d) The Concessionaire shall:
  - (i) carry out and complete the EPC Works such that the Concessionaire achieves the Commercial Operations Date by the Required Commercial Operations Date; and
  - (ii) carry out and complete the Road Works such that the relocation and construction are completed, as applicable, of all Project Roads and effected transfer all Project Roads to the Grantor in accordance with Section 3.15(c) prior to the inundation of the Inundated Areas.
- (e) The Concessionaire shall cause all equipment that is permanently installed by the EPC Contractor as part of the Morača HPPs or the Morača Transmission Lines to be new and unused and to otherwise comply with the requirements of Schedule 7.
- (f) The Concessionaire shall not make, without the Grantor's prior consent, any modification or addition to the Morača HPPs, Morača Transmission Lines or Project Roads not contemplated by the Project Development Plan that has or can reasonably be predicted to have a material adverse effect on the performance of the Project Facilities or the ability of the Concessionaire to perform its obligations under this Agreement.

## **6.2 Obligation to Achieve Contract Capacities**

The Concessionaire shall cause each Unit, each hydroelectric power plant within Morača HPPs, Morača HPPs as a whole, as well as Morača Transmission Lines to achieve their respective Contract Capacity.

## **6.3 Liquidated Damages for Failure to Achieve Contract Capacities**

- (a) If the Concessionaire fails to achieve the Contract Capacities as required by Section 6.2 then the Concessionaire shall pay to the Grantor as liquidated damages an amount equal to two hundred thousand Euros (€200,000) for each one hundredth of a percent (.01%) of reduction; provided, however, that the Concessionaire's payment of liquidated damages pursuant to this Section 6.3(a) shall not exceed fifty million Euros (€50,000,000).
- (b) The Concessionaire's obligation to pay liquidated damages pursuant to Section 6.3(a) shall be secured by the Construction Security posted by the Sponsor pursuant to Section 6.4 (*Construction Security*) of the Sponsor Support Agreement.

## **6.4 Duties of the Independent Engineer**

The Independent Engineer will perform the duties of the Independent Engineer provided in this Agreement, including:

- (i) confirming the accuracy of the Construction Reports;
- (ii) inspecting the EPC Works and the Connection Works;
- (iii) witnessing any tests;
- (iv) issuing the Certificates of Readiness for Synchronization;
- (v) issuing the Certificates of Readiness for Commissioning;
- (vi) issuing the Unit Commissioning Certificates;
- (vii) issuing the Unit Capacity Certificates;
- (viii) issuing the Hydropower Plant Commissioning Certificates;
- (ix) issuing the Hydropower Plant Capacity Certificates;
- (x) issuing the Transmission Lines Commissioning Certificate;
- (xi) issuing the Transmission Lines Capacity Certificate;



- (xii) issuing the Morača HPPs Commissioning Certificate;
- (xiii) issuing the Morača HPPs Capacity Certificate;
- (xiv) undertaking any other tests or activities required to be undertaken by the Independent Engineer pursuant to this Agreement; and
- (xv) undertaking any other tests or activities agreed upon by the Parties, as the Parties may reasonably request from time to time,

in each case in accordance with this Agreement and the Laws of Montenegro.

## **6.5 Liquidated Damages for Delay in Achieving Commercial Operations Date; Notice of Delay**

- (a) If the Concessionaire is in breach of its obligation under Section 6.1(d) to achieve the Commercial Operations Date by the Required Commercial Operations Date, then the Concessionaire shall pay the Grantor as liquidated damages for each Day after the Required Commercial Operations Date until the Commercial Operations Date is actually achieved a Daily amount equal to two hundred seventy-seven thousand seven hundred seventy-eight Euros (€277,778); provided, however, that the Concessionaire's payment of liquidated damages pursuant to this Section 6.5 shall not exceed fifty million Euros (€50,000,000).
- (b) Promptly upon learning any information suggesting that the Commercial Operations Date will occur later than the scheduled Commercial Operations Date, the Concessionaire shall notify the Grantor of such delay.
- (c) If a Concessionaire Event of Default occurs after Financial Closing and prior to the Commercial Operations Date, and the Grantor terminates this Agreement following such Concessionaire Event of Default, then the Concessionaire shall pay to the Grantor as liquidated damages the amount of fifty million Euros (€50,000,000).
- (d) The Concessionaire's obligation to pay liquidated damages pursuant to Section 6.5(a) and Section 6.5(c) shall be secured by the Construction Security posted by the Sponsor pursuant to Section 6.4 (*Construction Security*) of the Sponsor Support Agreement.

## **6.6 Submission of Reports and Information**

### **6.6.1 Concessionaire Submission of Reports and Information**

The Concessionaire shall submit, or cause to be submitted, to the Grantor and to the Independent Engineer the following documents on or before the specified dates:

- (a) beginning within thirty (30) Days after the Construction Start Date and until the Commercial Operations Date:
  - (i) reasonably detailed Construction Reports not later than the last Day of March, June, September, and December, including any updates to the construction schedule contained therein;
  - (ii) reports, when and as the Concessionaire becomes aware, of any condition, event, or any change in such condition or event that will have a material and adverse effect on the timely completion of the construction of the Project Facilities;
  - (iii) a list identifying Consents applied for by the Concessionaire or its Contractors but not yet issued or received, not later than the last day of March, June, September and December and an estimate of the time within which such Consents will be obtained;
- (b) immediately upon obtaining thereof, copies of each of the Consents required to be obtained for the design, research, engineering, financing, construction, operation, maintenance of the Project Facilities, and Rehabilitation;
- (c) at least sixty (60) Days prior to the scheduled commencement of testing and Commissioning, a preliminary start-up and test schedule;
- (d) as soon as available, but no later than thirty (30) Days following Commissioning Tests, two copies of all results of the respective Commissioning Tests, including tests of major equipment, tests of related electricity metering equipment, and a certificate from the Independent Engineer confirming each successful Commissioning Test;
- (e) no later than thirty (30) Days following each successful Commissioning Test, for the major items of the plant incorporated into the Morača HPPs and Morača Transmission Lines, one (1) copy, as received by the Concessionaire pursuant to the EPC Contract, of all the manufacturers' specifications and manufacturers' operation and maintenance manuals; and

### **6.6.2 Concessionaire Document Requests**

The Grantor shall provide to the Concessionaire within fifteen (15) Business Days after receipt of a written request from the Concessionaire, such documents and data in the Grantor's possession and control as may be reasonably necessary for the Concessionaire to undertake the Connection Works, the EPC Works, and the Road Works.

### **6.6.3 Notifications**

- (a) The Concessionaire shall notify the Grantor promptly from time to time whenever it determines that the then expected date for the Commissioning is unfeasible or inappropriate, and shall specify a revised expected date for the Commissioning

that shall not in any event be earlier than ten (10) Business Days following the date of delivery of such notice to the Grantor.

- (b) Each Party shall notify the other Party in a timely manner upon becoming aware of any changes to the information provided to the other Party pursuant to this Section 6.6.3.

## **6.7 The Grantor Observation Visits**

The Grantor shall have the right, on a recurring basis and upon reasonable prior notice to the Concessionaire to have the Grantor's officers, employees, and representatives observe the progress of the EPC Works, the Connection Works, the Road Works, and other works on the Project Facilities. The Concessionaire shall comply with all reasonable requests of the Grantor for, and assist in arranging, any such observation visits. The Grantor's visits shall be reasonable both in terms of the frequency of such visits and the number of persons. All persons visiting the Project Facilities, or the Project Sites, the Inundated Areas, or the Staging Areas, on behalf of the Grantor shall comply with the Concessionaire's and its Contractors' generally applicable safety regulations and procedures made available to such persons and shall comply with the reasonable instructions and directions of the Concessionaire and its Contractors, and shall not unreasonably cause any interference with or disruption to the activities of the Concessionaire or its Contractors on the Project Sites, the Inundated Areas, or the Staging Areas.

## **Article 7**

### **Commissioning; Commercial Operations Date**

## **7.1 Pre-Synchronization, Post-Synchronization, and Commissioning Tests**

### **7.1.1 Test Procedures**

- (a) *Pre-Synchronization Tests.* Prior to synchronizing a Unit, the Concessionaire shall conduct the Pre-Synchronization Tests described in Schedule 7 on such Unit. Once the Concessionaire is satisfied that the Unit has successfully passed the Pre-Synchronization Tests, the Concessionaire shall request that the Independent Engineer issue the Certificate of Readiness for Synchronization for such Unit.
- (b) *Post-Synchronization Tests.* Upon the issuance by the Independent Engineer of the Certificate of Readiness for Synchronization with respect to a particular Unit, the Concessionaire shall conduct the Post-Synchronization Tests described in Schedule 7, on such Unit. Once the Concessionaire is satisfied that the Unit has successfully passed the Post-Synchronization Tests and is capable of continued reliable operation, the Concessionaire shall request that the Independent Engineer to issue the Certificate of Readiness for Commissioning for such Unit. Upon issuance of the Certificate of Readiness for Commissioning for each Unit of

particular Hydropower Plant, Independent Engineer shall issue the Certificate of Readiness for Commissioning for such Hydropower Plant. Upon the issuance of Certificate of Readiness for Commissioning for each Hydropower Plant, Independent Engineer shall issue Certificate of Readiness for Commissioning for Morača HPPs and Morača Transmission Line.

- (c) *Unit Commissioning Tests.* Upon the issuance by the Independent Engineer of the Certificate of Readiness for Commissioning with respect to a particular Unit, the Concessionaire shall carry out the Unit Commissioning Tests described in Schedule 7 on such Unit. Once the Concessionaire is satisfied that the Unit has successfully passed the Unit Commissioning Tests, the Concessionaire shall request that the Independent Engineer issues a Unit Commissioning Certificate and a Unit Capacity Certificate with respect to that Unit.
- (d) *Hydropower Plant Commissioning Tests.* Upon issuance by the Independent Engineer of a Certificate of Readiness for Commissioning for particular Hydropower Plant and Unit Commissioning Certificate for each Unit within a Hydropower Plant, the Concessionaire shall carry out the Hydropower Plant Commissioning Tests described in Schedule 7 on such Hydropower Plant. Once the Concessionaire is satisfied that the Hydropower Plant has successfully passed the Hydropower Plant Commissioning Tests, the Concessionaire shall request that the Independent Engineer issues a Hydropower Plant Commissioning Certificate and Hydropower Plant Capacity Certificate with respect to that Hydropower Plant.
- (e) *Transmission Lines Commissioning Tests.* Upon issuance by the Independent Engineer of a Certificate of Readiness for Commissioning for Morača Transmission Lines, but prior to energizing the Morača Transmission Lines or any portion thereof, the Concessionaire shall conduct the Transmission Lines Commissioning Tests described in Schedule 7. Once the Concessionaire is satisfied that the Morača Transmission Lines have successfully passed the Transmission Lines Commissioning Tests, the Concessionaire shall request that the Independent Engineer issue the Transmission Lines Commissioning Certificate and the Transmission Lines Capacity Certificate.
- (f) *Morača HPPs Commissioning Tests.* Upon the issuance by the Independent Engineer of:
  - (i) Certificate of Readiness for Commissioning for Morača HPPs;
  - (ii) Hydropower Plant Commissioning Certificate, for each Hydropower Plant; and
  - (iii) Transmission Lines Commissioning Certificate,

the Concessionaire shall carry out the Morača HPPs Commissioning Tests. Once the Concessionaire is satisfied that the Morača HPPs has successfully passed the Morača HPPs Commissioning Tests, the Concessionaire shall request that the

Independent Engineer issues the Morača HPPs Commissioning Certificate and the Morača HPPs Capacity Certificate.

- (g) *Testing Procedures.* All tests undertaken pursuant to this Section 7.1.1 shall be undertaken in accordance with the procedures set forth in Schedule 7, and such additional testing procedures as may be negotiated by the Parties upon the request of either Party.
- (h) *Minimum performance criteria.* Minimum performance criteria for the Commissioning Tests are included in Schedule 7.
- (i) *Occupancy Permits.* Following the issuance of a Unit Commissioning Certificate, Hydropower Plant Commissioning Certificate, Morača HPPs Commissioning Certificate, or the Transmission Lines Commissioning Certificate, the Concessionaire shall apply for an Occupancy Permit with respect to the applicable Unit, Hydropower Plant, Morača HPPs or the Morača Transmission Lines.
- (j) The Independent Engineer shall observe all tests undertaken pursuant to this Section 7.1.1, the Concessionaire shall notify the Grantor and the Independent Engineer of the proposed date and time of the performance of each of such test at least ten (10) Business Days in advance thereof. In the event that the Independent Engineer or the Grantor are not able to observe the performance of a test at the time and date proposed by the Concessionaire, then they shall advise the Concessionaire that they are not able to observe the performance of the test at the time and date proposed by the Concessionaire, and the Concessionaire, the Independent Engineer, and the Grantor shall use their best efforts to agree on a mutually convenient time for the performance of the test that occurs not later than ten (10) Days after the date initially proposed by the Concessionaire.

### **7.1.2 Additional Tests**

- (a) The Concessionaire shall not be entitled to carry out more than ten (10) repetitions of any test conducted pursuant to the Section 7.1.1 to satisfy the minimum criteria for achieving the Commercial Operations Date; provided, however, that no test undertaken by the Concessionaire shall be counted against such ten (10) tests if the Concessionaire is prevented from completing the test due to a reason attributable to the Grantor or a lack of transmission capacity on the PRENOS Transmission System.
- (b) The Concessionaire shall give the Grantor not less than three (3) Days notice of each additional test it desires to attempt.

### **7.1.3 Conditions Precedent to the Commercial Operations Date**

- (a) The achievement of the Commercial Operations Date is subject to the satisfaction of the following conditions precedent to the reasonable satisfaction of the Grantor.
  - (i) The Grantor shall have received

- (A) Morača HPPs Commissioning Certificate;
  - (B) Unit Capacity Certificate for each Unit indicating that the Tested Capacity of such Unit is equal to or greater than ninety-five percent (95%) of the Contract Capacity of such Unit;
  - (C) Hydropower Plant Capacity Certificate for each Hydropower Plant indicating that Tested Capacity of such Hydropower Plant has a capacity that is equal to or greater than ninety-five percent (95%) of the Contract Capacity of such Hydropower Plant; and
  - (D) Morača HPPs Capacity Certificate indicating that the Tested Capacity of Morača HPPs is equal to or greater than ninety-five percent (95%) of the Contract Capacity of the Morača HPPs.
- (ii) The Independent Engineer submitted to the Grantor the certificate confirming that construction of the Project Facilities was conducted in line, in all of its material aspects, with the provisions of this Agreement;
  - (iii) The Concessionaire shall have paid to the Grantor all liquidated damages that are then outstanding under this Agreement, including any liquidated damages payable under Sections 3.7, 6.3 and 6.5.
  - (iv) The Concessionaire shall have:
    - (A) obtained all insurance it is then required to have obtained pursuant to Article 18; and
    - (B) delivered to the Grantor the certificates of insurance required to be delivered pursuant to Section 18.3.
  - (v) The Concessionaire shall have transferred all of its rights, title, and interest in and to the Morača Transmission Lines to PRENOS in accordance with the Agreement on Operation and Maintenance of the Transmission Network.
  - (vi) The Concessionaire shall have submitted to the Grantor a certificate of an authorized officer of the Concessionaire familiar with the Project and made after due inquiry stating that:
    - (A) all necessary Consents required to commence commercial operations have been obtained and are in full force and effect and that the Concessionaire is not in default in relation to any of those Consents;
    - (B) the Concessionaire is in compliance with and is able to continue complying with the terms and conditions of this Agreement in all respects;

- (C) the Concessionaire's operations and the Project Facilities are in compliance with all applicable Environmental Standards; and
  - (D) the Concessionaire is not in default under any of the Project Agreements.
- (vii) the Concessionaire shall have handed back to the Grantor or lessor, as applicable, all Staging Areas, upon returning the same to the condition in which it was delivered to the Concessionaire;
- (viii) the Concessionaire shall have submitted to the Grantor a copy of the Occupancy Permits for all of the Project Facilities.

## **7.2 Notice of and Compliance with Testing Procedures**

- (a) The Concessionaire shall give the Grantor not less than twenty-four (24) hours prior written notice of any testing or Commissioning in accordance with this Article 7 and the Grantor shall be entitled to be present and observe any such testing and Commissioning to verify that the testing or Commissioning is performed in accordance with the requirements of this Agreement.
- (b) The Grantor may Dispute the results of any tests or Commissioning not carried out in accordance with this Article 7 and Schedule 7.

## **7.3 Copies of Test Results**

- (a) The Concessionaire shall provide the Grantor with copies of the test results of all tests performed in line with:
  - (i) the Article 7, or
  - (ii) requirements of the Laws of Montenegro.
- (b) The Grantor shall not use or disclose such results other than in connection with the administration and enforcement of this Agreement.

## **7.4 Testing Disputes**

Any Dispute between the Concessionaire and the Grantor arising under this Article 7 shall be resolved in accordance with the provisions of Article 24; provided, however, that, in the case of a Dispute as to the successful completion of the Commissioning Tests, as certified by the Independent Engineer, such Dispute shall, unless the Parties otherwise agree, qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 24.

**Article 8**  
**Operation, Maintenance, and Staffing**

**8.1 Operation and Maintenance of the Morača HPPs**

- (a) The Concessionaire shall and shall cause its Contractors to operate and maintain the Morača HPPs in accordance with:
  - (i) this Agreement, including the Technical Requirements and the Project Development Plan;
  - (ii) the Laws of Montenegro;
  - (iii) the Consents;
  - (iv) the Environmental Standards;
  - (v) Prudent Utility Practices;
  - (vi) the maintenance and safety requirements contained in international and local standards and codes, such as those published by ICOLD, USBR, US Corps, and ASCE, and to the international standards of IEC and IEEE or equivalent for mechanical and electrical equipment;
  - (vii) any Lender Guidelines, to the extent they are applicable; and
  - (viii) the Environmental Impact Assessment, including any environmental impact mitigation measures contained therein,
- (b) The Concessionaire shall maintain the Morača HPPs in a condition such that it is capable of operation within the Contracted Operating Characteristics and shall promptly inform the Grantor of any inability to operate in accordance with such Contracted Operating Characteristics.
- (c) The Concessionaire shall operate the Morača HPPs within the range of voltage levels specified in the Technical Requirements.

**8.2 Employment of Qualified Personnel**

From and after the first date that any electric energy is delivered from the first synchronized Unit, the Concessionaire shall ensure that its or its Contractors' personnel are on duty at the Morača HPPs at all times, and that such personnel are adequately qualified and trained, and who have experience as necessary and appropriate to undertake the duties for which they are engaged at the Morača HPPs.



### **8.3 Maintenance of Operating Records**

- (a) The Concessionaire shall keep complete and accurate records and all other data reasonably required for the proper administration of this Agreement.
- (b) All such records and data shall be maintained for a minimum of seventy two (72) months after the creation of such record or data and for any additional length of time required by any Laws of Montenegro or Public Authority with jurisdiction over either the Concessionaire and the Concessionaire shall not dispose of or destroy any such records or data after such seventy two (72) month period unless previously approved by the Grantor.
- (c) The Grantor shall have the right, upon ten (10) Days prior written notice to the other Party, to examine the records and data kept by the Concessionaire pursuant to Section 8.3(a) at any time during normal office hours during the period such records and data are required hereunder to be maintained.

### **8.4 Free of Encumbrances**

The Concessionaire shall at all times keep the Project Facilities free and clear of all Encumbrances other than those in favor of the Lenders as permitted under Section 25.12.

### **8.5 The Grantor's Inspection Rights During Commercial Operation**

- (a) Following the Commissioning of the first Unit to be Commissioned, representatives of the Grantor shall, at all reasonable times, including weekends and nights, and with reasonable prior notice, have access to the Morača HPPs to perform all relevant inspections, observations, maintenance, service, and operational reviews of works and information on works as may be reasonably appropriate to facilitate the performance of this Agreement.
- (b) While at the Morača HPPs, such representatives shall observe such safety precautions as may be required by the Concessionaire and shall conduct themselves in a manner that will not interfere with the operation of the Morača HPPs.
- (c) Any visits to the Morača HPPs by the Grantor or its representatives shall not be construed as an endorsement by the Grantor of the operation, maintenance, modification, and repair procedures employed by the Concessionaire at the Morača HPPs.

## **Article 9 Rehabilitation**

### **9.1 Rehabilitation**

- (a) The Concessionaire shall design, research, engineer, construct (as applicable), and otherwise undertake the Rehabilitation Works described in Section 9.1(b)(i) in a good and workmanlike manner and in all respects in accordance with:
- (i) the Laws of Montenegro;
  - (ii) the Environmental Standards;
  - (iii) sound engineering and construction practices, including such engineering and construction practices as are required by applicable internationally recognized standards and codes such as the ASTM, ISO, DIN, BS, SS, EN, and similar standards and codes; and
  - (iv) Prudent Utility Practices,
- so that the Rehabilitation Works shall have been completed by the Concessionaire by the expiration of the Concession Period.
- (b) The Concessionaire and the Grantor shall, not later than eight (8) years prior to the expiration of the Concession Period, jointly appoint an international firm of consulting engineers with expertise in the rehabilitation of hydroelectric projects similar to the Morača HPPs (the “**Rehabilitation Study Engineer**”) to undertake a study (the “**Rehabilitation Study**”) that will:
- (i) Notwithstanding the provisions of Section 6.1 (c), define the scope of the works (the “**Rehabilitation Works**”) required to:
    - (A) rehabilitate the Morača HPPs so that the Morača HPPs are capable, following completion of the Rehabilitation, or achieving the Contracted Operating Characteristics;
    - (B) extend the expected life of the electrical and mechanical systems of the Morača HPPs so that they will have an expected service life that equals or exceeds twenty (20) years beyond the expiration of the Concession Period; and
    - (C) extend the expected life of the dams, civil and structural elements of the Morača HPPs so that they will have an expected service life that equals or exceeds seventy (70) years beyond the expiration of the Concession Period; and

- (ii) estimate the cost of performing the Rehabilitation Works (“**Rehabilitation Works Cost Estimate**”).
- (c) The terms of reference for the Rehabilitation Study shall require the Rehabilitation Study Engineer to complete the Rehabilitation Study within six (6) months of their appointment. The costs of the Rehabilitation Study shall be borne equally by the Parties. The Concessionaire and the Grantor shall each have the right to comment on drafts of the Rehabilitation Study and to present their comments thereon to the Rehabilitation Study Engineer. Any dispute between the parties on the Rehabilitation Study shall qualify as a Technical Dispute for purposes of dispute resolution proceedings under Article 23..
- (d) Upon the completion of the Rehabilitation Study, the Concessionaire shall begin depositing one sixtieth (1/60<sup>th</sup>) of the Rehabilitation Works Cost Estimate plus thirty percent (30%) thereof into the Rehabilitation Fund each month so that the amount on deposit in the Rehabilitation Fund will be sufficient to pay for the Rehabilitation during the last two and one half (2–1/2) years of the Concession Period.
- (e) The Rehabilitation Fund shall be held in an escrow account to be established at a commercial bank licensed to conduct business in Montenegro pursuant to an escrow agreement reasonably acceptable to the Concessionaire, the Grantor, and the bank at which the Rehabilitation Fund is held.
- (f) If the Rehabilitation Works Cost Estimate is higher than the actual Rehabilitation costs such that funds are left in the escrow account following the payment of all costs associated with the Rehabilitation, then such funds shall be released from the escrow account to the Concessionaire.
- (g) The Concessionaire undertakes to bear all the costs of Rehabilitation including any excess of the Rehabilitation costs over the Rehabilitation Works Cost Estimate.
- (h) The Concessionaire shall inform the Grantor and Rehabilitation Study Engineer on the occurrence of any events which may affect the content of Rehabilitation Study and/or Rehabilitation Works Cost Estimate as soon as possible for the purpose of amending/supplementing the Rehabilitation Study and/or Rehabilitation Works Cost Estimate. The Concessionaire shall effect additional payments to the Rehabilitation Fund within 15 Days upon receipt of such amendments/supplements to the Rehabilitation Study and/or Rehabilitation Works Cost Estimate, in order to completely implement the Rehabilitation.

## Article 10

### Transfer Following Expiration of the Concession Period

Upon the expiration of the Concession Period:

- (a) the Concession Rights granted pursuant to Section 3.3 shall expire;
- (b) the right to use the Project Sites, as applicable, and the Inundated Areas granted pursuant to Section 3.8.2(a) shall expire; and
- (c) the Concessionaire shall transfer all of its rights, title, and interest on
  - (i) the Project Facilities;
  - (ii) all books, records, and other documents relating to the Project Facilities;
  - (iii) any equipment, machinery, materials, real property, interests in real property, intellectual property, interests in intellectual property, or other property of any kind that are owned, leased, or licensed by the Concessionaire or in which the Concessionaire otherwise holds a legal or beneficial interest and are used by the Concessionaire in connection with the Project or the performance of the Concessionaire's obligations under the Project Agreements; and
  - (iv) the Project Contracts and all other contracts relating to the Concessionaire's participation in the Project, from and after the Day of expiry of the Concession Period;
- (d) the Concessionaire is not obliged to give or transfer the following:
  - (i) cash in hand and at the bank;
  - (ii) the trade and book debts and receivables accruing to the Concessionaire prior to, but unpaid at, the Day of expiry of the Concession Period; and
  - (iii) the benefit of claims under warranties, guarantees, conditions, indemnities, and insurance policies howsoever arising out of any events occurring or circumstances arising prior to the expiration of the Concession Period, other than any Outstanding Insurance Claims and any outstanding claims under warranties, guarantees, conditions, and indemnities to the extent that such claims relate to physical Loss or damage to or defects in the Project Facilities, if applicable, occurring prior to but remaining unremedied as of the Day of expiry of the Concession Period.
- (e) the Concessionaire shall deliver or make available to the Grantor:

- (i) documents on such conveyances, transfers, notarial deeds, assignments, novations, and other documents (duly sealed or signed as a deed by the Concessionaire and, if so reasonably required by the Concessionaire) together with the related documents of title, as the Grantor may reasonably require to give effect to the requirements of this Article 10 and vest in the Grantor the full benefit of the property and assets therein referred to, and shall permit the Grantor to enter into and take possession of the Project Facilities, as applicable; and
- (ii) possession of the Project Facilities, if applicable.
- (f) the Concessionaire shall, at its sole cost and expense, train the employees of the Grantor or its nominee in the operation and maintenance of the Project Facilities, as applicable, so that the Grantor's (or the Grantor's nominee's) employees shall be fully capable of operating and maintaining the Project Facilities on the Day of expiry of the Concession Period.
- (g) the Grantor shall identify the employees it requires the Concessionaire to so train in the operations and maintenance of the Project Facilities not later than four (4) months prior to the Day of expiry of the Concession Period. The Concessionaire shall commence the training not later than three (3) months prior to the Day of expiry of the Concession Period.

and the Grantor shall pay the Concessionaire a nominal payment of one Euro (€1).

## **Article 11 Concession Fee and Revenue Sharing Fee**

### **11.1 Quarterly Payment of Concession Fee and Revenue Sharing Fee**

- (a) The Concession Fee and the Revenue Sharing Fee shall begin to accrue upon the first sale by the Company of capacity, net electrical output, or ancillary or system services or Emission reduction from any hydroelectric power generation plant of the Morača HPPs; provided, however, that any such fees that accrue prior to the Commercial Operations Date shall be paid by the Concessionaire with the first quarterly payment that becomes due pursuant to Section 11.1(b).
- (b) Within thirty (30) Days of the end of each calendar quarter, the Concessionaire shall:
  - (i) deliver to the Grantor unaudited quarterly balance sheet with detailed presentation of the Project income by individual categories of the Concessionaire for the calendar quarter that just ended (each, an **“Unaudited Quarterly Profit and Loss Statement”**); and

- (ii) pay the Concession Fee and the Revenue Sharing Fee to the Grantor based on the Project Revenues of the Concessionaire shown in the relevant Unaudited Quarterly Profit and Loss Statement.

## 11.2 Annual Reconciliation Process

- (a) Within one hundred twenty (120) Days of the conclusion of each fiscal year of the Concessionaire, the Concessionaire shall:
  - (i) deliver to the Grantor annual financial statements of the Concessionaire for the fiscal year that just ended that have been audited by an independent auditor licensed to do business in Montenegro (each, an “**Audited Annual Statement**”); and
  - (ii) deliver to the Grantor an Annual Reconciliation Statement showing:
    - (A) the difference (if any) between:
      - (1) the Revenue Sharing Fees that were paid by the Concessionaire in respect of the Project Revenues earned by the Concessionaire during such fiscal year based on the relevant Unaudited Quarterly Profit and Loss Statement; and
      - (2) the actual amount of the Revenue Sharing Fees, based on the Audited Annual Statement; and
    - (B) the difference (if any) between:
      - (1) the Concession Fees that were paid by the Concessionaire in respect of the Project Revenues earned by the Concessionaire during such fiscal year based on the relevant Unaudited Quarterly Profit and Loss Statement; and
      - (2) the actual amount of the Concession Fees, based on the Audited Annual Statement.
- (b) If the Annual Reconciliation Statement shows that the Concessionaire paid less than the Revenue Sharing Fees and the Concession Fees that were actually due, then the Concessionaire shall pay the unpaid amount to the Grantor together with interest at the Interest Rate within three (3) Business Days of delivering the Annual Reconciliation Statement to the Grantor. If the Annual Reconciliation Statement shows that the Concessionaire paid more than the Revenue Sharing Fees and the Concession Fees that were actually due, then the excess amount shall be credited against the Revenue Sharing Fee or Concession Fee that is next payable by the Concessionaire, as the case may be.

## **11.3 Refinancing of the Project**

### ***11.3.1 Sharing of Refinancing Gains***

- (a) The Concessionaire shall use commercially reasonable efforts to determine from time to time if a Refinancing would result in lower Financing Costs than the Financing Costs of the Initial Financing or any existing Refinancing. If the Concessionaire wishes to enter into a Refinancing, the Concessionaire shall, prior to entering into that Refinancing, deliver a Refinancing Costs Report to the Grantor as soon as reasonably practicable.
- (b) Where the Grantor reasonably determines that a Refinancing Gain may exist, the Grantor may give the Concessionaire notice that it requires the Concessionaire to determine if a Refinancing would result in lower Financing Costs than the Financing Costs of the Initial Financing or any existing Refinancing.
- (c) Upon its own initiative under Section 11.3.1(a) or upon receipt of notice under Section 11.3.1(b), the Concessionaire shall deliver a Refinancing Costs Report to the Grantor as soon as is reasonably practicable. The Concessionaire shall bear the costs of preparation of the Refinancing Costs Report.

If the Refinancing Costs Report delivered to the Grantor under Section 11.3.1(c) finds that a Refinancing at that time would provide a material Refinancing Gain, the Concessionaire shall proceed with the Refinancing.

- (d) If the Refinancing results in a Refinancing Gain, the Grantor shall receive fifty percent (50%) of such Refinancing Gain through increases to the Revenue Sharing Fee that are then applicable over the remainder of the Term from the date of the Refinancing.
- (e) The Parties shall negotiate in good faith the method of calculating the appropriate increase in the Revenue Sharing Fee that is then applicable to reflect the Grantor's fifty percent (50%) share of the Refinancing Gain.

### ***11.3.2 Methodologies***

In this Section 11.3, the following methodologies shall be used:

- (a) each Refinancing Costs Report shall be:
  - (i) prepared in accordance with international accounting standards, consistently applied; and
  - (ii) accompanied by a certificate of the Concessionaire's auditors that the calculation is correct and that international accounting standards have been properly applied; and

- (b) the Refinancing Gain shall be calculated after taking into account any costs and expenses reasonably and properly incurred by the Concessionaire in relation to the Refinancing including:
- (i) any prepayment, cancellation, break or termination costs and expenses (however described) incurred pursuant to the Financing Documents entered into in relation to the financing that is the subject of the Refinancing (the “**Existing Financing**”);
  - (ii) costs and expenses incurred pursuant to the Financing Documents entered into in relation to the Refinancing (including arrangement, underwriting, agency and co-ordination fees, and costs and expenses of the lenders that are charged to the Concessionaire (however described)); and
  - (iii) any professional and management costs and expenses reasonably incurred in respect of the Refinancing or the prepayment, repayment, cancellation, or termination of the Existing Financing,

with the intent that the Refinancing Gain shall be net of any costs or expenses reasonably and properly incurred by the Concessionaire in entering into, and incurring financial indebtedness pursuant to, the Refinancing and prepaying, canceling, or terminating the Existing Financing.

## **Article 12 Transfer of Funds**

### **12.1 Transfer of Funds**

The Grantor shall permit the free transfer of all funds and financial settlements necessary to implement and carry out the Project or as contemplated by this Agreement in accordance with the Laws of Montenegro, and shall ensure full, timely, and unencumbered repatriation rights with respect to such funds.

### **12.2 Maintenance of Accounts**

The Concessionaire shall be permitted to maintain accounts outside Montenegro.



**Article 13**  
**Environmental Protection, Health, and Safety; Emission**  
**reduction**

**13.1 Environmental Protection, Health and Safety**

- (a) The Concessionaire shall in accordance with Prudent Utility Practices take necessary and adequate steps to:
  - (i) comply with the Health & Safety Standards;
  - (ii) comply with the Environmental Standards; and
  - (iii) prevent Environmental Conditions,in each case, as caused by the Concessionaire or any of its Contractors, agents, or employees.
- (b) If, as a result of a failure to comply with the provisions of Section 13.1(a), Environmental Conditions arise, the Concessionaire shall, at its cost, promptly take all remedial action as required by the Environmental Standards.
- (c) The Concessionaire shall promptly (but in no event more than ten (10) Business Days after such an accident or emergency) notify the relevant Public Authority of any environmental accidents or emergencies and shall report periodically, but in no event less frequently than Monthly following an environmental accident or emergency, on remediation programs and emergency response plans for Environmental Conditions related to the Project Facilities.

**13.2 Environmental Impact Assessment**

The Concessionaire shall:

- (a) conduct an Environmental Impact Assessment, and have such assessment approved in accordance with the Laws of Montenegro; and
- (b) develop an Environmental Management Plan to monitor and mitigate any adverse social or environmental impacts identified in the Environmental Impact Assessment.

**13.3 Concessionaire's exclusive right to Emission Reduction**

- (a) Concessionaire is entitled and will have exclusive right, at his own expense, to perform development, commerce and sale of Emission Reduction related to Morača HPPs.

- (b) Upon the Concessionaire's request and payment of the reasonable expenses borne by the Grantor, the Grantor shall perform, execute or secure performance or execution as the case may be of all acts, certificates, objects, documents and confirmations required in order to enable Concessionaire to develop, commercialize and sell Emission reductions and reasonably cooperate with Concessionaire in other ways in order to implement this Section 13.3.

#### **13.4 Emission reduction revenues**

Should the Concessionaire receive any income or revenue of Emission reduction such income or revenue will represent Project revenue.

### **Article 14 Financing Support**

#### **14.1 Consent to Concessionaire's Grant of Security Interest**

The Grantor agrees to:

- (a) upon the Lender's request, execute and deliver a reasonable and customary direct agreement that will provide a security to the Lender in respect of the funds invested in Project financing, without Grantor's obligation to guarantee to the Lender for the Concessionaire's obligations under the Financial Documents including a consent and acknowledgement of the grant of a security interest in this Agreement, together with any other documents that the Concessionaire or the Lenders may request the Grantor to execute in order to facilitate the creation or perfection of the foregoing security interests, and
- (b) provide reasonable support for regulatory filings and such reasonable and appropriate further assurances to the Lenders as are reasonably requested by the Concessionaire to give effect to the foregoing;

provided, however, that the Grantor shall not be obligated to execute any such document or instrument if or to the extent that the execution of such document or instrument would diminish the rights or protections or impose obligations inconsistent with the allocation of risks and responsibilities as provided in this Agreement or the other Project Agreements; and provided, further, that the Grantor shall have received copies of the documents or instruments that it is being requested to execute and all documents and instruments reasonably necessary for a full and complete understanding of the rights and obligations of the parties to the direct agreement with the Lenders reasonably in advance of the time that it is expected to negotiate the form of and execute such documents.

**Article 15**  
**Taxes and Import Controls**

**15.1 Taxes Applicable to the Concessionaire**

All present and future central, municipal, or other lawful Taxes applicable to the Concessionaire arising from or in connection with its rights and obligations under this Agreement shall be paid by the Concessionaire as and when required under the Laws of Montenegro.

**15.2 Taxes Applicable to the Sponsor and the Company**

The Sponsor and the Company will be taxed in Montenegro in accordance with the terms of any applicable Tax Treaties and the Laws of Montenegro, and in the event that no Tax Treaty is applicable, in accordance with the Laws of Montenegro.

**15.3 Right to Import; Customs Duties**

The Grantor encourages the Concessionaire and its Contractors to incorporate as much locally produced material, equipment, and supplies as is commercially reasonable for the Concessionaire's participation in the Project. Nonetheless, the Concessionaire and its Contractors shall be entitled to:

import without restriction plant machinery and equipment not manufactured locally, and required for the design, research, engineering, financing, construction, operation, maintenance, and Rehabilitation of the Project Facilities, as the case may be, subject to compliance with any restrictions imposed by the Laws of Montenegro (including payment of applicable Customs Duties and relevant Taxes)

provided that such imported plant machinery and equipment shall be used in relation to the Project and will not be sold or otherwise transferred to or used by another Person other than the Concessionaire or its Contractors.

**Article 16**  
**Immigration Controls**

**16.1 Immigration Controls**

Provided the Concessionaire and its Contractors comply with all Laws of Montenegro, the Grantor will expeditiously grant applications of the Concessionaire and its Contractors for work permits, employment passes, visas, and other permits, as necessary for individuals involved in the Project. Notwithstanding the foregoing, however, the

Grantor may, in any individual case, and in accordance with the Laws of Montenegro, decline to grant an application, or expel a person previously admitted.

## **Article 17**

### **Employment, Training, and Montenegrin Resources**

#### **17.1 Training and Employment of the citizens of Montenegro**

- (a) The Parties recognize that training citizens of Montenegro in the design, research, engineering, financing, construction, operation, maintenance, and Rehabilitation, as applicable, of the Project Facilities and maximizing technology transfer are central to the interests of the Grantor in the Project. The Concessionaire shall therefore employ citizens of Montenegro for the design, research, engineering, financing, construction, operation, maintenance, and Rehabilitation, as applicable, of the Project Facilities to the extent reasonable, taking into consideration availability and required skills of such citizens of Montenegro.
- (b) The Concessionaire shall submit reports annually to Ministry of Economy detailing the progress made toward meeting the objectives set forth in Section 17.1(a).

#### **17.2 Training**

The Concessionaire shall:

- (a) include employee training programs as required in the normal conduct of its business, which training programs shall, from time to time, include training in the skills necessary or reasonably appropriate for the design, research, engineering, financing, construction, operation, maintenance, and Rehabilitation, as applicable, of the Project Facilities. The training programs shall from time to time include technical and administrative matters, including contract administration; and
- (b) submit reports annually to the Ministry of Economy describing in detail the employee training programs carried out by the Concessionaire, the implementation of such training programs and the cost of such training programs during the relevant period.

#### **17.3 Montenegrin Resources**

- (a) Subject to the procurement requirements attached to any financing provided (or to be provided) to the Concessionaire in connection with the Project (or any material portion thereof) the Concessionaire shall give preference to:

- (i) the purchase of Montenegrin goods and materials for use in the Project; provided, however, that such goods and materials are:
    - (A) of an equal or better quality to similar goods and materials available on the international market;
    - (B) available on a timely basis in the quantity required; and
    - (C) available at equal or lower prices to, and on competitive terms with, similar goods and materials available on the international market; and
  - (ii) the employment of Montenegrin service contractors as far as they are financially and technically competent, possess the necessary skills to perform the work required by the Concessionaire, and such contractors are available on a timely basis and on competitive terms (including rates) with Contractors offering similar services on the international market under similar conditions and circumstances.
- (b) The Concessionaire shall establish appropriate tender procedures for Montenegrin goods, materials, and services:
- (i) taking into account Montenegrin local market conditions; and
  - (ii) enabling citizens and companies of Montenegro to bid to supply such goods and materials and to provide such services, subject to and in accordance with this Section 17.3.

## **Article 18 Insurance**

### **18.1 Maintenance of Insurance Policies**

#### ***18.1.1 Insurance Requirements***

- (a) At its sole cost and expense, the Concessionaire shall obtain and maintain or cause to be obtained and maintained policies of insurance:
  - (i) no less than the policies set forth in Section 1 of Schedule 5 (and satisfying the general conditions set forth in Section 15 of Schedule 5); or
  - (ii) if greater, that should be maintained pursuant to Prudent Utility Practices.
- (b) The insurance to be obtained and maintained by the Concessionaire under this Section 18.1.1 shall be obtained from insurers from whom the Concessionaire is permitted under the Laws of Montenegro to purchase policies.

### ***18.1.2 Exceptions to Insurance Requirements***

- (a) It is understood that the Concessionaire shall not be in breach of its obligations under Section 18.1.1 to the extent that and for so long as:
  - (i) either:
    - (A) any particular insurance (or any required endorsement) is unavailable to the Concessionaire under commercially reasonable terms for reasons other than any negligence or default by, or the condition of, the Concessionaire, provided that the Concessionaire has delivered notice thereof to the Grantor accompanied by a written report prepared by one (1) independent insurance consultant of recognized international standing certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market and explaining in detail the basis for such conclusions; or
    - (B) any particular insurance (or any required endorsement) is unavailable to it from insurers from whom the Concessionaire is permitted under the Laws of Montenegro to purchase policies in accordance with Section 18.1.1(b), provided that the Concessionaire has delivered notice thereof to the Grantor accompanied by a written report prepared by one (1) independent insurance consultant of recognized international standing certifying that such insurance is not available from insurers from whom the Concessionaire is permitted under the Laws of Montenegro to purchase policies; and
  - (ii) the Concessionaire uses commercially reasonable efforts to obtain, at its sole cost and expense, other insurance that provides, to the maximum extent reasonably achievable, comparable protection against the risk to be insured and the Concessionaire delivers a notice to the Grantor of the terms of that insurance, accompanied by a written report prepared by one (1) independent insurance consultant of recognized international standing certifying that such insurance provides, to the maximum extent reasonably achievable, comparable protection against the risk to be insured by the Concessionaire.
- (b) Each insurance policy shall be issued by an insurer (or reinsurer, to the extent reinsurance is obtained) of sound financial status. Insurers (or any reinsurer) with whom the Concessionaire has policies of insurance shall be deemed to be “of sound financial status” if such insurers (or any reinsurers) have either an S&P “Claims-Paying Ability Rating” of at least A- or an A.M. Best “Financial Strength Rating” rating of at least A (or, if any such rating is discontinued, the determination of a substantially similar rating shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 24).

## **18.2 Event of Loss**

### ***18.2.1 Notice of Damage or Loss***

If any substantial or significant part of the Project Facilities, shall suffer a Loss or an event occurs that prevents the Concessionaire from performing under this Agreement due to physical damage to a substantial portion of the Project Facilities, the Concessionaire shall promptly, and in any case within five (5) Days after it has knowledge of such event, so notify the Grantor.

### ***18.2.2 Event of Loss***

If an event occurs that prevents the Concessionaire from performing under this Agreement due to physical damage to a substantial portion of the Project Facilities, insurance proceeds shall be used to repair or restore the applicable equipment, material, and facilities to its condition prior to the event, unless otherwise agreed by the Parties.

## **18.3 Certificates and other Evidence of Insurance**

### ***18.3.1 Obligation to Provide***

- (a) No later than the Construction Start Date and at each policy renewal thereafter (but, in any event, at least annually), the Concessionaire shall cause its insurers or agents to provide the Grantor with certificates of insurance evidencing the policies and endorsements taken out pursuant to Section 18.1, including the name and address of the insurer, type, basic coverage, and name of insured and “additional insureds.”
- (b) Within two (2) Business Days of the Construction Start Date or as soon as practicable thereafter, the Concessionaire shall provide a copy of all insurance policies taken out pursuant to Section 18.1.
- (c) The Concessionaire shall provide, as and when updated, copies of all insurance policies taken out pursuant to Section 18.1.

### ***18.3.2 Failure to Provide Evidence of Insurance***

- (a) If the Concessionaire fails to provide evidence of insurance as required under Section 18.3.1, the Grantor may itself take out such insurance and pay such premiums as may be necessary to maintain it in force.
- (b) The Concessionaire shall, within 15 days from the Grantor’s request compensate to the Grantor total amount of all expenses paid by the Grantor in order to obtain Insurance according to the Section 18.3.2(a).
- (c) Failure by the Grantor to obtain the insurance coverage permitted under Section 18.3.2(a) shall not relieve the Concessionaire of its insurance obligations

under this Article 18 or otherwise limit the Concessionaire's obligations or liabilities under this Agreement.

#### **18.4 Insurance Reports**

The Concessionaire shall provide the Grantor with copies of any technical underwriters' reports or other technical reports received by the Concessionaire from any insurer.

#### **18.5 Impact of Political Force Majeure Event**

Following a Political Force Majeure Event, to the extent that insurance required by this Agreement is not available to the Concessionaire at commercially reasonable rates due to the occurrence of the Political Force Majeure Event, then such additional costs shall be recoverable by the Concessionaire from the Grantor. The additional compensation provided for under this Section 18.5 shall cease as soon as the Concessionaire's insurance rates are no longer affected by the Political Force Majeure Event.

#### **18.6 Miscellaneous**

Failure by the Concessionaire to obtain the insurance coverage or certificates of insurance required by this Article 18 shall not in any way relieve or limit the Concessionaire's obligations and liabilities under any provision of this Agreement.

### **Article 19 Representations and Warranties**

#### **19.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants that:

- (a) the Concessionaire is duly organized and validly existing under the Laws of [•];
- (b) the execution, delivery, and performance of this Agreement by the Concessionaire have been duly authorized by all requisite corporate action;
- (c) this Agreement has been duly executed and delivered by the Concessionaire and constitutes the legal, valid, and binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, or other similar Laws of Montenegro relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;
- (d) the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material



agreement binding on the Concessionaire or any valid order of any court, or any regulatory agency or other body having authority to which the Concessionaire is subject;

- (e) none of the execution, delivery, or performance by the Concessionaire of this Agreement, the compliance with the terms and provisions hereof, and implementation of the Project hereby, conflicts or will conflict with or result in a breach or violation of its Constitutional Documents or any of the terms, conditions, or provisions of any Law of Montenegro or any applicable permit, or any order, writ, injunction, judgment, or decree of any Public Authority against the Concessionaire; and
- (f) the statement contained in Section 25.17(a) of this Agreement is true and correct in respect of the Concessionaire.

## **19.2 Representations and Warranties of the Grantor**

The Grantor represents and warrants that:

- (a) this Agreement has been duly executed and delivered by the Grantor and constitutes the legal, valid, and binding obligation of the Grantor, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to general principles of equity;
- (b) the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on the Grantor or any valid order of any court, or any regulatory agency or other body having authority to which the Grantor is subject;
- (c) none of the execution, delivery, or performance by the Grantor of this Agreement, the compliance with the terms and provisions hereof, and the implementation of the Project hereby, conflicts or will conflict with or result in a breach or violation of any of the terms, conditions, or provisions of any Law of Montenegro or any applicable permit, or any order, writ, injunction, judgment, against the Grantor; and
- (d) the statement contained in Section 25.17(a) is true and correct in respect of the Grantor.

**Article 20**  
**Limitation of Liability**

**20.1 Limitation of Liability**

Except as expressly provided to the contrary in this Agreement, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by this Agreement.

**Article 21**  
**Default; Termination**

**21.1 Concessionaire Events of Default**

Each of the following shall constitute an event of default by the Concessionaire (each such event being a “**Concessionaire Event of Default**”):

- (a) the failure by the Concessionaire to make any payment of any sum due to the Grantor hereunder within ten (10) Business Days after receipt of written notice from the Grantor that such payment is overdue, which notice shall specify the payment failure in reasonable detail;
- (b) in the event of initiation of bankruptcy or liquidation proceeding over the Concessionaire ;
- (c) in the event of the misrepresentation related to the material fact as of the Execution Date contained in the Concessionaire’s representations and warranties in this Agreement, whereas such misrepresentation has material adverse effect on the Grantor or Project and such effect is not cured within forty-five (45) Days from the detailed notice of the Grantor on misrepresentation, provided, however, that if the Concessionaire commences taking appropriate actions to cure such misrepresentation within such forty-five (45)Days period, and thereafter diligently continues to cure such misrepresentation, the cure period shall be extended for an additional ninety (90) Days;
- (d) assignment or transfer of Concessionaire’s rights and covenants s under this Agreement except those permitted under Section 25.12(a).
- (e) the failure of the Concessionaire, to remove imperilment to the environment, human health or areas and objects protected by the law in the course of exercising

Concession rights, regardless of whether it could have been foreseen at the moment of the assignment of the Concession rights.

- (f) The failure of the Concessionaire in the observance or performance of any other material covenant of the Concessionaire contained herein that the Concessionaire has not cured within thirty (30) Days after written notice from the Grantor addressed to the Concessionaire specifying the failure in detail and demanding that the same be remedied; provided, however, that if the Concessionaire commences taking appropriate actions to cure such failure within such thirty (30) Day period, and thereafter diligently continues to cure such failure, the cure period shall extend for an additional ninety (90) Days.
- (g) the failure of the Concessionaire to achieve the Financial Closing by the date that occurs three (3) months after the Required Financial Closing Date, or to achieve Construction Start Date no later than ninety (60) Days upon the Day on which the Delivery Protocol set forth in the Section 3.8.2(b) has been signed in respect of Project Sites and Staging Areas or to achieve the Commercial Operations Date by the date that occurs six (6) months after the Required Commercial Operations Date;
- (h) if the Tested Capacity is less than 95% of the relevant Contract Capacity, and the Concessionaire has not cured such failure within thirty (30) Days after written notice from the Grantor to the Concessionaire specifying the failure in reasonable detail and demanding that the same be remedied; provided, however, if the Concessionaire commences taking appropriate actions to cure such failure within such thirty (30) Days period, and thereafter diligently continues to cure such failure, the cure period shall extend for an additional ninety (90) Days;
- (i) after the Construction Start Date but prior to the achievement of the Commercial Operations Date, the failure of the Concessionaire to prosecute the Concessionaire's participation in the Project in a diligent manner for a period of thirty (30) consecutive Days without prior notice to, and the prior written consent of, the Grantor;
- (j) the occurrence of a Sponsor Event of Default (as defined in the Sponsor Support Agreement) under the Sponsor Support Agreement; and
- (k) effective court or administrative decision by which the Concessionaire is prohibited to perform electric power generation activity
- (l) the average capacity of the Morača HPPs during any period of at least twelve (12) months is less than eighty percent (80%) of the Tested Capacity; provided, however, that if the Concessionaire commences taking appropriate actions to remedy the underlying cause of the reduction in capacity and thereafter diligently continues to cure such failure, then a Concessionaire Event of Default will not occur unless the underlying cause of the reduction in capacity has not been remedied within an additional period of twelve (12) months.

provided, however, that no such event shall be a Concessionaire Event of Default if it is caused in whole or material part by:

- (i) a breach by the Grantor of or a default by the Grantor under this Agreement (including any Grantor Event of Default); or
- (ii) a Force Majeure Event (except in the case of Section 21.1(a)).

## **21.2 Grantor Events of Default**

Each of the following shall constitute an event of default by the Grantor (each such event being a “**Grantor Event of Default**”):

- (a) the dissolution, pursuant to the Laws of Montenegro of PRENOS, except for an amalgamation, reorganization, or reconstruction, as the case may be, where all of the PRENOS’s obligations under the Transmission Network Connection Contract and the Agreement on Operation and Maintenance of the Transmission Network are assigned pursuant to the Laws of Montenegro or contractually assumed, through novation or otherwise, by one (1) or more entities, each with the appropriate commercial function to perform its obligations thereunder;
- (b) the misrepresentation of a material fact as of the Execution Date by the Grantor’s representations and warranties in this Agreement, and such misrepresentation has a material adverse effect on the Concessionaire or the Project and such effect is not cured within forty-five (45) Days from written notice from the Concessionaire to the Grantor, which notice shall specify the misrepresentation in reasonable detail; provided, however, that if the Grantor commences taking appropriate actions to cure such misrepresentation within such forty-five (45) Day period, and thereafter diligently continues to cure such misrepresentation, the cure period shall extend for an additional ninety (90) Days;
- (c) the failure by the Grantor in any respect in the observance or performance of any other material covenant of the Grantor contained herein that the Grantor has not commenced to cure within thirty (30) Days after written notice from the Concessionaire to the Grantor specifying the failure in reasonable detail and demanding that the same be remedied; provided, however, that if the Grantor commences taking appropriate actions to cure such failure within such thirty (30) Day period, and thereafter diligently continues to cure such failure, the cure period shall extend for an additional ninety (90) Days;
- (d) the failure by the Grantor to make any payment of any sum due to the Concessionaire hereunder within ten (10) Business Days after receipt of written notice from the Concessionaire that such payment is overdue, which notice shall specify the payment failure in reasonable detail;
- (e) the failure of the Grantor to deliver to the Concessionaire the Project Sites and/or Staging Areas and/or Inundated Areas pursuant to Section 3.8.2 and such failure

is not cured within one hundred eighty (180) Days; provided, however, that if the Grantor commences taking appropriate actions to cure such failure within such one hundred eighty (180) Day period, and thereafter diligently continues to cure such failure, the cure period shall extend for an additional one hundred eighty (180) Days;

(f) the expropriation, compulsory acquisition, or nationalization by the Grantor or any Public Authority of

(i) any Ownership Interest, or

(ii) any material asset or right of the Concessionaire (except as contemplated by the Project Agreements);

(g) the occurrence of any Change in Law that:

(i) makes unlawful, unenforceable, invalid, or void any material undertaking of the Grantor or PRENOS under this Agreement, the Sponsor Support Agreement, the Transmission Network Connection Contract, or the Agreement on Operation and Maintenance of the Transmission Network, as the case may be;

(ii) makes it unlawful for the Concessionaire to make or receive or the Lenders or the Sponsor to receive any material payment (including interest), or for the Concessionaire to perform any material obligation or to enjoy or enforce any material right under this Agreement or any other Project Agreement in relation to the Project; or

(iii) places any material restrictions or limitations (beyond those restrictions or limitations that are in existence on the date of execution of this Agreement) on the right to repatriate any capital, dividends, distributions, or other proceeds from the Concessionaire (provided that such distributions do not arise in connection with a breach of this Agreement),

which in the case of (i), (ii), or (iii) above, has a continuing effect for more than one hundred eighty (180) Days without an arrangement being provided to exempt the affected party from the effect of such Change in Law or to remedy the effects of the Change in Law on such affected party; and

(h) any Lapse of Consent which lasts more than ninety (90) consecutive days;

(i) the occurrence of:

(i) a PRENOS Event of Default (as defined in the Transmission Network Connection Contract) under the Transmission Network Connection Contract; or

- (ii) a PRENOS Event of Default (as defined in the Agreement on Operation and Maintenance of the Transmission Network) under the Agreement on Operation and Maintenance of the Transmission Network;

provided, however, that no such event shall be a Grantor Event of Default if it is caused in whole or material part by:

- (iii) a breach by the Concessionaire of or a default by the Concessionaire under this Agreement (including any Concessionaire Event of Default); or
- (iv) a Force Majeure Event (except in the case of Section 21.2(d)).

### **21.3 Termination Notice**

If any Concessionaire Event of Default or Grantor Event of Default, as the case may be, occurs and is continuing, the non-defaulting Party may deliver a notice (a “**Termination Notice**”) to the defaulting Party, which notice shall specify in reasonable detail the Concessionaire Event of Default or Grantor Event of Default, as the case may be, giving rise to the Termination Notice. This Agreement shall terminate on the date specified in the Termination Notice, which date shall not be earlier than the date that is ten (10) Business Days following the date on which the Termination Notice is delivered to the other Party or later than thirty (30) Days following the date of such delivery.

### **21.4 Termination Due to Political Force Majeure Events**

If there occurs a Political Force Majeure Event that has continued (excluding the effects thereof) uninterrupted for a period of one hundred eighty (180) Days or more after written notice from the Concessionaire to the Grantor of such Political Force Majeure Event, then the Concessionaire may terminate this Agreement. To terminate this Agreement, the Concessionaire shall deliver a notice thereof, which notice shall be effective thirty (30) Days following the delivery of such notice to the Grantor. Upon such termination, the provisions of Article 22 shall apply.

### **21.5 Termination Due to Other Force Majeure Event**

In the event that:

- (a) the Project Facilities (or any part thereof) are damaged as a result of an Other Force Majeure Event;
- (b) the affects of the Other Force Majeure Event continue for a period of six (6) months or more; and
- (c) the average capacity of the Morača HPPs during such period of six (6) months or more is less than fifty percent (50%) of the Tested Capacity,

then the Grantor and the Concessionaire shall each have the option to terminate this Agreement. To terminate this Agreement, either Party shall deliver a notice of termination thereof, which notice shall be effective thirty (30) Days following the delivery of such notice to the other Party. Upon such termination, the provisions of Article 22 shall apply.

#### **21.6 Obligations Following Disputed Termination Notice**

The Parties shall continue to perform their respective obligations under this Agreement pending the final resolution of any Dispute raised by the receiving and challenging Party of a Termination Notice pursuant to Section 21.3 or a termination notice pursuant to Section 21.4.

#### **21.7 Other Remedies**

- (a) Except as provided in Section 21.7(b), the exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude such Party from exercising other remedies that are provided herein or are available at law; provided, however, that no Party shall have a right to terminate or treat this Agreement as repudiated except in accordance with the provisions of this Agreement.
- (b) Notwithstanding Section 21.7(a), the remedies and compensation amounts provided in Article 22 are the exclusive remedies available to each Party with respect to any termination of this Agreement as a consequence of the events described in Article 22.
- (c) Subject to the provisions of Article 20 and except as may otherwise be set forth in this Agreement, remedies are cumulative, and the exercise of, or failure to exercise, one or more of them by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by such Party.

### **Article 22**

#### **Rights and Obligations Upon Termination; Compensation**

##### **22.1 Termination Following a Concessionaire Event of Default**

In the event the Grantor terminates this Agreement pursuant to Section 21.1 as a result of a Concessionaire Event of Default, the Grantor or its designee shall have the right, but shall not be required to exercise the Buy-Out Option by delivering a Buy-Out Notice to the Concessionaire. If the Grantor so elects to exercise the Buy-Out Option, then the Grantor shall pay the Concessionaire Default Termination Payment to the Concessionaire.

## **22.2 Termination Following a Grantor Event of Default**

In the event the Concessionaire terminates this Agreement pursuant to Section 21.2 as a result of a Grantor Event of Default, the Concessionaire shall have the right, but shall not be required to exercise the Buy-Out Option by delivering a Buy-Out Notice to the Grantor. If the Concessionaire so elects to exercise the Buy-Out Option, then the Grantor shall pay the Grantor Default Termination Payment to the Concessionaire.

## **22.3 Termination Following a Political Force Majeure Event**

In the event the Concessionaire terminates this Agreement pursuant to Section 21.4 as a result of a Political Force Majeure Event, the Concessionaire shall have the right, but shall not be required to exercise the Buy-Out Option by delivering a Buy-Out Notice to the Grantor. If the Concessionaire so elects to exercise the Buy-Out Option, then the Grantor shall pay the Grantor Force Majeure Termination Payment to the Concessionaire.

## **22.4 Termination Following an Other Force Majeure Event**

In the event either Party terminates this Agreement pursuant to Section 21.5 as a result of an Other Force Majeure Event, the Grantor or its designee shall have the right, but shall not be required to exercise the Buy-Out Option by delivering a Buy-Out Notice to the Concessionaire. If the Grantor so elects to exercise the Buy-Out Option, then the Grantor shall pay the Other Force Majeure Termination Payment to the Concessionaire, except in the case of termination on the basis of Other Force Majeure Event caused due to the Ground Condition Delay Event, in which case the Grantor shall pay Ground Condition Delay Termination Payment.

## **22.5 Expiration of Buy-Out Option**

If either Party does not exercise a Buy-Out Option by issuing a Buy-Out Notice within sixty (60) Days after the Day on which the Buy-Out Option became exercisable, then such Party shall have waived and renounced its rights to exercise the Buy-Out Option as a result of the facts and circumstances that caused such Buy-Out Option to have become exercisable.

## **22.6 Obligations Following Issuance of a Buy-Out Notice**

Notwithstanding the delivery of a Buy-Out Notice, the Concessionaire shall:

- (a) continue to occupy the Project Facilities, pending the Buy-Out Date, if applicable, and shall continue to operate the Project Facilities in accordance with Prudent Utility Practices and the Concessionaire's prior course of ordinary operations; and
- (b) not take any action to prejudice the rights of the Grantor.



## Article 23 Force Majeure

### 23.1 Definition

A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that, on or after the Execution Date, materially and adversely affects the performance by such affected Party of its obligations under or pursuant to this Agreement; provided, however, that such material and adverse effect could not have been prevented, overcome, or remedied by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Project Facilities, as applicable, from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. “**Force Majeure Events**” hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements above:

- (a) the following political events that occur inside or directly involve Montenegro (each a “**Political Force Majeure Event**”):
  - (i) any act of war (whether declared or undeclared), invasion, armed conflict, or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage;
  - (ii) any strike, work-to-rule, go-slow, or analogous labor action that is politically motivated and is widespread or nationwide; or
- (b) Other events beyond the reasonable control of the affected Party (each an “**Other Force Majeure Event**”), including, but not limited to:
  - (i) the occurrence of a Ground Condition Delay Event;
  - (ii) archeological conditions;
  - (iii) lightning, fire, earthquake, tsunami, flood, drought, storm, cyclone, typhoon, or tornado;
  - (iv) fire, explosion, chemical contamination, radioactive contamination, or ionizing radiation; or
  - (v) epidemic or plague.
- (c) Force Majeure Events shall expressly not include the following conditions, except and to the extent that such events or circumstances occur directly as a consequence of a Force Majeure Event:

- (i) late delivery or interruption in the delivery of machinery, equipment, materials, spare parts, or consumables (including fuel);
- (ii) a delay in the performance of any Contractor; or
- (iii) normal wear and tear or random flaws in materials and equipment or breakdown in equipment.

## **23.2 Notification Obligations**

- (a) If, by reason of a Force Majeure Event, a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:
  - (i) give the other Party notice of the Force Majeure Event as soon as practicable, but in any event, no later than the later of forty-eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event or six (6) hours after the resumption of any means of providing notice between the Concessionaire and the Grantor; and
  - (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent that can reasonably be determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, no later than seven (7) Days after the initial notice of the occurrence of the Force Majeure Event is given by the affected Party.
- (b) When appropriate, or when reasonably requested so to do by the other Party, the affected Party shall provide further notices to the other Party, more fully describing the Force Majeure Event and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it shall be unable to carry out any of its affected obligations due to the Force Majeure Event.
- (c) The affected Party shall provide notice to the other Party of:
  - (i) with respect to an ongoing Force Majeure Event, the cessation of the Force Majeure Event; and
  - (ii) its ability to recommence performance of its obligations under this Agreement,

as soon as possible and in any event no later than seven (7) Days after the occurrence of each of the clauses (i) and (ii) hereabove.

- (d) Failure by the affected Party to give written notice of a Force Majeure Event to the other Party within the forty-eight (48) hour period or six (6) hour period required under Section 23.2(a) shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case, the affected Party shall not be excused pursuant to Section 23.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If such notice is given within the forty-eight (48) hour period or six (6) hour period required by Section 23.2(a), the affected Party shall be excused for such failure or delay pursuant to Section 23.4 from the time of commencement of the relevant Force Majeure Event.

### **23.3 Duty to Mitigate**

The affected Party shall use all reasonable efforts (and shall ensure that its Contractors use all reasonable efforts) to mitigate the effects of a Force Majeure Event, including, but not limited to, the payment of reasonable sums of money by or on behalf of the affected Party (or such Contractor), which sums are reasonable in light of the likely efficacy of the mitigation measures.

### **23.4 Delays Caused by Force Majeure**

- (a) So long as the affected Party has, at all times since the occurrence of the Force Majeure Event complied with the obligations of Section 23.3 and continues to so comply, then:
  - (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment or provide security) under or pursuant to this Agreement during the existence of a Force Majeure Event; and
  - (ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended for such period as is reasonably necessary given the nature and effects of the Force Majeure Event;

provided, however, that no relief, including extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 23.4 to the extent that such failure or delay would nevertheless have been experienced by the affected Party had the Force Majeure Event not occurred. Other than for breaches of this Agreement by the other Party, the other Party shall not bear any liability for any Loss or expense suffered by the affected Party as a result of a Force Majeure Event.
- (b) Notwithstanding the foregoing, the Grantor shall not be entitled to claim for itself, and shall not be relieved of its obligations under this Agreement by the occurrence of a Political Force Majeure Event.

## **Article 24 Dispute Resolution**

### **24.1 Notice of Dispute**

In the event that there arises between the Parties any Dispute, controversy, or claim arising out of or relating to this Agreement or the breach, termination, or validity thereof, the Party wishing to declare a Dispute shall deliver to the other Party a written notice identifying the disputed issue in reasonable detail.

### **24.2 Dispute Resolution Procedures**

#### ***24.2.1 Informal Dispute Resolution by Parties***

Upon receipt by a Party of a notice from the other Party of a Dispute in accordance with Section 24.1 identifying the Dispute in reasonable detail, the Parties shall for a period of twenty (20) Days from the date of delivery of such notice attempt in good faith to settle such Dispute by discussions among representatives of each Party. In the event that the Parties are unable to reach agreement within such twenty (20) Day period, or such longer period as they may agree, then the Dispute shall be resolved in accordance with the formal Dispute resolution procedures described in Section 24.2.2.

#### ***24.2.2 Formal Dispute Resolution Procedures—Appropriate Forum***

- (a) In the event that the Parties are unable to resolve a Dispute by informal discussions in accordance with Section 24.2.1 and such Dispute is a Technical Dispute, then the Dispute shall be resolved by referral to the Independent Panel in accordance with Section 24.3; provided, however:
  - (i) in the event that the Parties cannot agree within five (5) Business Days as to whether a Dispute falls within the definition of a Technical Dispute, then Section 24.3 shall not be used to resolve this Dispute and the Dispute shall be resolved in accordance with Section 24.4; and
  - (ii) notwithstanding the foregoing, any Party may, unless explicitly provided otherwise in this Agreement, require by notice to the other Party that a Technical Dispute be resolved by reference to the procedures described in Section 24.4 without referring it to the Independent Panel pursuant to Section 24.3.

If any Party does not accept the recommendation of the Independent Panel with respect to the Technical Dispute, it may refer the Dispute for resolution in accordance with the procedures described in Section 24.4; provided, however, that if such Party has not referred the Dispute for resolution in accordance with the procedures described in Section 24.4 within ninety (90) Days following the delivery of the recommendation by the Independent Panel, such recommendation

shall become a binding determination on the Parties. If the Independent Panel has not submitted its recommendation to the Parties within the time period provided in Section 24.3.2(g) then either Party may refer the Dispute for resolution in accordance with the procedures described in Section 24.4.

- (b) In the event that the Parties are unable to resolve a Dispute by informal discussions in accordance with Section 24.2.1 and such Dispute is not a Technical Dispute, then the Dispute shall be resolved in accordance with Section 24.4.

## 24.3 Technical Disputes

### 24.3.1 Appointment of Independent Panel

- (a) The Grantor and the Concessionaire shall appoint an independent panel of five experts (the “**Independent Panel**”) in accordance with the following provisions:
  - (i) not later than one hundred twenty (120) Days following the Execution Date each of the Grantor and the Concessionaire shall appoint two experts with extensive experience in the design, research, engineering, financing, construction, operation, maintenance, and rehabilitation of facilities similar to the Project Facilities, which experts shall not be an agent, employee, or contractor or a former agent, employee, or contractor of either Party; and
  - (ii) the experts appointed by the Grantor and the Concessionaire pursuant to Section 24.3.1(a)(i) shall jointly appoint a fifth expert with extensive experience in the design, research, engineering, financing, construction, operation, maintenance, and rehabilitation of facilities similar to the Project Facilities, which expert shall not be an agent, employee, or contractor or a former agent, employee, or contractor of either Party.
- (b) In the event that a member of the Independent Panel becomes unable or unwilling to perform its duties, then:
  - (i) in the event such member was appointed by a Party pursuant to Section 24.3.1(a)(i), then the Party that appointed such member shall appoint a replacement, or
  - (ii) in the event that such member was appointed by the members appointed pursuant to Section 24.3.1(a)(ii), then the remaining members shall appoint a replacement,

in each case within ninety (90) Days of the day of retirement of the retiring member from the Independent Panel.

- (c) The Independent Panel will be required to stay informed regarding the development of the Project Facilities and to visit the Project during the construction of the Project at least once every one hundred twenty (120) Days.
- (d) The Parties shall mutually determine standard terms and conditions for engagement of the Independent Panel's members and the fees and expenses of the Independent Panel shall be borne equally by the Parties,

#### ***24.3.2 Technical Dispute Procedures***

Any Technical Dispute subject to this Section 24.3 shall be resolved in accordance with the following provisions:

- (a) The Party initiating submission of the Technical Dispute to the Independent Panel shall provide the other Party with a notice stating that it is submitting the Technical Dispute to the Independent Panel.
- (b) Consideration of the Technical Dispute by the Independent Panel shall be initiated by the Party seeking consideration of the Technical Dispute by the Independent Panel submitting within ten (10) Business Days of the notice described in Section 24.3.2(a) to both the Independent Panel and the other Party written materials setting forth:
  - (i) its detailed description of the Technical Dispute;
  - (ii) a statement of the initiating Party's position; and
  - (iii) copies of records supporting the initiating Party's position.
- (c) Within ten (10) Business Days of the date that a Party has submitted the materials described in the preceding sentence, the other Party may submit to the Independent Panel and to the initiating Party:
  - (i) its description of the Technical Dispute in reasonable detail;
  - (ii) a statement of the responding Party's position; and
  - (iii) copies of any records supporting the responding Party's position.
- (d) In addition to the material provided to the Independent Panel by the initiating Party, the Independent Panel shall consider any such information submitted by any responding Party within such ten (10) Business Day period and, in the Independent Panel's discretion, any additional information submitted by either Party to the Independent Panel (with a copy to the other Party) at a later date.
- (e) Each Party shall designate one Person knowledgeable about the issues in dispute who shall be available to the Independent Panel to answer questions and provide any additional information requested by the Independent Panel. Except for such

Person, a Party shall not be required to, but may, provide oral statements or presentations to the Independent Panel or make any particular individuals available to the Independent Panel.

- (f) Except as provided in Section 24.3.2(h) with respect to the payment of costs, the proceedings under this Section 24.3 shall be without prejudice to either Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings, including an arbitration proceeding under Section 24.4. The process under this Section 24.3 shall not be regarded as an arbitration, and the laws relating to arbitration set forth in Section 23.4 shall not apply.
- (g) When consideration of the Technical Dispute by the Independent Panel is initiated, the Independent Panel shall be requested to provide a recommendation within fifteen (15) Business Days after the expiry of the ten (10) Business Day response period provided in Section 24.3.2(c). If the Independent Panel's recommendation is given within such fifteen (15) Business Day period, or if the Independent Panel's recommendation is given at a later time and no Party has at such time initiated any other proceeding concerning the Technical Dispute, the Parties shall review and discuss the recommendation with each other in good faith for a period of ten (10) Days following delivery of the recommendation before proceeding with any other actions.
- (h) Each Party shall bear its own costs in preparing materials for, and making presentations to, the Independent Panel.

#### **24.4 Arbitration**

- (a) Any Dispute subject to this Section 24.4 shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (the "**ICC Rules**").
- (b) The language to be used in the arbitral proceedings shall be English.
- (c) Unless otherwise agreed by the Parties, the number of arbitrators shall be three (3), with such arbitrators to be appointed by each Party selecting one (1) arbitrator within the period for selecting the arbitrator specified in the ICC Rules, and the two (2) arbitrators thus appointed shall, within thirty (30) Days of the selection of the second arbitrator, select the third (3<sup>rd</sup>) arbitrator.
- (d) No arbitrator appointed pursuant to this Section 24.4 shall be a national of the jurisdiction of a Party nor shall any such arbitrator be a shareholder, director, employee, agent, or contractor or former shareholder, director, employee, agent or contractor of a Party.
- (e) The arbitration shall be conducted in Vienna, Austria.

- (f) The Parties agree that the marshalling of evidence, pre-hearing disclosure, and examination of witnesses and experts authorized by Article 20 of the ICC Rules shall be construed by the arbitral tribunal to allow any Party to request the delivery of documents and other information that is reasonably calculated to lead to the discovery of evidence that is relevant to any claim or defense relating to the Dispute, including by the following means:
  - (i) up to twenty-five (25) written interrogatories, including all discrete subparts;
  - (ii) up to twenty-five (25) requests for admission;
  - (iii) requests for delivery of documents, including delivery of electronically stored information in a convenient electronic format; and
  - (iv) up to ten (10) oral depositions, including the deposition of a representative designated by an entity as its agent to testify as to specific matters on its behalf.
- (g) Each Party shall use reasonable endeavors (including to so require in any contract with such advisors, agents, and contractors) to ensure that its advisors, agents, and contractors are available for depositions and other discovery mechanisms provided for in Section 24.4(f).
- (h) Each Party shall be responsible for its own legal fees and related costs in connection with any arbitration.
- (i) The decision of the arbitrators shall be final and binding upon the Parties, and shall not be subject to appeal.
- (j) Any Party may petition any court having jurisdiction to enter judgment upon the arbitration award.
- (k) The arbitral award shall be made and payable in Euros and the award shall be grossed up for Tax unless the amount paid would have been subject to Tax if paid in the normal course.
- (l) The Parties waive their rights to claim or recover, and the arbitrators shall not award, any punitive, multiple, or other exemplary damages, whether statutory or common law (except to the extent such damages have been awarded to a third party and are subject to allocation among the Parties).

## **24.5 Related Disputes**

- (a) The arbitral tribunal may consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to one or more of the Project Agreements if the subject matter of the Disputes arises out of or relates to



essentially the same facts or transactions. Such consolidated arbitration shall be determined by the arbitral tribunal appointed for the arbitration proceeding that was commenced first in time.

- (b) Except as otherwise provided in Section 24.2, the rights of the Parties to proceed with Dispute resolution under Section 24.2 shall be independent of their rights or the rights of related entities to proceed with Dispute resolution under any of the other Project Agreements. Notwithstanding the foregoing or anything to the contrary in this Agreement, a final determination of a Dispute under and in accordance with any of the Project Agreements shall be a final and binding resolution of the same issue as it relates, mutatis mutandis, to the obligations of the Concessionaire or the Grantor hereunder.

#### **24.6 Obligations Continue**

The pendency of a Dispute shall not in and of itself relieve either Party of its duty to perform under this Agreement.

#### **24.7 Sovereign Immunity; Jurisdiction**

- (a) The Grantor unconditionally and irrevocably agrees that the execution, delivery, and performance by it of this Agreement constitute its private and commercial acts. The Grantor hereby irrevocably and unconditionally:
  - (i) agrees that should any proceedings be brought against the Grantor or its assets, other than the Protected Assets, in any jurisdiction in connection with this Agreement, no claim of immunity from such proceedings will be claimed by or on behalf of the Grantor on behalf of itself or any of its assets (other than the Protected Assets);
  - (ii) waives any right of immunity that it or any of its assets (other than the Protected Assets) now has or may in the future have in any jurisdiction in connection with any such proceedings; and
  - (iii) consents in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution against or in respect of any of its assets whatsoever (other than the Protected Assets)) regardless of its use or intended use.
- (b) The Concessionaire hereby irrevocably and unconditionally:
  - (i) consents to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may thereafter acquire, of any court of competent jurisdiction for any action filed by the Grantor to enforce any

award or decision of any arbitrator who was duly appointed under this Agreement to resolve any Dispute between the Parties. The Concessionaire waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 24.7(b), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same;

- (ii) agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court; and
  - (iii) waives any and all rights it may have to enforce any judgment or claim against the Protected Assets in the courts of any jurisdiction.
- (c) For the avoidance of doubt, any Dispute or difference between the Parties as to whether either Party has complied with this Section 24.7 shall be referred for determination under Section 24.3 and shall fall within the definition of Technical Dispute.

## **Article 25 Miscellaneous**

### **25.1 Notices**

- (a) All notices and other communications required or permitted to be given by a Party (including any invoices required or permitted to be delivered hereunder) shall be in writing and either delivered personally or by courier or sent by fax or by e-mail to the address or number of the other Party specified below:

- (i) If to the Concessionaire:

Attention:  
Fax:  
E-mail:

with a copy to:

Attention:  
Fax:  
E-mail:

- (ii) If to the Grantor:

Attention:  
Fax:  
E-mail:

with a copy to:

Attention:

Fax:

E-mail:

provided, that a Party may change the address to which notices are to be sent to it by giving not less than thirty (30) Days' prior written notice to the other Party in accordance with this Section 25.1(a).

- (b) No notice or other communication shall be effective until received or deemed received. Notices or other communications shall be deemed to have been received by the receiving Party:
  - (i) when delivered if personally delivered;
  - (ii) three (3) Business Days after sending, if sent by international courier;
  - (iii) upon sending if sent by fax, subject to confirmation of an uninterrupted transmission report and provided that a hard copy is dispatched not later than the following Business Day to the recipient by international courier or personal delivery; or
  - (iv) upon sending if sent by e-mail, provided that a hard copy is dispatched not later than the following Business Day to the recipient by international courier or personal delivery.
- (c) A Party delivering a notice or other communication in accordance with Section 25.1(a) shall within one (1) Business Day of sending such notice or other communication provide to the receiving Party a true and correct translation in Montenegrin. In the event of any inconsistency between the English original and the Montenegrin translation of any notice or other communication, the English version shall prevail over the Montenegrin version. For the avoidance of doubt, failure to deliver a translation of a notice or other communication in accordance with this Section 25.1(c) shall not affect the effectiveness of such notice or other communication as established pursuant to Section 25.1(b).

## **25.2 Amendment**

An amendment or modification of this Agreement shall be effective or binding on a Party only if made in writing and signed by a duly authorized representative of each of the Parties.

## **25.3 Survival**

On the expiry of this Agreement or the earlier termination of this Agreement, all covenants, obligations, representations and warranties contained in this Agreement shall

terminate and be of no force or effect and the Parties shall have no further obligations or liabilities under this Agreement, except for those obligations and liabilities that arose prior to and remain undischarged at the date of expiry or termination.

#### **25.4 Third Party Beneficiaries**

Except for the rights expressly granted to the Lenders herein, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any rights in, duty to, standard of care to, or any liability to, any Person not a Party.

#### **25.5 No Waiver**

No default by either Party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of the other Party. No waiver by either Party of any default by the other in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

#### **25.6 Relationship of the Parties**

- (a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.
- (b) Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, or be an agent or representative of, or to otherwise bind, the other Party, and neither Party shall hold itself out to any third party as having such right, power, or authority.

#### **25.7 Expenses of the Parties**

Except as otherwise agreed in Section 8.1 (*Advisors' Fees*) of the Sponsor Support Agreement or as may be otherwise agreed in any other Project Agreement, all expenses incurred by or on behalf of each Party, including all fees and expenses of agents, representatives, counsel, and accountants employed by the Parties in connection with the preparation of this Agreement and implementation of the Project, shall be borne solely by the Party who shall have incurred such expenses, and the other Party shall have no liability in respect thereof.

## **25.8 Consent**

Unless otherwise provided herein, whenever a consent or approval is required by any Party from another Party, such consent or approval shall not be unreasonably withheld or delayed.

## **25.9 Language**

This Agreement has been drafted in English and Montenegrin and the English version shall prevail. All notices, certificates, and other documents and communications (including copies) shall be made in accordance with the Section 25.1(c); provided, however, that notices, certificates, and other documents and communications given or made pursuant to the Laws of Montenegro by a Public Authority shall be in Montenegrin.

## **25.10 Governing Law**

This Agreement shall be governed by and construed in accordance with the Laws of Montenegro.

## **25.11 Entirety**

This Agreement shall be the full and final expression of the agreement between the Parties on the matters contained herein. Except for the other Project Agreements and any agreement or other communication required thereunder, all written or oral representations, understandings, offers, or other communications of every kind between the Parties in relation to the Project prior to this Agreement are hereby abrogated and withdrawn.

## **25.12 Assignment**

- (a) This Agreement shall not be assigned by the Concessionaire to any other party without the prior written consent of the Grantor; provided, however, that the Concessionaire may grant a security interest in its interest hereunder to a Lender or any financial institution or institutions participating in the financing of the Project in accordance with Section 14.1.
- (b) This Agreement shall not be assigned by the Grantor without the prior written consent of the Concessionaire.
- (c) This Agreement shall bind and inure to the benefit of the Parties and any successor or assignee acquiring an interest hereunder consistent with Section 25.12(a) and Section 25.12(b).
- (d) Any assignment in contravention of this Section 25.12 shall be null and void.

### 25.13 Contracting

Each Party may delegate its responsibilities under this Agreement to one or more Contractors; provided, however, that no such delegation shall relieve the relevant Party of its obligations or responsibilities under this Agreement. All Contractors shall have all the required skills and capacity necessary to perform or cause to be performed any tasks that they undertake in a timely and professional manner, utilizing sound engineering principles, project management procedures, supervisory procedures, and generally acceptable industry practices.

### 25.14 Confidentiality

- (a) This Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and, subject to Section 25.14(c) such information shall not be disclosed in whole or in part by either Party without the prior consent of the other Party.
- (b) This obligation does not apply to information that (when used or disclosed) has been made public other than through a breach of this Agreement or has been, or could have been, lawfully acquired by the Party.
- (c) Notwithstanding the provisions of Section 25.14(a), neither Party shall be required to obtain the prior consent of the other in respect of disclosure of information:
  - (i) to directors and employees and Affiliates of such Party, provided that such Party shall use reasonable endeavors to ensure that such Affiliates keep the disclosed information confidential on the same terms as are provided in this Section 25.14;
  - (ii) to persons professionally engaged by or on behalf of such Party, provided that such Persons shall be required by such Party to undertake to keep such information confidential and that such Party shall use reasonable endeavors to secure compliance with such undertaking;
  - (iii) to any government department or any governmental or regulatory agency having jurisdiction over such Party but only to the extent that such Party is required by law to make such disclosure;
  - (iv) to any lending or other financial institution in connection with the financing of such Party's operations; or
  - (v) to any bona fide intended assignee or transferee of the whole or any part of the rights and interests of the disclosing Party under this Agreement,but (in either case) only to the extent required in connection with obtaining such finance or in respect of such proposed assignment and subject to such

institution or intended assignee or transferee first agreeing with such Party to be bound by confidentiality provisions substantially the same as those contained in this Section 25.14; or

- (vi) to the Independent Panel or arbitrator appointed pursuant to and under the terms of this Agreement;
- (vii) according to the Laws of Montenegro.

### **25.15 No Liability for Review**

No review and approval by a Party of any agreement, document, instrument, drawing, specifications, or design proposed by another Party nor any inspection carried out by a Party pursuant to this Agreement shall relieve another Party from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification, or design or the carrying out of such works or failure to comply with the applicable Laws of Montenegro with respect thereto, or to satisfy another Party's obligations under this Agreement nor shall a Party be liable to another Party or any other Person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design or such inspection.

### **25.16 Specific Performance**

In the event that any provision of this Agreement was not performed in accordance with the terms hereof, the Parties shall, to the fullest extent permitted under any Laws of Montenegro, be entitled to specific performance of the terms of this Agreement, in addition to any other remedy as provided in Section 21.7, without the necessity of demonstrating the inadequacy of monetary damages.

### **25.17 Affirmation**

- (a) Neither the Concessionaire nor the Grantor has, directly or through an agent, engaged in any Corrupt Practices, Fraudulent Practices, Collusive Practices, Coercive Practices, or Obstructive Practices in competing for this Agreement, during the procurement or execution of any Project Agreement, or otherwise in connection with the Project.
- (b) The Concessionaire and the Grantor each covenants, each on its own behalf, that it will not, directly or through an agent, engage in any Corrupt Practices, Fraudulent Practices, Collusive Practices, Coercive Practices, or Obstructive Practices in the performance of any Project Agreement or otherwise in connection with the Project.
- (c) The Concessionaire has fully disclosed to the Grantor in writing all commissions, brokerage and other fees, and other compensation (other than compensation paid

to employees of the Concessionaire for services provided) paid or payable to any Person within or outside Montenegro in relation to the Project.

- (d) The Concessionaire accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of the representations and warranties contained herein and the declarations required hereby. The Concessionaire agrees that any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the Grantor, shall be voidable.

#### **25.18 Counterparts**

This Agreement is executed in eight (8) original copies, two copies for the Concessionaire and six copies for the Grantor.

#### **25.19 Further Assurances**

The Parties shall each execute any and all reasonable documents necessary to effectuate the purposes of this Agreement. Neither of the Parties shall, without prior written consent of the other Party, take or fail to take any action that might reasonably be expected to prevent or materially impede, interfere with, or delay implementation of the Project.

#### **25.20 Severability**

If any term or provision of this Agreement is determined by a court or other authority of competent jurisdiction to be invalid, void, illegal, unenforceable, or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by such determination in any way.

#### **25.21 Partial Invalidity**

The illegality, invalidity or unenforceability of any provision of this Agreement in whole or in part under the law of any jurisdiction shall neither affect:

- (a) its legality, validity, or enforceability under the law of any other jurisdiction; nor
- (b) the legality of any other provision or part thereof.



**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement in Podgorica, Montenegro as of the date first above written.

**The Grantor**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Sponsor]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **Schedule 1 Definitions**

### **2 Definitions**

Whenever the following capitalized terms appear in this Agreement or in the Schedules, they shall have the meanings stated below:

“Affiliate” – As to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “under common control with,” and “controlled by”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting stock or other equity interests, by contract, or otherwise.

“Agreement” – Has the meaning given thereto in the introductory paragraph.

“Agreement on Operation and Maintenance of the Transmission Network” – The agreement by that name to be entered into between the Concessionaire and PRENOS in respect of the transfer, operation and maintenance of the Morača Transmission Lines.

“Annual Reconciliation Statement” – A statement delivered by the Concessionaire to the Grantor pursuant to Section 11.2(a)(ii) of the Agreement.

“Audited Annual Statement” – Has the meaning given thereto in Section 11.2(a)(i) of the Agreement.

“Business Day” – Any Day other than a Saturday, Sunday, or a Day on which commercial banks in Podgorica, Montenegro are legally permitted to be closed for business.

“Buy-Out Compensation Amounts” – The compensation amounts set forth in Schedule 2.

“Buy-Out Date” – Has the meaning given thereto in Schedule 3.

“Buy-Out Notice” – A notice issued by the Grantor or the Concessionaire, as appropriate, stating that it wishes to exercise the Buy-Out Option.

“Buy-Out Option” – The right or obligation, as the case may be, to:

- (a) terminate the Concession Rights granted pursuant to Section 4.3 of the Agreement;
- (b) terminate the right to use the Project Sites and the Inundated Areas granted pursuant to Section 3.8.2(a) of the Agreement, and
- (c) acquire all of the Concessionaire’s rights, title, and interest in and to the Transferable Assets in accordance with the provisions of Schedule 3,

which right or obligation may arise pursuant to Sections 21.1, 21.2, 21.4, or 21.5 of the Agreement.

“Certificate of Readiness for Commissioning” – A certificate to be issued by the Independent Engineer to the Concessionaire and the Grantor under Section 7.1.1 of the Agreement stating, in relation to each Unit, Hydropower Plant, Morača HPPs or Morača Transmission Lines, that such Unit, Hydropower Plant, Morača HPP or Morača Transmission Lines is, in the professional opinion of the Independent Engineer, ready for the Commissioning Tests to be carried out.

“Certificate of Readiness for Synchronization” – A certificate to be issued by the Independent Engineer to the Concessionaire and the Grantor under Section 7.1.1 of the Agreement stating, in relation to each Unit, , that such Unit is, in the professional opinion of the Independent Engineer, ready for the Pre-Synchronization Tests and Post-Synchronization Tests to be carried out.

“Change in Law” –

- (a) The adoption, promulgation, repeal, modification, or reinterpretation after [•]<sup>1</sup> by any Public Authority of any Law of Montenegro;
- (b) the imposition by a Public Authority of any additional material term or condition in connection with the issuance, renewal, extension, replacement, or modification after [•]<sup>2</sup> of any Consent; or
- (c) the imposition by a Public Authority of any additional Consent,

that in any such case

- (i) establishes any requirement for the design, research, engineering, financing, construction, operation, maintenance, or Rehabilitation relating to the Concessionaire’s participation in the Project that is materially more restrictive than the most restrictive requirements
  - (A) in effect as of [•]<sup>3</sup>,
  - (B) specified in any applications, or other documents filed in connection with such applications, for any Consent filed by the Concessionaire on or before the Commercial Operations Date, or
  - (C) agreed to by the Concessionaire in any of the Project Agreements”; or
- (ii) has a Material Adverse Effect.

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<sup>1</sup> This blank will be filled in with the date that occurs one month prior to the date on which proposals are due.

<sup>2</sup> This blank will be filled in with the date that occurs one month prior to the date on which proposals are due.

<sup>3</sup> This blank will be filled in with the date that occurs one month prior to the date on which proposals are due.

“Coercive Practices” – Impairing or harming, or threatening to impair or harm, directly or indirectly, any Person or the property of any Person to influence improperly the actions of a Person.

“Collusive Practices” – Any arrangement between two (2) or more Persons designed to achieve an improper purpose, including influencing improperly the actions of another Person.

“Commercial Operations Date” – Means 00:01 hours on the Day immediately following the Day on which all prior conditions set forth in the Section 7.1.3 (a) of the Agreement have been fulfilled.

“Commissioned” – The successful completion of Commissioning of a Unit for continuous operation and dispatch in accordance with Article 7 of the Agreement and Schedule 7 and the certification of such successful completion of Commissioning of the Unit to the Grantor and the Concessionaire by the Independent Engineer.

“Commissioning” – The undertaking of the Commissioning Tests on a Unit and/or Hydropower Plant, and/or Morača HPPs and/or Morača Transmission Lines.

“Commissioning Procedures” – Has the meaning given thereto in Schedule 7.

“Commissioning Tests” – Refers collectively to the Pre-Synchronization Tests and Post-Synchronization Tests, the Unit Commissioning Tests, the Hydropower Plant Commissioning tests, Morača Transmission Lines Commissioning Tests and Morača HPPs Commissioning Tests - has the meaning given thereto in Schedule 7.

“Company” – Has the meaning given thereto in Section 3.1 of the Agreement.

“Concession Fee” – A quarterly fee in the amount of [●] percent ([●]%) of the Project’s revenue.

“Concession Period” – The period commencing on the Commercial Operations Date and ending on the [●]<sup>4</sup> anniversary of the Commercial Operations Date.

“Concession Rights” – Has the meaning given thereto in Section 3.3 of the Agreement.

“Concessionaire” – Means:

- (a) the Sponsor prior to the novation of this Agreement to the Company; and
- (b) the Company following the novation of this Agreement to the Company.

“Concessionaire Default Termination Payment” – Has the meaning given thereto in Schedule 2.

“Concessionaire Event of Default” – Has the meaning given thereto in Section 21.1 of the Agreement.

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<sup>4</sup> This blank will be filled in based on the proposal submitted by the preferred bidder.

“Connection Approval” – The approval for the connection of the Morača HPPs to the PRENOS Transmission System issued by PRENOS pursuant to the Chapter XIII of the Energy Law.

“Connection Facilities” – The facilities and equipment to be designed, constructed or installed by or on behalf of the Company to connect the Morača HPPs to the Morača Transmission Lines, including any telemetering equipment, relay and switching equipment, telecommunications devices, telemetering, and data interfaces required for the SCADA system, protective devices, and safety equipment.

“Connection Works” – Those works and activities described in the Transmission Network Connection Contract and the Agreement on Operation and Maintenance of the Transmission Network to be undertaken by or on behalf of the Company for the design, engineering, and construction of the Connection Facilities.

“Consents” – Means:

- (a) all approvals, consents, authorizations, notifications, acknowledgements, licenses, permits, decisions, or similar items that are required to be obtained from any Public Authority under any Law of Montenegro by the Concessionaire, the EPC Contractor, the Rehabilitation EPC Contractor, the Road Works Contractor, or any of their subcontractors in order for the Concessionaire and the Sponsor to fulfill their obligations under this Agreement and the other Project Agreements, including the Generation License and the Connection Approval.

“Constitutional Documents” – With respect to any Person:

- (a) all organizational and governance documents, including all documents adopted or filed in connection with the creation, formation, or organization of such Person;
- (b) all shareholders agreements, voting agreements, voting trust agreements, company agreements, operating agreements, joint venture agreements, registration rights agreements, or other agreements or documents relating to the organization, management, or operation of any Person or relating to the rights, duties and obligations of the holders of any equity interest in any Person; and
- (c) any amendment or supplement to any of the foregoing.

“Construction Report” – A report to be submitted by the Concessionaire pursuant to Section 6.6.1 of the Agreement, which report shall address the matters identified in, and shall be substantially in the form set out in, Schedule 7.

“Construction Security” – Has the meaning given thereto in the Sponsor Support Agreement.

“Construction Start Date” – The Day of issuance of the notice to proceed by the Concessionaire to the EPC Contractor upon the satisfaction of all other conditions precedent to the obligation of the EPC Contractor to commence the construction of the Project Facilities.

“Contract Capacity” – Means:

- a. with respect to a Unit, the capacity of such Unit indicated as Contract Capacity in Schedule 1;
- b. with the respect to the Hydropower Plant, Hydropower Plant capacity indicated as Contract Capacity in Schedule 1;
- c. with the respect to the Morača Transmission Lines, Morača Transmission Lines capacity indicated as Contract Capacity in Schedule 1.
- d. with respect to the Morača HPPs, Morača HPPs capacity measured as net electrical output generated by the Morača HPPs at the connection(s) between the Morača Transmission Lines and PRENOS Transmission System, indicated as Contract Capacity in Schedule 1.

“Contracted Operating Characteristics” – Has the meaning given in Schedule 1.

“Contractor” – The EPC Contractor, the Rehabilitation EPC Contractor, the O&M Contractor, the Road Works Contractor, and any other direct contractors to the Concessionaire and any of their direct subcontractors integrally involved in the Project.

“Corrupt Practices” – The offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another Person.

“Customs” – The Customs Administration of Montenegro.

“Customs Duties” – All Taxes (other than value added tax) on or relating to the import into or export from Montenegro of goods and levied by any Public Authority.

“Day” – A period of twenty four (24) hours, commencing at 00:00 of each Day, and “Daily” shall be construed accordingly.

“Delivery Protocol” – Any protocol signed by the Grantor and the Concessionaire confirming the date and the time of delivery by the Grantor to the Concessionaire, of the particular cadastre parcels that are part of Project Sites, Staging Areas or Inundated Areas, with the right to possess and use, without disturbance and without Encumbrances.

“Dispute” – Any dispute, disagreement, or difference arising under, out of, or in connection with this Agreement, including any dispute or difference concerning the existence, legality, validity, or enforceability of this Agreement or any provision hereof or the performance of a Party under any provision hereof.

“Emission Reductions” – Any and all attributes, credits, benefits, reductions, offsets, or allowances, howsoever entitled, that exist on or after the Execution Date, including:

- (a) any emission reduction, emission reduction credits, benefits, set-offs, or incentives related to the avoidance, reduction, mitigation, removal, sequestration, flaring, displacement, emission, or destruction of carbon dioxide (CO<sub>2</sub>) or any other greenhouse gas, whether existing or created pursuant to contract, on voluntary standard or program, or in accordance with international law or Laws of Montenegro; and

- (b) any other benefit attributable to or in connection with any renewable energy production or emission, avoidance, or displacement.

“Encumbrance” – Any mortgage, pledge, interest security, lien, levy, fee, demand, condition, option, right of way, neighboring property right, the right to housing, right to build on someone else's land, easements, restrictions, preemptive rights, right of first refusal, or other encumbrances or restrictions of any kind or any conditional sale agreement, retention of the ownership right or other agreement which has effect as any of the above.

“Energy Law” – The Energy Law (Zakon o energetici (Službeni list Crne Gore, br.28/10)), with any possible amendments and restatements of the same.

“Environmental Condition” – Any conditions, circumstances, or other matters of fact relating to or otherwise affecting the environment that violate the Environmental Standards, including with respect to any natural resources (including flora and fauna), soil, surface water, ground water, any present or potential drinking water supply, subsurface strata, or the ambient air. Environmental Conditions includes:

- (a) conditions, circumstances, or other matters of fact relating to or arising out of the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping discharging, injecting, escaping, leaching, disposal (including the abandonment or discarding of ash, barrels, containers, and other closed receptacles containing any Hazardous Material), dumping, or threatened release of Hazardous Materials; and
- (b) conditions, circumstances, or other matters of fact resulting in the exposure of any Person to Hazardous Materials as a result of or otherwise arising from operations, acts, omissions, or other conduct.

“Environmental Impact Assessment” – An assessment conducted by the Concessionaire in accordance with the Environmental Standards:

“Environmental Management Plan” – Any environmental management plan contained in an Environmental Impact Assessment that relates to the Project.

“Environmental Standards” – Collectively,

- (a) the Environmental Management Plans;
- (b) the requirements imposed by any Law of Montenegro related to the environment and the protection and preservation thereof; and
- (c) in the event that the Laws of Montenegro related to the environment and the protection and preservation thereof do not regulate a condition, circumstance, or other matter related to the environment and the protection and preservation thereof, and such condition, circumstance, or other matter is regulated by any measure, including directives, regulations, decisions, and case law, adopted by an official institution of the European Union related to the environment and the protection and preservation thereof, the

requirements imposed by such measure, regardless of whether legislation implementing such measure has been adopted in Montenegro.

(d) The Lender Guidelines.

“EPC” – Engineering, procurement, and construction.

“EPC Contract” – The agreement entered into or to be entered into between the Concessionaire and the EPC Contractor for the design, research, engineering, procurement, and construction by the EPC Contractor of the Morača HPPs and the Morača Transmission Lines, as it may be amended by the parties thereto from time to time.

“EPC Contractor” – Any design, research, engineering, procurement, and construction contractor and any successor thereto appointed by the Concessionaire to undertake the design, research, engineering, procurement, and construction of the Morača HPPs and the Morača Transmission Lines.

“EPC Works” – The design, research, engineering, procurement, and construction of the Morača HPPs and the Morača Transmission Lines, testing and Commissioning of the Morača HPPs and the Morača Transmission Lines.

“EPCG” – Elektroprivreda Crne Gore AD Nikšić.

“EPCG Technical Documentation” – The complete library of technical documentation commissioned by EPCG prior to 10 December 2008 for the purpose of implementation of the Project.

“ERA” – The Energy Regulatory Agency of Montenegro, and any successor or substitute regulatory agency with authority and jurisdiction over the electricity sector in Montenegro.

“Euribor” – The then-effective European Banking Federation Interbank Offer Rate for Euro deposits for a period equal to three (3) months, which appears on the appropriate page of the Reuters service at or about 11:00 a.m. Central European Time, or in the event that the Reuter’s service, or any successor thereto, no longer provides such information, such other service as agreed to by the Parties that provides a comparable rate.

“Euro” or “€” – The single currency of participating member states of the European Union.

“Execution Date” – Has the meaning given thereto in the introductory paragraph.

“Existing Financing” – Has the meaning given thereto in Section 11.3.2(b)(i) of the Agreement.

“Financial Closing” – The execution and delivery of the Financing Documents.

“Financing Costs” – The costs and expenses (however defined) incurred by the Concessionaire or its affiliates pursuant to any Financing Document entered into in connection with the Initial Financing or a Refinancing.



“Financing Documents” – Loan agreements, and all related notes, indentures, security agreements, guarantees, agreements, or other instruments providing security to the Lenders (including consents and acknowledgements of assignment and direct agreements in respect to documents assigned as security to the Lenders) and other documents entered into by the Concessionaire and any of its Affiliates in relation to the financing of the Project or any material part thereof (and if any of the proceeds of the loan agreements or other related documents constituting the “Financing Documents” are on-lent by an Affiliate of the Concessionaire to the Concessionaire in relation to the Project, including any such documents entered into by the borrower and the Concessionaire), as such agreement, instruments, guarantees, and documents may be amended from time to time.

“Financing Security” – Has the meaning given thereto in the Sponsor Support Agreement.

“Force Majeure Events” – Has the meaning given thereto in Section 23.1 of the Agreement.

“Fraudulent Practices” – Any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a Person to obtain a financial or other benefit or to avoid an obligation.

“Generation License” – The license to produce electric energy to be issued by the ERA pursuant to the Energy Law.

“Grantor” – Has the meaning given thereto in the introductory paragraph.

“Grantor Default Termination Payment” – Has the meaning given thereto in Schedule 2.

“Grantor Event of Default” – Has the meaning given thereto in Section 21.2 of the Agreement.

“Grid Code” – The grid code prepared by PRENOS and approved by ERA, as it may be revised from time to time by PRENOS with any necessary approval by ERA.

“Ground Condition Delay Event” – The discovery of variations in the actual ground and subsurface conditions at the Morača HPPs Sites from the reference conditions specified in accordance with the exploration works performed by the Concessionaire under Section 3.19, and/or in the EPC Contract, which variations cause a delay in the construction and commissioning of the Project of ninety (90) Days or more.

“Hazardous Materials” – Any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance or waste, any flammable, explosive, or radioactive material regulated under, or subject to, any Environmental Standard.

“Health & Safety Standards” – Collectively, the requirements imposed by:

- (a) any Law of Montenegro related to health and safety; and
- (b) any measure, including directives, regulations, decisions, and case law, adopted by an institution of the European Union related to health and safety, regardless of whether legislation implementing such measure has been adopted in Montenegro.

“Hydropower Plant Capacity Certificate” – Certificate issued by the Independent Engineer under Section 7.1.1 of the Agreement stating the Test Capacity of the relevant Hydropower Plant.

“Hydropower Plant” – Refers to one of the Hydropower Plants comprising the Morača HPPs including the Units as parts of the hydropower plant.

“Hydropower Plant Commissioning Certificate” – Certificate issued by the Independent Engineer under Section 7.1.1 of the Agreement stating that the relevant Hydropower Plant has successfully passed the Hydropower Plant Commissioning Tests.

“Hydropower Plant Commissioning Tests” - Has the meaning given thereto in Schedule 7.

“ICC Rules” – Has the meaning given thereto in Section 24.4(a) of the Agreement.

“Independent Engineer” – The firm (or firms) of engineering consultants to be appointed by the Grantor in accordance with Section 3.17 of the Agreement.

“Independent Panel” – Has the meaning given thereto in Section 24.3.1 of the Agreement.

“Initial Financing” – The financial indebtedness of the Concessionaire or its affiliates in connection with the Project or any substantial part of the same thereto.

“Interest Rate” – Euribor, plus three and a half percent (3.5%).

“Inundated Areas” – Land that will be inundated with water following the construction of the Morača HPPs, including a belt of [•] meters from the shore of the relevant reservoir at the maximum fill level of the relevant reservoir, as is more particularly described in Schedule 6.

“Lapse of Consent” – Event of Any Consent:

- (a) not being issued, renewed, replaced, or, having lapsed, not being reissued or replaced, within one hundred eighty (180) Days of properly and timely made and diligently pursued application by the Concessionaire for that Consent to be issued, renewed, or reissued, as the case may be, and as a result the Material and Adverse Effect occurs; or
- (b) being made subject, upon renewal or otherwise, to any terms or conditions that have Material and Adverse Effect,

in each of the above instances despite such Party’s compliance with the applicable procedural and substantive requirements for the issuance, renewal, or re-issuance of relevant Consents as applied in a “non-discriminatory” (as explained in Section 4.1.2 of the Agreement) manner.

“Laws of Montenegro” – Means:

- (a) the laws of Montenegro, and all statutes, treaties, codes, ordinances, orders, rules, regulations, judicial decisions, notifications, or other similar directives issued by any Public Authority pursuant thereto, and

- (b) the ‘acquis communautaire on energy’ and the ‘acquis communautaire on environment’, in each case as defined in the Energy Community Treaty, but only to the extent that the statutes, codes, ordinances, rules and regulations of Montenegro do not regulate or otherwise address any matter that is regulated or otherwise addressed by the ‘acquis communautaire on energy’ or the ‘acquis communautaire on environment’;

as they may be amended, supplemented, replaced, reinterpreted by a Public Authority, or otherwise modified from time to time.

“Lender Guidelines” – Any requirements imposed by

- (a) the Lenders, or
- (b) any financial institution providing funding to the Grantor in connection with the acquisition of the Project Sites by the Grantor,

in either case as to requirements in connection with (i) the acquisition of land and rights in land required in connection with the Project, and (ii) the undertaking of the Environmental Impact Assessments and the development of Environmental Management Plans.

“Lender” – A financial institution that is a party to the Financing Documents, or a financial institution that subsequently becomes a party to the Financing Documents, together with their respective successors and assigns.

“Loss” – Any loss, damage, liability, payment or obligation (excluding any indirect or consequential loss, damage, liability, payment, or obligation) and all costs and expenses (including reasonable legal fees) related thereto.

“Material Adverse Effect” – A material and adverse effect on

- (a) the Concessionaire or its ability to perform its obligations or exercise its rights under any Project Agreement to which it is a party,
- (b) the design, research, engineering, financing, construction, operation, maintenance, and/or Rehabilitation of the Project Facilities, as applicable, or
- (c) the interests of the Sponsor or the return of or on the Sponsor’s investment in relation to the Company’s participation in the Project.

“Ministry of Economy” – The Ministry of Economy of the Grantor or, in the event that the name or responsibility of such ministry is changed, the ministry or ministries of the Grantor charged with the responsibility for electric energy sector.

“Morača HPPs” – The series of cascading hydroelectric power generation plants to be located on the Morača River, including the dams, power houses, and related switchyard facilities (including the Connection Facilities) to be constructed as part of the Project, as more particularly described in Schedule 1.

“Morača HPPs Sites” – The land on which the dams, power generation plants and related switchyard facilities comprising the Morača HPPs will be located, as more particularly described in Schedule 6.

“Morača Transmission Lines” – The transmission lines to be designed, constructed or installed by or on behalf of the Company to connect the switchyards adjacent of the Morača HPPs to the powerhouses to the PRENOS Transmission System, which transmission lines will be transferred to PRENOS pursuant to Section 3.14 of the Agreement.

“Morača Transmission Lines Routes” – The land on which the transmission lines, substations, and related facilities comprising the Morača Transmission Lines will be located, as more particularly described in Schedule 6.

“MW” – A unit of electric generation capacity equal to 1 Megawatt or 1,000,000 Watts.

“Novation Agreement” – Has the meaning given thereto in Section 3.2 of the Agreement.

“Occupancy Permit” – Occupancy permit set forth in Article 121 of the Law on Spatial Planning and Construction (*Zakon o uređenju prostora i izgradnji objekata (Službeni list Crne Gore br. 51/08)*);

“O&M Agreement” – The operation and maintenance agreement to be entered into between the Concessionaire and the O&M Contractor for the operation and maintenance of the Morača HPPs, as may be amended by the parties thereto from time to time.

“O&M Contractor” – Any operation and maintenance contractor(s), and any successor(s) thereto, appointed by the Concessionaire.

“Obstructive Practices” – Any of:

- (a) deliberately destroying, falsifying, altering, or concealing evidence material to any investigation, or making false statements to investigators, in order to materially impede any investigation into allegations of any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice, or Obstructive Practice;
- (b) threatening, harassing, or intimidating any Person to prevent such Person from disclosing its knowledge of matters relevant to any such investigation or from pursuing any such investigation; or
- (c) acts intended to materially impede the exercise of the any Person’s legal or contractual rights of access to information under any Project Agreement.

“Other Force Majeure Event” – Has the meaning given thereto in Section 23.1(b) of the Agreement.

“Other Force Majeure Termination Payment” – Has the meaning given thereto in Schedule 2.

“Ownership Interest” – Any ownership interest of the Company with voting or other rights of management and control, and any securities of the Company that are convertible into such ownership interests at the option of the holder.

“Party” and “Parties” – Have the meaning given thereto in the introductory paragraph.

“Permitted Affiliate Transaction” – All transactions or agreements for the sale of capacity, net electrical output, or ancillary services with Affiliates that:

- (a) in the aggregate in respect of the Company do not exceed three million Euros (€3,000,000) per year; and
- (b) other transactions or agreements in the ordinary course of business on fair and reasonable terms (i) no less favorable than those which the Company would obtain, if they were obtainable given the then current circumstances, in an arm’s length transaction with a person (not being a Affiliate), or (ii) otherwise with the Grantor’s prior written consent, which consent shall not be unreasonably withheld or delayed.

“Person” – Any individual, corporation, partnership, joint venture, association, business trust, unincorporated organization, Public Authority or limited liability company.

“Political Force Majeure Event” – Has the meaning given thereto in Section 23.1(a) of the Agreement.

“PRENOS” – Crnogorski elektroprenosni sistem AD Podgorica, the electricity transmission company of Montenegro and the Montenegrin transmission system operator or any other Person which may be at any moment the Montenegrin transmission system operator.

“PRENOS Transmission System” – The electricity transmission system owned and operated by PRENOS to transmit electricity in Montenegro.

“Prescribed Consent Fee” – With respect to any Consent, the charge or fee, if any, prescribed by the Laws of Montenegro.

“Post-Synchronization Tests” – Has the meaning given thereto in Schedule 7.

“Pre-Synchronization Tests” – Has the meaning given thereto in Schedule 7.

“Prescribed Consent Form” – With respect to any Consent, the form, if any, (including all information and details) prescribed by the Laws of Montenegro for the application for or renewal of such Consent.

“Project” – Has the meaning given thereto in the recitals.

“Project Agreements” – This Agreement, the Sponsor Support Agreement, the Transmission Network Connection Contract, and the Agreement on Operation and Maintenance of the Transmission Network, as such agreements may be amended by the parties thereto from time to time; provided, however, that no such amendment shall affect the Grantor’s obligations under

this Agreement or any other Project Agreement unless the Grantor is a party to the agreement amending the relevant Project Agreement (or the amended and restated version of the relevant Project Agreement) or the Grantor otherwise consented to the amendment of the relevant Project Agreement.

“Morača HPPs Capacity Certificate” - Certificate issued by the Independent Engineer in line with the Section 7.1.1 of the Agreement stating the total capacity of Morača HPPs measured as net electrical output generated by the Morača HPPs at the connection(s) between the Morača Transmission Lines and PRENOS Transmission System.

“Morača HPPs Commissioning Certificate” - Certificate issued by the Independent Engineer in line with the Section 7.1.1 of the Agreement stating that Morača HPPs have successfully passed Morača HPPs Commissioning Tests.

“Morača HPPs Commissioning Tests” - Has the meaning given thereto in Schedule 7.

“Project Development Plan” – The design parameters, design basis, project scope, and operating characteristics of the Project Facilities, as described in Schedule 1.

“Project Facilities” – Collectively refers to:

- (a) the Morača HPPs;
- (b) until the Concessionaire transfers all of its rights, title, and interests in and to the Morača Transmission Lines in accordance with the Agreement on Operation and Maintenance of the Transmission Network, the Morača Transmission Lines; and
- (c) until the Concessionaire transfers its rights, title, and interests in and to any particular Project Road to the Grantor pursuant to Section 3.15(c), such Project Road,

and “Project Facility” refers to any of the foregoing individually.

“Project Revenues” - related to any period, the sum of all amounts which have the nature of the income or revenue of the Concessionaire’s or its subsidiary company , in line with the Section 3.10.1 during that period, including all amounts earned in relation with the sale of the capacity, generated net electrical output, auxiliary and system services of Morača HPPs or sale of the reduced emission.

“Project Road” – Any road to be relocated pursuant to Section 3.15(a) or to be constructed pursuant to Section 3.15(b).

“Project Roads Construction Contract” – The agreement entered into or to be entered into between the Concessionaire and the Road Works Contractor for the relocation or construction, as applicable, by the Road Works Contractor of the Project Roads, as it may be amended by the parties thereto from time to time.

“Project Roads Routes” – The land on which the Project Roads will be located, as more particularly described in Schedule 6.

“Project Sites” – Refers collectively to the Morača HPPs Sites, the Morača Transmission Lines Routes, and Project Roads Routes.

“Protected Assets” – The Grantor’s aircraft and other defence related assets or assets protected by the diplomatic and consular privileges provisions of any legislation (if any).

“Prudent Utility Practices” – Those practices, methods, and procedures conforming to safety and legal requirements that are attained by exercising that degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from a skilled and experienced generator of electricity engaged in the same or a similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in Montenegro and satisfying the health, safety, and environmental standards of reputable international electric generation companies. Prudent Utility Practices are not limited to optimum practices, methods, or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods, and acts that could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety.

“Public Authority” – Any of:

- (a) the Grantor, any subdivision thereof, or any local governmental authority with jurisdiction over the Company, the Project, or any part thereof;
- (b) any department, authority, instrumentality, agency, or judicial body;
- (c) courts and tribunals in Montenegro; or
- (d) any commission or independent regulatory agency or body having jurisdiction over either the Company or the Sponsor, the Project, or any part thereof.

“Refinancing” – At any time, any refinancing of all or part of any existing financial indebtedness of the Concessionaire or its affiliates in connection with the Project at that time.

“Refinancing Costs Report” – In respect of any Refinancing, a written report prepared by the Concessionaire setting out:

- (a) the average of the monthly payments of principal, interest, and fees and expenses to be paid by the Concessionaire pursuant to the Refinancing;
- (b) for each month following the proposed date of any Refinancing until the month in which no amounts are scheduled to remain payable pursuant to the Refinancing, the difference between the average of the monthly payments of principal, interest, and fees and expenses that will be payable pursuant to:
  - (i) the Initial Financing; and
  - (ii) the Refinancing; and
- (c) the Refinancing Gain.

“Refinancing Gain” – The amount (if any) by which the principal, interest, and fees and expenses of the Concessionaire or its affiliates over the term of the credit facilities made available under the relevant Financing Documents are reduced as a result of any Refinancing.

“Rehabilitation” – The rehabilitation of the Morača HPPs in accordance with Section 9.1 of the Agreement.

“Rehabilitation EPC Contract” – The agreement entered into or to be entered into between the Concessionaire and the Rehabilitation EPC Contractor for the Rehabilitation by the Rehabilitation EPC Contractor of the Morača HPPs, as may be amended by the parties thereto from time to time.

“Rehabilitation EPC Contractor” – Any design, research, engineering, procurement, and construction contractor(s) and any successor thereto appointed by the Concessionaire to undertake the Rehabilitation.

“Rehabilitation Fund” – The rehabilitation fund established pursuant to Section 9.1(e) of the Agreement for the purpose of funding the Rehabilitation.

“Rehabilitation Study” – Has the meaning given thereto in Section 9.1(b) of the Agreement.

“Rehabilitation Study Engineer” – Has the meaning given thereto in Section 9.1(b) of the Agreement.

“Rehabilitation Works” – Has the meaning given thereto in Section 9.1(b)(i) of the Agreement.

“Rehabilitation Works Cost Estimate” – Has the meaning given thereto in Section 9.1(b)(ii) of the Agreement.

“Required Commercial Operations Date” – The earlier of:

- (a) the date that occurs seventy-two (72) months after Construction Start Date; and
- (b) the date of [•], as designated by the Sponsor in its proposal to participate in the Project,

as such dates may be extended by reason of a Force Majeure Event.

“Required Financial Closing Date” – The date that occurs [**three (3months)**] after the Execution Date.

“Revenue Sharing Fee” – A quarterly fee in the amount of [•] percent ([•]%)<sup>6</sup> of the Project’s revenue, whose purpose is sharing of the Project’s economic benefit and refund of the invested funds in the Project by the Grantor.

“Road Works” – The design, research, engineering, procurement, and relocation or construction, as applicable, of the Project Roads.



“Road Works Contractor” – Any construction contractor and any successor thereto appointed by the Concessionaire to undertake the relocation or construction, as applicable, of the Project Roads.

“Sponsor” – Has the meaning [●].

“Sponsor Support Agreement” – The agreement by that name between the Grantor and [Sponsor] dated on the Execution Date.

“Staging Areas” – Land needed by the Concessionaire during the construction of the Project Facilities, including land required for temporary warehouses, workshops, construction settlements, internal access roads and spoils dumps, as more particularly described in Schedule 6.

“Tax” – Any tax, charge, impost, tariff, duty, basis for assessing taxes (including the rates of or periods for depreciation of assets for tax assessment purposes), fiscal concession, or allowance, any value added tax, sales tax, water or environmental or energy tax, import or customs duty, withholding tax, excise tax, tax on foreign exchange transactions, or property tax.

“Tax Treaties” – One or more conventions or treaties entered into between Montenegro and other countries for the avoidance of double taxation.

“Technical Dispute” – A Dispute that relates to a technical, engineering, or operational issue.

“Technical Requirements” – Project scope, design parameters and standards for the Morača HPPs, the Morača Transmission Lines and Project Roads, as more particularly described in Schedule 7.

“Term” – Has the meaning given thereto in Section 2.1 of the Agreement.

“Termination Notice” – Has the meaning given thereto in Section 21.3 of the Agreement.

“Tested Capacity” –means the capacity of a Unit , Hydropower Plant ,Morača HPPs and/or the and/or Morača Transmission Lines, as the context requires , as demonstrated by the Commissioning Tests and as certified by the Independent Engineer in line with Article 7..

– “Transferable Assets” – Has the meaning given in Schedule 3.

“Transmission Lines Commissioning Tests” – Has the meaning given thereto in Schedule 7

“Transmission Lines Capacity Certificate” – Certificate issued by the Independent Engineer in line with Section 7.1.1 of the Agreement stating the Tested Capacity of the Morača Transmission Lines.

“Transmission Lines Commissioning Certificate” – Certificate issued by the Independent Engineer under Section 7.1.1 of the Agreement stating that the Morača Transmission Lines have successfully passed the Transmission Lines Commissioning Tests.

“Transmission Network Connection Contract” – The agreement by that name to be entered into between the Concessionaire and PRENOS for connection to the PRENOS Transmission System, as may be amended by the parties thereto from time to time.

“Unaudited Quarterly Profit and Loss Statement” – Has the meaning given thereto in Section 11.1(b)(i) of the Agreement.

“Unit” – An electric power generation unit within the Morača HPPs.

“Unit Capacity Certificate” – Certificate issued by the Independent Engineer in line with Section 7.1.1 of the Agreement stating the Tested Capacity of the relevant Unit.

“Unit Commissioning Certificate” – Certificate issued by the Independent Engineer in line with Section 7.1.1 of the Agreement stating the relevant Unit has successfully passed the Unit Commissioning Tests.

“Unit Commissioning Tests” – Has the meaning given thereto in Schedule 7.

**Schedule 2**  
**Buy-Out Compensation Amounts**

**3 Definitions**

The following terms shall have the following meanings when used in this Schedule and in the Agreement.

“Calculation Date” – The Day as of which the applicable termination price is calculated, such Day being the Day that occurs ninety (90) Days after the date of the applicable Buy-Out Notice.

**4 Calculation of Transfer Prices**

The “**Concessionaire Default Termination Payment**” shall be calculated as follows:

$$UP - Reh - IP$$

The “**Grantor Default Termination Payment**” shall be calculated as follows:

$$UP + PC + [UE + EP - (UP - UPerD)] - IP$$

The “**Other Force Majeure Termination Payment**” shall be calculated as follows:

$$UP + PC + [UE - (UP - UPerD)] - IP$$

The “**Ground Condition Delay Termination Payment**” shall be calculated as follows:

$$UP + PC - IP$$

In each case where:

*UP* means the unpaid principal actually outstanding under the Financing Documents;

*PC* means the amount of any reasonable and customary prepayment charges, wind-up costs, hedge break costs, outstanding accrued interest charges, or similar charges or fees payable to the Lenders in accordance with the Financing Documents submitted to the Grantor pursuant to Section 3.5 of the Agreement as a result of the prepayment of the unpaid principal included in the variable *UP* or the transfer of the Morača HPPs, Project Facilities, if applicable;

*Reh* means the estimated cost of completing the Rehabilitation in accordance with Section 9.1 of the Agreement;

*UPerD* means the unpaid permitted debt, which shall equal the lesser of:

- (i) the amount of principal actually outstanding under the Financing Documents; and
- (ii) the amount of principal that should be outstanding under the Financing Documents, as submitted to the Grantor pursuant to Section 3.5 of the Agreement, to the extent associated with the financing of the Project Facilities, if applicable, and assuming that the Concessionaire had paid all amounts due under the Financing Documents on the date such amounts fell due;

*UE* means unredeemed equity, which shall be calculated as follows:

$$UE = EI - \left( N \times \frac{EI}{Term} \right)$$

Where:

*EI* means the amount of equity (in Euros) contributed by the Sponsor to the Company in order to finance the construction of the Project Facilities, if applicable;

*N* means the number of years (or part-years) that have elapsed since the date that falls exactly between the first contribution of equity and the last contribution of equity, in each case made by the Sponsor to the Company in order to finance the construction of the Project Facilities if applicable;

*Term* means the number of years in the Concession Period;

*EP* means the amount (in Euros) of the dividends the Company would reasonably expect to pay to the Sponsor on its shares in the Company in connection with the Project for a period of three (3) years following the Calculation Date, discounted to their net present value as of the Calculation Date using a rate equal to Euribor plus eight percent (8%) per annum; provided, however, that in no event shall such expected dividends exceed 15% of the value of *UE* during any year, calculated by calculating *UE* as set forth using the mid-point of each of such three years as the calculation date, instead of the Calculation Date; and

*IP* means any insurance proceeds following the occurrence of a Force Majeure Event that have not been expended by the Company on the repair

and restoration of the damage caused by such Force Majeure Event or used to pay unpaid principal under the Financing Documents.

### **Schedule 3 Buy-Out Arrangements**

#### **1 Introduction**

This Schedule 3 outlines the procedures to be adopted in the event that the Project Facilities, as applicable are to be transferred pursuant to Article 22 of the Agreement.

#### **2 Definitions**

Capitalized terms used but not defined in this Schedule 3 shall have the meanings given to them in the body of the Agreement. Wherever the following terms appear in this Schedule 3, they shall have the meanings stated below.

“Accountants” – An independent firm of international chartered accountants agreed between the Parties. In the absence of agreement within fifteen (15) Days after the date of service of a Buy-Out Notice, the Grantor shall nominate three such firms and the Concessionaire shall select one such firm from the list prepared by the Grantor.

“Buy-Out” – The:

- (a) termination of the Concession Rights granted pursuant to Section 4.3 of the Agreement;
- (b) termination of the right to use the Project Sites and the Inundated Areas granted pursuant to Section 3.8.2(a) of the Agreement, and
- (c) the transfer of all of the Concessionaire’s rights, title, and interest in and to the Transferable Assets in accordance with the provisions of this Schedule 3,

in each case effective as of the Buy-Out Date.

“Buy-Out Closing” – Has the meaning given thereto in Section 8.1.

“Buy-Out Date” – The Day that occurs one hundred eighty (180) Days after the date of receipt of the Buy-Out Notice, or if such Day is not a Business Day, on the next succeeding Business Day, or such earlier date as may be agreed between the Concessionaire and the Grantor.

“Buy-Out Price” – The amount payable by the Grantor in respect of the Buy-Out as certified by the Accountants in accordance with Article 7 of the Agreement and being:

- (a) the Concessionaire Default Termination Payment, if the Project Facilities, as applicable, are being transferred pursuant to Section 22.1 of the Agreement;
- (b) the Grantor Default Termination Payment, if the Project Facilities, as applicable, are being transferred pursuant to Sections 22.2 or 22.3 of the Agreement;

- (c) the Other Force Majeure Termination Payment, if the Project Facilities, as applicable, are being transferred pursuant to Section 22.4 of the Agreement;
- (d) the Ground Condition Delay Termination Payment if the Project Facilities, as applicable, are being transferred pursuant to Section 22.4 of the Agreement in the event of termination on the basis of the Other Force Majeure Event caused by the Ground Condition Delay Event.

“Encumbrance” – Any mortgage, pledge, security interest, lien, levy, charge, claim, condition, equitable interest, option, right of way, easement, tenancy, encroachment, servitude, restriction, right of first option, right of first refusal, or other encumbrance or restriction of any kind whatsoever, or any conditional sale contract, title retention, or other contract giving effect to any of the foregoing.

“Outstanding Insurance Claims” – Claims outstanding and unpaid as of the Buy-Out Date, and claims that the Concessionaire is entitled to make but has not as of the Buy-Out Date made, under any insurance policies relating to the Project Facilities, as applicable, in each case insofar as such claims relate to physical Loss or damage occurring prior to the Buy-Out Date save where the Loss or damage has been remedied prior to the Buy-Out Date at the cost of the Concessionaire.

“Material Contracts” – Each of the following:

- (a) the EPC Contract;
- (b) the Rehabilitation EPC Contract;
- (c)
- (c) Transmission Network Connection Contract;
- (d) the Agreement on Operation and Maintenance of the Transmission Network,
- (e) O&M Agreement
- (f) the Project Roads Construction Contract; and
- (g) any other contract agreed by the Concessionaire and the Grantor to be an the Material Contract.

“Transferable Assets” – Has the meaning given thereto in Section 3(a)(iii)(C) of this Schedule.

### **3 Scope of Buy-Out**

- (a) On the Buy-Out Date:

- (i) the Concession Rights granted pursuant to Section 3.3 of the Agreement shall terminate;
- (ii) the Concessionaire's rights to use the Project Sites and, if applicable, the Inundated Areas granted pursuant to Section 3.8.2(a) of the Agreement shall terminate; and
- (iii) the Concessionaire shall surrender, assign, or transfer to the Grantor or its designee any of its rights, title, and interest (if any) in and to:
  - (A) the Project Facilities;
  - (B) all books, records, and other documents relating to the Project Facilities;
  - (C) any equipment, machinery, materials, real property, interests in real property, intellectual property, interests in intellectual property, or other property of any kind that are owned, leased, or licensed by the Concessionaire or in which the Concessionaire otherwise holds a legal or beneficial interest and are used by the Concessionaire in connection with the Project or the performance of the Concessionaire's obligations under the Material Agreements; and
  - (D) the Material Contracts and all other contracts relating to the Concessionaire's participation in the Project, from and after the Buy-Out Date

(collectively, the "**Transferable Assets**").

- (b) The Concessionaire shall not be required to surrender or transfer the following:
  - (i) cash in hand and at the bank;
  - (ii) the trade and book debts and receivables accruing to the Concessionaire prior to, but unpaid at, the Buy-Out Date; and
  - (iii) the benefit of claims under warranties, guarantees, conditions, indemnities, and insurance policies howsoever arising out of any events occurring or circumstances arising prior to the Buy-Out Date, other than any Outstanding Insurance Claims and any outstanding claims under warranties, guarantees, conditions, and indemnities to the extent that such claims relate to physical Loss or damage to or defects in the Project Facilities, if applicable, occurring prior to but remaining unremedied as of the Buy-Out Date.
- (c) The Grantor may elect, in its sole discretion, not to receive any of the assets set forth in Section 3(a), of this Schedule, provided that any such election shall not



affect the Buy-Out Compensation Amounts determined in accordance with Schedule 2 of the Agreement.

## **4 Terms and Conditions of Buy-Out**

### **4.1 Warranties**

No warranties (express or implied) as to the condition of the property and assets referred to in Section 3 of this Schedule, shall be given at the Buy-Out Date; provided, however, that, without prejudice to the generality of Section 3, of this Schedule the Concessionaire agrees to assign to the Grantor at Buy-Out Closing the benefit of any warranties given by third parties in respect of any property or assets to be transferred that are valid as of the Buy-Out Date to the extent that the Concessionaire is legally capable of doing so and to the extent that such warranties are not excluded under the provisions of Section 3(b) of this Schedule.

### **4.2 Apportionment of Liabilities**

(a) Except as otherwise provided in the Agreement, the Concessionaire will be responsible for:

- (i) all liabilities and obligations in relation to the Project Facilities, as applicable; and
- (ii) the performance of all obligations under agreements with third parties in relation to the Project Facilities, as applicable

that have accrued prior to the Buy-Out Date.

(b) Except as otherwise provided in the Agreement, the Grantor shall be responsible for:

- (i) all liabilities and obligations in relation to the operation of the Morača HPPs; and
- (ii) all liabilities and obligations in relation to all agreements with third parties that have been transferred pursuant to this Schedule 3

that arise after the Buy-Out Date.

(c) Following the Buy-Out Date, each of the Concessionaire and the Grantor shall indemnify and keep the other fully and effectually indemnified against all liabilities, demands, claims, actions, proceedings, damages, costs, and expenses arising as a result of all such liabilities and obligations that are its respective responsibility under Section 4.2(a) of this Schedule and Section 4.2(b) of this Schedule.

### **4.3 Encumbrances**

Any transfer to the Grantor (or its designee) of the Project Facilities, as applicable, shall be free and clear of all Encumbrances.

### **4.4 Closing Modalities**

The Concessionaire and the Grantor agree to effectuate the transfer or surrender of the Concessionaire's rights, title, and interest in the Project Facilities, as applicable, and the payment of the Buy-Out Price so as to minimize the transaction costs of such transfer or surrender.

## **5 Maintenance Audit**

- (a) Within thirty (30) Days of termination pursuant to Article 21 of the Agreement, the Concessionaire shall, at its sole cost and expense, provide to the Grantor a report by a reputable and qualified engineer (including engineering consulting firm) reasonably acceptable to the Grantor either:
  - (i) certifying that, as of the Day of the report, the Project Facilities, as applicable, are in the condition and state of repair and maintenance required by the Material Agreements (including an adequate spare parts inventory), together with such inspection reports, tests and other data reasonably adequate to substantiate the conclusions reached in such report, or
  - (ii) if such is not the case, providing a list of any discrepancies and/or deficiencies in such condition and a remediation plan and a cost estimate of the work required to remedy such discrepancies and deficiencies as soon as reasonably practicable and in any event prior to the Buy-Out Date.
- (b) If such report includes a remediation plan, the Concessionaire, at its sole cost and expense, shall cause any such discrepancies and deficiencies to be fully corrected in accordance with the engineer's remediation plan, if any, contained in the report prior to the Buy-Out Date.
- (c) The Concessionaire shall within thirty (30) Days of delivery of the engineer's report deposit funds in escrow sufficient to ensure the full execution of such plan. Funds held in escrow shall only be released from the escrow account to pay for work carried out to effect the remediation plan. Following the completion of all required remediation work, as certified by the engineer, any funds remaining in the escrow account shall be released to the Concessionaire.
- (d) Following the completion of any work required to be undertaken under the report, the engineer's report shall be updated within fifteen (15) Days, and this Section 5 shall apply to the updated report.

- (e) To the extent the Concessionaire does not complete the required work by the Buy-Out Date, the costs thereof (as set forth in the engineer's report, as may be updated) shall be deducted from any payments due to the Concessionaire hereunder.

## **6 Environmental Audit**

- (a) Within thirty (30) Days of termination pursuant to Article 21 of the Agreement, the Concessionaire shall provide to the Grantor an inspection report by a qualified environmental engineer (including an engineer consulting firm) selected by the Concessionaire and reasonably satisfactory to the Grantor either:
  - (i) certifying that, as of the date of the report, no Environmental Conditions are present on, in, or under the Morača HPPs, or
  - (ii) if such qualified engineer/consulting firm cannot so certify due to the presence of Environmental Conditions, providing a list identifying the Environmental Conditions present and the extent of the contamination in reasonable detail and the estimated costs to effectively remediate such contamination and providing a remedial response plan and covering such other environmental matters as the Grantor shall reasonably request in writing.
- (b) If the qualified engineer /consulting firm's report includes a remedial response plan, the Concessionaire shall within thirty (30) Days of the delivery of the consulting firms' report or any update thereof deposit funds into an escrow account sufficient to ensure the full execution of the plan. Funds held in escrow shall only be released from the escrow account to pay for work carried out to effect the remedial response plan. Following the completion of all required remediation work, as certified by the environmental qualified engineer/ consulting firm, or on the Buy-Out Closing, any funds remaining in the escrow account shall be released to the Concessionaire.
- (c) Following the completion of any remedial action required to be undertaken under the report, the qualified engineer /consulting firm's report shall be updated within fifteen (15) Days, and this Article 6 shall apply to the updated report.
- (d) To the extent the Concessionaire does not complete the required remediation by the Buy-Out Date, the costs thereof (as set forth in the qualified engineer /consulting firm's report, as may be updated) shall be deducted from any payments due to the Concessionaire hereunder.

## **7 Calculation and Verification of Buy-Out Price; Set-Off**

### **7.1 Calculation and Verification of Buy-Out Price**

- (a) The Concessionaire shall submit a statement to the Accountants within thirty (30) Days following the service of the Buy-Out Notice setting out a provisional determination of the Buy-Out Price due in respect of the Buy-Out.
- (b) The Accountants shall be responsible for reviewing the Concessionaire's provisional determination of the Buy-Out Price and shall, within fifteen (15) Days of receiving such determination or such longer period of time as the Accountants reasonably require, issue a certificate to the Concessionaire (with a copy to the Grantor) confirming either:
  - (i) that the Buy-Out Price set out therein has been properly determined; or
  - (ii) if, in their opinion, it has not been properly determined, the Accountants' own determination of the Buy-Out Price.
- (c) Except in the case of manifest error, the certificate of the Accountants shall be conclusive and binding.
- (d) The Accountants shall act as experts and not as arbitrators. The reasonable costs and expenses of the Accountants shall be borne as follows:
  - (i) if the Project Facilities, as applicable, are being transferred pursuant to Section 22.1 of the Agreement, by the Concessionaire;
  - (ii) if the Project Facilities, as applicable, are being transferred pursuant to Section 22.2 or Section 22.3 of the Agreement, by the Grantor; and
  - (iii) if the Project Facilities, as applicable, are being transferred pursuant to Section 22.4 of the Agreement, equally between the Parties.
- (e) The Accountants shall be entitled to have access to the Concessionaire's premises and to the Concessionaire's books, records, and other documents for the purposes of carrying out their review, and each of the Parties shall promptly on request supply to the Accountants all such documents and information as the Accountants may require for the purposes of their functions pursuant to this Article 7.

### **7.2 Set-Off of Other Amounts Owed to the Grantor**

If the Concessionaire fails to pay any amount that it is obligated to pay to the Grantor or PRENOS under a Material Agreement, such amount shall be deducted from the relevant Buy-Out Price.

## **8 Buy-Out Closing**

### **8.1 Closing**

Closing of the transfer of the Project Facilities, as applicable, pursuant to a Buy-Out Notice (the “**Buy-Out Closing**”) shall take place on the Buy-Out Date at such place in Montenegro and at such time as the Grantor may reasonably notify the Concessionaire, such notice to be given not later than 10:00 a.m. on the fifth (5<sup>th</sup>) Business Day prior to the Buy-Out Date.

### **8.2 Deliveries**

On Buy-Out Closing, the Concessionaire shall deliver or make available to the Grantor or its designee:

- (a) documents on such conveyances, transfers, notarial deeds, assignments, novations, and other documents (duly sealed or signed as a deed by the Concessionaire and, if so reasonably required by the Concessionaire) together with the related documents of title, as the Grantor may reasonably require to give effect to the requirements of Section 3 of this Schedule and vest in the Grantor the full benefit of the property and assets therein referred to, and shall permit the Grantor to enter into and take possession of the Project Facilities, as applicable; and
- (b) possession of the Project Facilities, as applicable.

### **8.3 Payment of Buy-Out Price**

- (a) Against compliance by the Concessionaire with the provisions of Section 8.2, of this Schedule the Grantor shall cause the Buy-Out Price to be paid in Euros to a bank account of the Concessionaire in Montenegro nominated by the Concessionaire at least three (3) Business Days prior to the proposed Day for Buy-Out Closing.
- (b) If any Tax is imposed on or withheld from payments to be made by the Grantor to the Concessionaire hereunder in connection with a transfer to the Grantor of the Morača HPPs, then such payments to the Concessionaire shall be increased by an amount such that Concessionaire will receive the same amount which it would in exchange for the Morača HPPs had no such Tax been imposed or withheld.

## **9 Training of Employees**

- (a) The Concessionaire shall, at its sole cost and expense, train the employees of the Grantor or its nominee in the operation and maintenance of the Project Facilities, as applicable, so that the Grantor’s (or the Grantor’s nominee’s) employees shall be fully capable of operating and maintaining the Project Facilities on the Buy-Out Date.

- (b) The Grantor shall identify the employees it requires the Concessionaire to so train in the operations and maintenance of the Project Facilities not later than four (4) months prior to the Buy-Out Date. The Concessionaire shall commence the training not later than three (3) months prior to the Buy-Out Date.

**Schedule 4**  
**Form of Novation Agreement**

**THIS NOVATION AGREEMENT** (this “**Agreement**”) is entered into on the [•] day of [•] [2011] (the “**Execution Date**”) by and between:

- (1) **[Sponsor]** (the “**Sponsor**”), a [•] organized under the laws of [•], with its principal office at [•];
- (2) **[Company]** (the “**Company**”), a [•] organized under the Laws of Montenegro, with its principal office at [•]; and
- (3) The State of Montenegro represented by the Ministry of Economy, based on decision [•] of Parliament, as the grantor (the “**Grantor**”).

Each of the Sponsor, the Company, and the Grantor is hereinafter referred to individually as a “**Party**” and, collectively, as the “**Parties**.”

**RECITALS**

- A. The State of Montenegro intends as a matter of policy to involve the private sector in a project of constructing hydropower plants for the purpose of exploitation of hydro-energetic potential of the Morača River, that includes:
- (i) the design, research, engineering, financing, construction, operation, maintenance, and rehabilitation of hydropower plants on the Morača River by the Concessionaire, and the transfer of such hydropower plants to the Grantor following the expiration of the Concession Period (as hereinafter defined);
  - (ii) the design, research, engineering, financing, and construction of the transmission lines necessary to connect those hydropower plants to PRENOS’s (as hereinafter defined) transmission network by the Concessionaire, and the transfer of such transmission lines to PRENOS in accordance with the Agreement on Operation and Maintenance of the Transmission Network (as hereinafter defined);
  - (iii) the design, research, engineering, financing, and construction of any roads that are required to be relocated or any new roads that are necessary to replace any roads that are rendered unusable by the Morača HPPs (as hereinafter defined), the Morača Transmission Lines (as hereinafter defined), or the inundation of the Inundated Areas (as hereinafter defined), by the Concessionaire and the subsequent transfer of such roads to the Grantor;
  - (iv) the expropriation by the Grantor of all lands required in connection with the development of the Morača HPPs, the Morača Transmission Lines, or the Project Roads (as hereinafter defined) or with the inundation of the Inundated Areas; and
  - (v) the preservation by the Grantor of the site of the Morača Monastery,

(the “**Project**”);

- B. The Sponsor has entered the Concession Agreement on the Day [•] (the “**Concession Agreement**”) with the Grantor to facilitate the implementation of the Project;
- C. The Sponsor has formed the Company, a wholly-owned special purpose business organization pursuant to the Laws of Montenegro (as hereinafter defined) for the purpose of undertaking the Project, as required by the terms of the Concession Agreement; and
- D. In accordance with the Concession Agreement, and to facilitate the implementation of the Project by the Company, the Sponsor desires to novate the Concession Agreement to the Company, following which the Company will undertake the Project.

**NOW, THEREFORE**, the Parties hereby agree as follows:



## 10 Definition; Interpretation

### 10.1 Definitions

Whenever the following capitalized terms appear in this Agreement, they shall have the meanings stated below:

“Affiliate” – Has Has the meaning given thereto in the Concession Agreement..

“Agreement” – Has the meaning given thereto in the introductory paragraph.

“Business Day” – Has the meaning given thereto in the Concession Agreement..

“Company” – Has the meaning given thereto in the introductory paragraph.

“Concession Period” – Has the meaning given thereto in the Concession Agreement.

“Concession Agreement” – The Concession Agreement between the Grantor and Sponsor as the Concessionaire on the Day [• relating to the Project, which will subsequently be novated to the Company pursuant to its terms.

“Concessionaire” – Has the meaning given thereto in this Concession Agreement.

“Constitutional Documents” – Has the meaning given thereto in the Concession Agreement.

“Day” – Has the meaning given thereto in the Concession Agreement..

“Environmental Standards” – Has the meaning given thereto in the Concession Agreement.

“Execution Date” – Has the meaning given thereto in the introductory paragraph.

“Grantor” – Has the meaning given thereto in the introductory paragraph.

“Laws of Montenegro” Has the meaning given thereto in the Concession Agreement.

“Lender” – Has the meaning given thereto in the Concession Agreement.

“Morača HPPs” – Has the meaning given thereto in the Concession Agreement..

“Morača Transmission Lines” – Has the meaning given thereto in the Concession Agreement.

“Party” or “Parties” – Has the meaning given thereto in the introductory paragraph.

“Person” – Has the meaning given thereto in the Concession Agreement.

“PRENOS” – Has the meaning given thereto in the Concession Agreement.

“Project” – Has the meaning given thereto in the recitals.

“Project Agreements” – Has the meaning given thereto in the Concession Agreement.

“Project Roads” – Has the meaning given thereto in the Concession Agreement.

“Public Authority” – Has the meaning given thereto in the Concession Agreement.

“Sponsor” – Has the meaning given thereto in the introductory paragraph.

## **10.2 Interpretation**

- (a) In this Agreement, unless a clear contrary intention appears:
- (i) the singular number includes the plural number, and vice versa;
  - (ii) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
  - (iii) reference to any gender includes each other gender;
  - (iv) reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
  - (v) references to any legislation or legislative provision include references to any statutory modification or re-enactment of such legislation or legislative provision and any legislative provision substituted for that legislation or legislative provision;
  - (vi) “hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section, Schedule, or other provision hereof;
  - (vii) “including” (and with correlative meaning “include” or “includes”) means including without limiting the generality of any description preceding such term;
  - (viii) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”; and
  - (ix) references to documents, instruments, or agreements shall be deemed to refer as well to all addenda, exhibits, schedules, or amendments thereto.
- (b) Captions and headings in this Agreement are for reference only and do not constitute a part of the substance of this Agreement and shall not be considered in construing this Agreement.

- (c) References in the body of this Agreement to Articles, Sections, and Schedules (and Annexes thereof) are to Articles and Sections of and Schedules (and Annexes thereof) to this Agreement, unless stated otherwise. References in any Schedule to Articles, Sections, and Annexes are references to Articles, Sections, and Annexes of that Schedule, unless stated otherwise. References in any Schedule (or Annex thereto) to Articles and Sections of the Agreement are references to the body of this Agreement, unless stated otherwise.
- (d) In carrying out its obligations and duties, and in providing estimates under this Agreement, each Party shall have an implied obligation of good faith.
- (e) Except as otherwise indicated in this Agreement, references to time are references to Central European Standard Time or Central European Summer Time, as then applicable.
- (f) This Agreement was negotiated by the Parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof.
- (g) To the extent there exists a conflict between any provisions of this Agreement and any Schedule or Annex, the provisions of this Agreement shall prevail.

## **11 Substitution and Release**

On and from the Execution Date

- (a) the Company is substituted for the Sponsor under the Original Concession Agreement as if the Company had originally been party to the Concession Agreement instead of the Sponsor; and
- (b) the Company is bound by and must fulfil, comply with, and observe all the provisions of the Original Concession Agreement and is bound by the liabilities and obligations which are the same as those of the Sponsor under the Original Concession Agreement and shall enjoy all the rights, benefits, title, and interest of the Sponsor under the Original Concession Agreement.

## **12 Representations and Warranties**

### **12.1 Representations and Warranties of the Sponsor**

The Sponsor represents and warrants to the Grantor that:

- (a) the Sponsor is duly organized and validly existing under the laws of [•];

- (b) the execution, delivery, and performance of this Agreement by the Sponsor have been duly authorized by all requisite corporate action;
- (c) this Agreement has been duly executed and delivered by the Sponsor and constitutes the legal, valid, and binding obligation of the Sponsor, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium, or other similar Laws of Montenegro relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;
- (d) the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on the Sponsor or any valid order of any court, or any regulatory agency or other body having authority to which the Sponsor is subject;
- (e) none of the execution, delivery, or performance by the Sponsor of this Agreement, the compliance with the terms and provisions hereof, and the realization of the Project, conflicts or will conflict with or result in a breach or violation of the Sponsor's Constitutional Documents or any of the terms, conditions, or provisions of any Law of Montenegro or any applicable permit, or any order, writ, injunction, judgment, or decree of any Public Authority against the Sponsor; and
- (f) the statements contained in Sections 13.14(a) through 13.14(c) of this Agreement are true and correct.

## **12.2 Representations and Warranties of the Company**

The Company represents and warrants to the Grantor that:

- (a) the Company is duly organized and validly existing under the laws of [•];
- (b) the execution, delivery, and performance of this Agreement by the Company have been duly authorized by all requisite corporate action;
- (c) this Agreement has been duly executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium, or other similar Laws of Montenegro relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;
- (d) the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on the Company or any valid order of any court, or any regulatory agency or other body having authority to which the Company is subject;

- (e) none of the execution, delivery, or performance by the Company of this Agreement, the compliance with the terms and provisions hereof, and the realization of the Project, conflicts or will conflict with or result in a breach or violation of the Company's Constitutional Documents or any of the terms, conditions, or provisions of any Law of Montenegro or any applicable permit, or any order, writ, injunction, judgment, or decree of any Public Authority against the Company; and

the statements contained in Sections 13.14(a) through 13.14(c) of this Agreement are true and correct.

### **12.3 Representations and Warranties of the Grantor**

The Grantor represents and warrants to the Sponsor that:

- (a) this Agreement has been duly executed and delivered by the Grantor and constitutes the legal, valid, and binding obligation of the Grantor, enforceable against it in accordance with the terms hereof, subject to general principles of equity;
- (b) the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on the Grantor or any valid order of any court, or any regulatory agency or other body having authority to which the Grantor is subject; and
- (c) none of the execution, delivery, or performance by the Grantor of this Agreement, the compliance with the terms and provisions hereof, and the realization of the Project, conflicts or will conflict with or result in a breach or violation of any of the terms, conditions, or provisions of any Law of Montenegro or any applicable permit, or any order, writ, injunction, judgment, against the Grantor.

## **13 Miscellaneous**

### **13.1 Dispute Resolution**

The dispute resolution provisions of Article 24 (*Dispute Resolution*) of the Original Concession Agreement are hereby incorporated, *mutatis mutandis*.

### **13.2 Remedies and Waivers**

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

### **13.3 Amendment**

An amendment or modification of this Agreement shall be effective or binding on a Party only if made in writing and signed by a duly authorized representative of each of the Parties.

### **13.4 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any rights in, duty to, standard of care to, or any liability to, any Person not a Party.

### **13.5 No Waiver**

No default by any of the Parties in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of each of the other Parties. No waiver by any of the Parties of any default by any of the other Parties in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

### **13.6 Relationship of the Parties**

- (a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party.
- (b) None of the Parties shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, or be an agent or representative of, or to otherwise bind, the other Parties, and none of the Parties shall hold itself out to any third party as having such right, power, or authority.

### **13.7 Expenses of the Parties**

Except as may otherwise be agreed in any other Project Agreement, all expenses incurred by or on behalf of each Party, including all fees and expenses of agents, representatives, counsel, and accountants employed by the Parties in connection with the preparation of this Agreement and the realization of the Project, shall be borne solely by the Party who shall have incurred such expenses, and the other Party shall have no liability in respect thereof.

### **13.8 Consent**

Unless otherwise provided herein, whenever a consent or approval is required by any Party from another Party, such consent or approval shall not be unreasonably withheld or delayed.

### **13.9 Language**

This Agreement has been drafted in English and Montenegrin and the English version shall prevail over any translations.

### **13.10 Governing Law**

This Agreement shall be governed by and construed in accordance with the Laws of Montenegro.

### **13.11 Entirety**

This Agreement shall be the full and final expression of the agreement between the Parties on the matters contained herein. Except for the other Project Agreements and any agreement or other communication required thereunder, all written or oral representations, understandings, offers, or other communications of every kind between the Parties in relation to the Project prior to this Agreement are hereby abrogated and withdrawn.

### **13.12 Assignment**

No Party may assign any of its rights or transfer any of its rights or obligations under this Deed without the prior written consent of the other Parties, and any assignment in contravention of this Section shall be null and void.

### **13.13 Confidentiality**

The confidentiality provisions of Section 25.14 (*Confidentiality*) of the Original Concession Agreement are hereby incorporated, *mutatis mutandis*.

### **13.14 Affirmation**

- (a) Each of the Sponsor and the Company represents and warrants that it has not obtained, induced, or influenced the procurement of this Agreement or any contract, consent, approval, right, interest, privilege, or other obligation or benefit related to this Agreement or the Project from the Grantor or any Public Authority through any corrupt or illegal business practice.
- (b) Each of the Sponsor and the Company represents and warrants that it has fully disclosed to the Grantor in writing all commissions, brokerage and other fees, and other compensation (other than compensation paid to employees of the Sponsor or the Company, as the case may be, for services provided) paid or payable to any Person within or outside Montenegro in relation to the Project.
- (c) Each of the Sponsor and the Company represents and warrants that it has not given or agreed to give and shall not give, or agree to give to any Person within or outside Montenegro either directly or indirectly through any Person, including its Affiliates, employees, agents, associates, brokers, consultants, officers, directors,

promoters, shareholders, sponsors, or subsidiaries (and any of their employees, agents, associates, brokers, consultants, officers, directors, promoters, shareholders, or sponsors), any commission, gratification, bribe, finder's fee, or kickback, whether described as consultation fee or otherwise, with the object of obtaining, inducing, or influencing the procurement of this Agreement or any contract, right, interest, privilege, or other obligation or benefit related to this Agreement or the Project from the Grantor or any Public Authority, except that which has been expressly declared pursuant hereto.

- (d) Each of the Sponsor and the Company accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts, or taking any action likely to defeat the purpose of the representations and warranties contained herein and the declarations required hereby. It agrees that any contract, consent, approval, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the Grantor, shall be voidable and without legal effect at the option of the Grantor.

### **13.15 Counterparts**

This Agreement may be executed in ten (10) original copies, two copies for the Sponsor and the Company and six for the Grantor.

### **13.16 Further Assurances**

The Parties shall each execute any and all reasonable documents necessary to effectuate the purposes of this Agreement. None of the Parties shall, without prior written consent of each of the other Parties, take or fail to take any action that might reasonably be expected to prevent or materially impede, interfere with, or delay the realization of the Project.

### **13.17 Severability**

If any term or provision of this Agreement is determined by a court or other authority of competent jurisdiction to be invalid, void, illegal, unenforceable, or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by such determination in any way.

### **13.18 Partial Invalidity**

The illegality, invalidity, or unenforceability of any provision of this Agreement in whole or in part under the law of any jurisdiction shall neither affect:

- (a) its legality, validity or enforceability under the law of any other jurisdiction; nor
- (b) the legality of any other provision or part thereof.



**IN WITNESS WHEREOF**, the Parties have executed and delivered this Agreement in Podgorica, Montenegro as of the date first above written.

For and on behalf of  
**The State of Montenegro** acting through the  
**Ministry of Economy**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Sponsor]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Company]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Schedule 5 Insurance

### 14 Insurance Coverages

In respect of its obligations under Article 18 of the Agreement, the Concessionaire will maintain or cause to be maintained in full force and effect the following insurances:

(a) Comprehensive or Commercial General Liability Insurance

Coverage: The insurance shall include coverage for products and completed operations, sudden/accidental pollution liability, contractual liability, including coverage specifically applicable to the undertakings in this Agreement, personal injury, and independent contractors.

Sum Insured: Not less than **one hundred million Euros (€100,000,000)** per year for death or bodily injury (including personal injury) to one or more persons and **one hundred million Euros (€100,000,000)** per year for casualty or damage to property resulting from any one occurrence in the aggregate during any year.

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **twenty five thousand Euros (€25,000)** per event.

Term: This insurance shall be in effect from the Execution Date and throughout the Term.

Insureds: The Concessionaire, the Concessionaire's Contractors (as applicable), the Concessionaire's suppliers, and the Grantor.

Other: Such policy shall include a cross-liability and severability of interest clause providing that in the event of a claim by one insured for which another insured covered by the same policy may be held liable, the insured against whom the claim is made is covered in the same manner as if separate policies had been issued (recognizing that such clause shall not operate to increase the limit of coverage).

Such insurance shall be primary with respect to the interests of the Grantor and its officers and employees, and any other insurance maintained by them is excess and not contributory with such policies.

The amounts of insurance required in this Section 14(a) may be satisfied by the Concessionaire purchasing any combination of

primary and excess insurance, so long as the total amount of insurance meets the requirements specified in this Section 14(a)

(b) Automobile Liability Insurance

Coverage: This insurance shall include coverage for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no fault insurance provisions or similar endorsements to the extent required under the Laws of Montenegro.

Sum Insured: A combined single limit of not less than **one million Euros (€1,000,000)** per accident with respect to body injury or property damage.

Term: This insurance shall be in effect from the Execution Date and throughout the Term.

Insureds: The Concessionaire, the Concessionaire's Contractors (as applicable), and the Concessionaire's suppliers.

Other: The amounts of insurance required in this Section 14(b) may be satisfied by the Concessionaire purchasing any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified in this Section 14(b).

(c) Employers Liability Coverage

Coverage: The insurance shall include coverage for owned, non-owned, and hired automobiles for both bodily injury and property damage and containing appropriate no fault insurance provisions or similar endorsements to the extent required under the Laws of Montenegro.

Sum Insured: A **one million Euro (€1,000,000)** minimum limit per occurrence and per year.

Term: This insurance shall be in effect from the Execution Date and throughout the Term.

Insureds: The Concessionaire.

Other: The amounts of insurance required in this Section 14(c) may be satisfied by the Concessionaire purchasing any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified in this Section 14(c).

(d) Worker's Compensation Insurance

Coverage: As required by the Laws of Montenegro.

Sum Insured: As required by the Laws of Montenegro.

Term: As required by the Laws of Montenegro.

Insureds: As required by the Laws of Montenegro.

(e) “All Risks” Builder’s Risk Insurance

Coverage: The Project Facilities.

Sum Insured: **Full replacement cost** basis, as such replacement cost shall increase or decrease from time to time.

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **five million Euros (€5,000,000)** per event.

Term: Any period in which the Concessionaire is constructing, expanding, modifying, or restoring the Project Facilities, as applicable, in accordance with the Agreement.

Insureds: The Concessionaire, the Concessionaire’s Contractors (as applicable), the Concessionaire’s suppliers, and the Grantor.

(f) “All Risks” Property and Boiler and Machinery Insurance

Coverage: The entire Project Facilities. The physical damage insurance shall include coverage for all risks of physical loss or damage, including for flood and earthquake, as well as volcano, tsunami, storm, cyclone, inundation, and land slip.

Sum Insured: **Full replacement cost** basis..

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **five million Euros (€5,000,000)** per event.

Term: From the Execution Date and throughout the Term.

Insureds: The Concessionaire, the Concessionaire’s Contractors (as applicable), the Concessionaire’s suppliers, and the Grantor.

(g) Maritime Cargo Insurance

Coverage for loss of or damage to materials, machinery or equipment of all Contractors, and all subcontractors, to be used at or installed into the Project Facilities while in transit.

Sum Insured: Not less than the value of the largest single cargo..

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed twenty **five thousand Euros (€25,000)** per event.

Term: Any time during which marine cargo is being shipped in connection with this Agreement.

Insureds: The Concessionaire, the Concessionaire's Contractors (as applicable), the Concessionaire's suppliers, and the Grantor.

## 15 General Conditions

- (a) To the extent consistent with the provisions of Section 18.1 of the Agreement, the Concessionaire shall obtain "occurrence" form policies rather than "claims made" form coverage. If any policy must be written on a "claims-made" basis and such policy is not renewed or the retroactive date of such policy is to be changed, such policy shall contain the broadest basis and supplemental extended reporting period coverage or "tail" reasonably available in the commercial insurance market for each such policy and the Concessionaire shall provide proof that such basic and supplemental extended reporting period coverage or "tail" has been obtained.
- (b) In each policy issued in accordance with Section 14, of this Schedule 5, the insurer shall provide that the Grantor shall receive from the insurer or broker thirty (30) Days prior notice of any cancellation of each of the policies described in Section 14 of this Schedule 5, and any such notice shall be delivered by fax and confirmed in writing registered mail, if sent from an office outside Montenegro, by international courier.
- (c) If the "all risks" builder's risk insurance and "all risks" property and boiler and machinery insurance described in Section 14(e) and Section 14(f) of this Schedule 5 are provided by different insurers, there shall be included as part of the respective policies a joint loss agreement allocating loss between the respective insurers.
- (d) The terms, conditions, and limits of any insurances required to be provided pursuant to this Schedule 5 and those like insurances that may be required to be provided by any other agreement into which the Concessionaire enters, may be satisfied by the purchase of a single insurance program or by inclusion into the Company's parent company's global insurance program, without any accumulation of the limits required to be obtained pursuant to this Agreement with the limits of similar policies to be obtained under other contracts.
- (e) In each policy issued in accordance with Section 14, of this Schedule 5, the insurer shall waive all rights of subrogation against the Grantor and each of its ministries, officers, and employees and ERA and its employees.
- (f) The amount of the coverage required to be provided under Section 14 of this Schedule 5 shall be adjusted at the fifth anniversary of the Execution Date and

each fifth anniversary thereafter in accordance with changes in the then-prevailing **[Montenegro Consumer Price Index]** in relation to the value of such index on the Execution Date.

- (g) The Concessionaire shall be the loss payee in respect of insurance proceeds.

**Schedule 6**  
**Description of the Project Sites, Inundated Areas, and Staging**  
**Areas**

**[To be developed after the preferred bidder has been selected on the proposal of the preferred bidder.]**

## Schedule 7 Technical Requirements

### 1. Definitions and Acronyms

“Alternative technical Solution” – Technical solution, given in Technical Offer, which is different from the Basic Technical Solutions presented in Variant I and Variant II.

“Detailed Design” – Has the meaning given thereto in Section 6.4(a).

“Basic Design” – Has the meaning given thereto in Section 6.3(e).

“Variant I” – Technical solution prepared by EPCG in 1989. in cooperation with Energoprojekt (Serbia) and Elektroprojekt (Slovenia) which includes HPP systemes Andrijevo, Raslovići, Milunovići and Zlatica with upper level of HPP Andrijevo of 285 meters above sea level, total power of 238,4 MW, average year production of 693,7 GWh (721 GWh According to Technical and Economical analysis for HPP Morača prepared by Econ Pöyry AB in 2009.)

“Variant II” – Technical solution consist of (i) HPP Raslovići, HPP Milunovići and HPP Zlatica prepared by EPCG in 1989. in cooperation with Energoprojekt (Serbia) and Elektroprojekt (Slovenia) and (ii) HPP Andrijevo prepared by Montenegrin Water Base Plan. Variant II includes HPP systemes Andrijevo, Raslovići, Milunovići and Zlatica with upper level of HPP Andrijevo of 250 meters above sea level, total power of 238,4 MW, average year production of 616 GWh.

“MDE” or “Maximum Design Earthquake” – As defined by ICOLD.

“PBX System” – Has the meaning given thereto in Section 2.4(b).

“Quality Control Plan” – Has the meaning given thereto in Section 4.1(a).

“Health and Safety Policy” – Has the meaning given thereto in Section 5(a).

“Temporary Works” – That portion of the EPC and Road Works that have a use only during the design, research, engineering, and construction of the Roads, the Morača HPPs and the Morača Transmission Lines.

“Design Programme” – Has the meaning given thereto in Section 6.4(a).

“Safety Officer” – Has the meaning given thereto in Section 5.

“Permanent Works” – That portion of the EPC Works that are not Temporary Works.

“Contract Requirements” – The Project requirements specified in the Project Development Plan.

“Protective Relays” – Has the meaning given thereto in Section 2.5(a).

Other definitions used in this Annex has the meaning given thereto in Anex 1.



## **2. General Technical Requirements**

### **2.1. General Conditions**

- (a) The Morača HPPs, Transmission Lines and Road Works shall be designed in an optimal manner such that they can be operated safely, reliably, and economically and are fit for purpose. The design of the facilities shall be such that they can be readily maintained, are secure, and are capable of continuous operation with minimum attention and maintenance.
- (b) The Morača HPPs and the Morača Transmission Lines shall be designed for local control and remote control and operation.
- (c) All relocated and permanent roads shall be designed and constructed according to Montenegrin codes and standards.
- (d) Permanent access roads to the Project Facilities shall provide for all necessary transport, year-round, during construction, operation, and maintenance of the EPC Works.
- (e) The water conveyance systems shall provide for the required discharges safely and reliably under the specified head conditions. All discharge facilities shall provide capabilities to meet the functional requirements.
- (f) Provisions shall be made for regular inspection and maintenance of all EPC Works during the service life of the Morača HPPs and the Morača Transmission Lines. Easy access and safety shall be provided for these operations.
- (g) The exterior of the dams, powerhouses and other buildings shall blend with the natural surroundings and shall have an architectural appearance consistent with their function and setting and with good quality design practice.

### **2.2. Civil Works**

- (a) The Concessionaire shall design and build all civil and EPC works as specified in Schedule 8 of the Concession Agreement.
- (b) The Concessionaire shall present and describe the general characteristics and basic design of the civil works in the Basic Design. The Grantor shall review and provide its consent. The documentation shall include, at a minimum, information on:

- (i) Dams, powerhouses, switchyards, auxiliary structures, access roads, borrow pits, quarries, and landfills.
  - (ii) Utilities (electricity, water supply, sanitation, etc.)
  - (iii) Geology and seismicity data.
  - (iv) Hydrology and floods including ecological floods.
  - (v) Reservoir vegetation clearance programs.
  - (vi) Construction health and safety programs.
- (c) The Concessionaire shall present and describe the detailed specifications and design of the civil works and road works in the Detailed Design. The Grantor shall review and provide its consent.
- (d) The Concessionaire shall discuss with the Grantor the selection of construction equipment and contractors to perform the civil and road works and obtain Grantor's consent.
- (e) The Concessionaire shall prepare a local transportation plan for use of roads between the various Project Facilities, and submit it to the Grantor for review and approval.
- (f) The Concessionaire shall provide to the Grantor for review and approval the following:
- (i) Testing programs and protocols for materials and civil structures during the construction works.
  - (ii) Programs and protocols for periodical testing and maintenance during operation.
  - (iii) Report on the structural integrity of all civil works comprising the Project Facilities.
  - (iv) Report on the water tightness of the structures and reservoirs.
  - (v) All other programs and protocols in accordance with the laws of Montenegro.

### **2.3. Main HPP Equipment and Transmission Lines**

- (a) The Concessionaire shall design, procure, install and perform commissioning works for all major HPP equipment and transmission lines as specified in Schedule 8.

- (b) The Concessionaire shall present and describe the general characteristics and basic design of the equipment and transmission lines in the Basic Design. The Grantor shall review and provide its consent. The documentation shall include, at a minimum, information on:
  - (i) Turbines, generators and transformers.
  - (ii) HV, MV and LV switchgear equipment.
  - (iii) HPP protection and measurement systems.
  - (iv) HPP telecommunication and control systems.
  - (v) HPP auxiliary and ancillary equipment.
  - (vi) 220-kV, 110-kV and 35-kV transmission systems including towers and poles, conductors, connection and suspension equipment, insulators, telecommunication and control systems, protection and metering)
- (c) The Concessionaire shall present and describe the detailed design and specifications and construction drawings of the HPP and transmission lines equipment in the Detailed Design. The Grantor shall review and provide its consent.
- (d) The Grantor shall review and provide its consent for the selection of equipment, manufacturers, and contractors for the installation, testing and commissioning of all equipment.
- (e) The Grantor shall review and provide its consent for the transport of equipment from the factory to the project sites.
- (f) The Concessionaire shall provide to the Grantor for review and approval the following:
  - (i) Factory testing programs and protocols and certificates of compliance.
  - (ii) Factory instructions for field installation and testing, operation and maintenance.
  - (iii) Programs and protocols for pre-synchronization, post-synchronization, commissioning, pre-trial and operation reliability tests.
  - (iv) Programs and protocols for periodical testing and maintenance during operation, in accordance with instructions from equipment suppliers.
  - (v) All other programs and protocols in accordance with the laws of Montenegro.

## **2.4. Telecommunications Systems**

- (a) The Concessionaire shall furnish and install a complete telecommunications system at each of the Hydro power plant, transmission grid substations and NDC. The telecommunication system shall provide voice and data communications for HPP personnel and for plant data transmission requirements for HPP as well as for transmission grid substations and NDC.
- (b) The telecommunication system shall be an extension of the PRENOS control centre's private branch exchange system ("**PBX System**") in the PRENOS control rooms in substations and NDC, to permit voice communications between each Morača HPP and the PRENOS control rooms in substations and NDC. The Concessionaire shall inventory the existing PBX system and provide all switching equipment and programming necessary to tie into this system. Tie lines between the existing PBX System and the Hydro power plant' PBXs shall be coordinated with the local telephone utility.
- (c) Analog lines shall be provided at each of the Hydro power plant for connection of facsimile machines.
- (d) The telecommunication system shall include switches, multiplexers, wire distribution, surge protection devices, telephone receptacles, telephone sets, and any conversion modules necessary to interface with the teleprotection and telemetering systems.
- (e) In-HPP control cabling and communication circuits outside the Hydro power plant shall be made with fiber optic cable.
- (f) The telecommunication system shall be provided with the provisions for expansion of the system by 15%.

## **2.5. Protective Devices**

- (a) The Concessionaire shall install Protective Relays at each of the Hydro power plant and transmission grid substations to protect the generators and other equipment from damage due to fault or abnormal conditions during the operation of the Morača HPPs in power system. Protective Relays shall protect the low and medium voltage systems, the generators, and generator auxiliary equipment, and the Morača Transmission Lines and associated equipment.
- (b) The Concessionaire shall be responsible for all relay settings in the Hydro power plant up to level agreed by the Concessionaire and PRENOS in the Transmission Network Connection Contract.
- (c) All Protective Relays shall be microprocessor-based multifunction devices with communication capabilities. Protective Relays for the generators shall be redundant to provide for reliability in the event that one device fails. Protection

shall include, but not be limited to time-overcurrent, ground fault, differential, unbalanced current, loss of excitation, and under and over frequency.

- (d) The Concessionaire shall perform a short circuit and protective device coordination study to determine the Protective Relay settings. Settings shall ensure that devices are coordinated such that a fault trips the nearest isolation device before any further upstream device isolates the fault. The plant protection shall also be coordinated with the protection of the Morača Transmission Lines to ensure that the Morača HPPs protection isolates an abnormal condition prior to the Morača Transmission Lines' protection picking up.
- (e) A GPS time clock shall be provided at each of the Morača HPPs to establish a common time base for diagnosing protective device operations.
- (f) Subject to giving the Concessionaire reasonable notice, the Grantor may (or PRENOS may, pursuant to the terms of the Transmission Network Connection Contract) require the Concessionaire to modify or expand the requirements for Protective Relays. Such work shall be completed within a reasonable time under the circumstances. The Grantor and PRENOS shall be notified in advance of, and shall have the right to observe, all work on the Protective Relays.

### **3. Planning and Design of the EPC and Road Works**

#### **3.1. Seismic Design Requirements**

- (a) All designs of the Permanent Works shall consider earthquake loadings such that the performance of the Morača HPPs, Transmission Lines and Road Works, will not be adversely impacted in the event of the occurrence of an earthquake with the strength and other characteristics of the Maximum Design Earthquake (“MDE”).

#### **3.2. Tolerances**

- (a) The Concessionaire shall propose acceptable tolerances to be used for the EPC and Road Works that shall be subject to the Grantor's approval.

#### **3.3. Setting Out of the Works**

- (a) The Concessionaire shall make the setting out of the EPC and Road Works, including establishment of all survey reference points, benchmarks, and control objects.

#### **3.4. Temporary Works**

- (a) The Concessionaire shall ensure that all Temporary Works are properly designed and constructed so that all health and safety requirements of Temporary Works have been properly considered. The Concessionaire shall be responsible for all

costs associated with the design, construction, and performance of the Temporary Works.

### **3.5. Protection of the Works**

- (a) All finished EPC and Road Works shall be protected from damage, including that which could arise from other construction activities.
- (b) The EPC and Road Works shall not be carried out in weather conditions that may adversely affect the quality of the Works unless proper protection, acceptable to the Grantor, is provided.
- (c) Permanent Works under construction and materials for such Permanent Works shall be protected from exposure to weather conditions that may adversely affect the quality and performance of the Permanent Works and the materials.

## **4. Testing and Quality**

### **4.1. General**

- (a) The Concessionaire shall establish, along with the detailed design of the Morača HPPs, the Transmission Lines and the Road Works, procedures for the testing of all materials and equipment in accordance with specified standards, such quality assessment and quality control procedures to be specified in a quality control plan (the “Quality Control Plan”).
- (b) The Concessionaire shall prepare and submit a detailed set of programs and procedures of all the tests described in Annex 1 according to Section 8 of the Concession Agreement. The Grantor shall review and approve all the programs and procedures at least ten (10) Days prior to the start of each test. The Grantor shall notify the Concessionaire of any comments of the Grantor or the Independent Engineer on the procedures within five (5) Days of the receipt of the procedures by the Grantor. The Concessionaire, the Grantor, and the Independent Engineer shall use their best efforts to agree on the final programs and procedures be ready not later than ten (10) Days of the submission by the Grantor of any comments on the procedures.
- (c) On the request of the Grantor, the Concessionaire shall promptly produce certificates and protocols of any such testing, including all test certificates for proprietary materials, equipment and works.

### **4.2. Factory Acceptance and Shop Tests**

- (a) All materials and equipment related to or intended for incorporation in the Road and EPC Works shall, while in the process of manufacture at the Equipment Suppliers’ factories, Concessionaire’s shops or in any of his subcontractors’ shops, as the case may be, be subject to such factory or shop tests and inspections

as may be necessary to prove compliance with the requirements of the Technical Requirements and Contract documents. A preliminary list of such tests is shown in Annex 1.

- (b) The Concessionaire shall request permission and approval from the Grantor before transporting materials and equipment from the factories to the Project Facilities.

#### **4.3. Field Testing During Construction and Installation**

- (a) The Concessionaire shall set up a laboratory for testing of construction materials. The staff, equipment and testing procedures to be used at the laboratory shall be reviewed and approved by the Grantor. The tasks that cannot be performed at the laboratory will be done by the Concessionaire at other laboratories approved by the Grantor. A preliminary list of such tests is shown in Annex 1.

#### **4.4. Commissioning (Pre-Synchronization and Post-Synchronization), Reliability and Performance During Operation Tests**

- (a) The Concessionaire shall prepare a detailed list of Commissioning (Pre-Synchronization and Post-Synchronization), Reliability and Performance during Operation Tests and Procedures for the Project Facilities. A preliminary list of such tests is shown in Annex 1.

#### **4.5. The Grantor's Laboratory Testing**

- (a) The Grantor and its staff shall also have the right to carry out any physical testing of the Road and EPC Works. Samples (e.g., concrete, soils, cement, rock, reinforcing steel, etc.) shall be supplied by the Concessionaire at no charge. Furthermore, the Grantor will have the right to utilize the Concessionaire's laboratory and staff (if necessary) to carry out verification testing at no charge. Such verification testing by the Grantor will be performed in an efficient and timely manner so that the Concessionaire's Quality Control Plan is not disrupted.
- (b) The Grantor and its staff shall also have the right to perform any off-site testing of materials. Samples for such testing shall be supplied at no cost to the Grantor. Should any off-site testing indicate that materials do not meet Contract Requirements, the costs of the Grantor's off-site testing will be charged to the Concessionaire.

### **5. Health and Safety**

- (a) The Concessionaire shall provide for the health and safety of its employees, the employees or representatives of the Grantor, and any other Persons who are at any time directly or indirectly affected by the performance of the Road and EPC Works by an application of a suitable or acceptable "Health and Safety Policy" that ensures attention to (i) the safety of work sites, (ii) safe methods of working,

- (iii) the suitability of personnel by training or placement and by adequate supervision.
- (b) At each location where the Road and EPC Works are being constructed, the Concessionaire shall appoint a “Safety Officer” who will be responsible for all personnel engaged in the performance of the Road and EPC Works at that location, including those of the Concessionaire’s subcontractors. The Concessionaire shall draw up and ensure compliance with safety regulations commensurate with the hazardous nature of the work being performed at that location.
- (c) The Concessionaire shall provide suitable bunkers at approved locations for the storage of all explosives. Storage, transportation, handling, and charging, shall be performed by experienced personnel using approved equipment in accordance with the relevant regulations of Montenegro. The Concessionaire shall obtain the requisite permission and licenses from the concerned agencies for transportation, use, and storage of explosives.
- (d) The Concessionaire shall be responsible for all security measures around the Morača HPPs Sites, the Morača Transmission Lines Routes and Road Works. The Concessionaire shall also secure the perimeter of the Morača HPPs Sites and the Morača Transmission Lines Routes.

## **6. Design and Construction Documentation**

### **6.1. General**

- (a) The receipt of any schedules, data, certificates, or reports by the Grantor shall not be construed as an endorsement by the Grantor of the design thereof, does not constitute a warranty by the Grantor of the safety, durability, or reliability of the Project, nor otherwise relieve the Concessionaire of its obligations or potential liability under any Project Agreement or any Financing Document or, except with respect to the obligations of the Grantor to maintain the confidentiality of documents and information received by it, create any obligation or liability on the part of the Grantor.
- (b) The Concessionaire shall have local staff to prepare and revise drawings and documents during construction as needed to document “as-built” conditions, including geological maps of surface and underground excavations that are part of the Permanent Works.

### **6.2. Submission of Reports and Drawings**

- (a) All reports, design documents, calculations and construction drawings shall be prepared in the English language or Montenegrin language. Some of these documents and drawings will need to be translated into Montenegrin as required



by the laws of Montenegro to obtain permits, licenses or other Government approvals.

- (b) Design documents and all computations shall be initialed and dated by the designer and checker, and shall clearly state the Project name, document and calculation number and title, calculation description/objective, revision number (where revision 0 is the original submission), key assumptions, references, and a summary of the calculation conclusions/results. All pages shall be numbered. All documents and calculations shall be delivered to the Grantor.
- (c) All equipment and construction drawings shall be produced using the latest version of AUTOCAD and Adobe Acrobat PDF. Each drawing shall be initialed by the designer and drafter as well as their respective checkers. The drawings shall include a revision number (where revision 0 is the original submission), a brief description of revision(s), and all revisions must be clearly identified on the drawing. An “as-fabricated” set of drawings for each item of equipment, as delivered to the project site, shall be delivered to the Grantor.
- (d) Units of measure shall be as follows:
  - (i) The system of measurement to be used in the Project shall be in SI units. Angles shall be given in the 360-degree system.
  - (ii) The coordinate reference system to be used for all Permanent Works and Temporary Works shall be defined by a quadrant grid system. Each drawing shall contain a scale reflecting the appropriate meter spacing. The grid system shall be defined in accordance with the Montenegrin national grid system.
- (e) The Concessionaire shall submit to the Grantor one (1) electronic copy and two (2) printed copies of the final reports listed below:
  - (i) one (1) electronic copy and two (2) copies of the results, reports or recommendations of any additional geotechnical surveys or investigations that the Concessionaire shall perform at the Morača HPPs Sites, the Morača Transmission Lines Routes and the Road Works for the purposes of design or construction of the Permanent Works.
  - (ii) one (1) electronic copy and two (2) copies of the results and reports of seismicity studies used to establish the seismic design parameters for meeting the seismic design requirements for the EPC and Road Works.
  - (iii) one (1) electronic copy and two (2) copies of quality control records such as, concrete test reports, structural steel bolting, weld inspections (visual, magnetic particle, X-ray), stress relieving, equipment alignment, equipment meggering, continuity wiring checks, etc.

- (iv) one (1) electronic copy and two (2) copies of shop and field inspection/test programs and procedures and shop and field inspection/test results for each item of equipment delivered to the various sites.
- (f) Unless otherwise specified in this Section, one (1) electronic copy and two (2) printed copies of any additional drawing or document shall be submitted to the Grantor, or as requested by the laws of Montenegro.
- (g) All manufacturer's field representatives shall provide field inspection reports upon completion of each visit to the Morača HPPs Sites or the Morača Transmission Lines Routes. The Concessionaire shall submit these reports to the Grantor.

### **6.3. Basic Design**

- (a) The Concessionaire shall prepare and submit a Basic Design (the “**Basic Design**”) to the Grantor for its review and approval in accordance with the laws of Montenegro.
- (b) For Variants 1 and 2, the Concessionaire shall first continue to review, verify and update the previous investigations, studies and documents prepared by Energoprojekt and Elektroprojekt as well as for the water resource development master plan of Montenegro.
- (c) For Variant 3, the Concessionaire shall review the same investigations, studies and documents prepared by Energoprojekt and Elektroprojekt as well as for the water resource development master plan of Montenegro, and shall undertake all additional studies and field investigations to prepare a full Basic Design, in accordance to the laws of Montenegro.
- (d) For all Variants, the following investigations, studies, and surveys shall be prepared during the development of the Basic Design for the Morača HPPs, the Morača Transmission Lines and the Road Works, as minimum:
  - (i) additional hydrological studies to include latest data;
  - (ii) additional environmental studies for construction (temporary facilities such as camps, spoil areas, etc.); to meet current laws of Montenegro;
  - (iii) additional geological and geotechnical studies and investigations;
  - (iv) additional topographic surveys as needed; and
  - (v) additional seismic hazard and earthquake design studies to reflect current MDE codes and standards
  - (vi) input to the preparation of the final EIA to be performed by the Concessionaire.

- (e) The Basic Design shall include the following at a minimum:
  - (i) Investigation work results;
  - (ii) a description of how the design requirements shall be achieved including a description of design computations, design inputs and their sources, proposed design methods, techniques and software as well as a list of all references to be used for design of all Permanent Works;
  - (iii) a description of how the Contract Capacity shall be fulfilled;
  - (iv) principal outline drawings (plans, profiles, sections) of the project layout and all structures with main measurement data, water levels, etc., as well as principal drawings, schematic and single-line diagrams, etc., for all mechanical and electrical systems;
  - (v) load flow, short circuit, transient stability, and transient over-voltage calculations; including insulation coordination
  - (vi) summary of all tests and investigations planned to be carried out in connection with the Detailed Design;
  - (vii) basic outline of the operation and maintenance manuals;
  - (viii) Quality Control Plan; and
  - (ix) additional basic design requirements that are contained elsewhere in these Technical Requirements.
- (f) The Basic Design shall include computations and analyses as required to substantiate the validity of the proposed design. Drawings shall be appended to the Basic Design.
- (g) The Basic design shall be prepared in accordance with the laws of Montenegro.

#### **6.4. Detailed Design**

- (a) Ninety (90) Days after the commencement date of the EPC and Roads Works Contract, the Concessionaire shall submit to the Grantor a “**Design Programme**” showing the order and procedure in which the Concessionaire proposes to carry out the design and engineering of the Morača HPPs, the Morača Transmission Lines and the Road Works, including a schedule for submission of design documents and drawings for completing the Roads and EPC Works within the specified time for completion. Such Design Programme shall be subject to review and revision by the Grantor in consultation with the Independent Engineer in order to achieve completion of the EPC and Road Works by the Required Commercial Operations Date.

- (b) The Concessionaire shall prepare and submit to the Grantor monthly construction reports throughout the construction period, including but not limited to construction progress, quantities, updated construction schedule, certificates of completion, health and safety incidents, photos.
- (c) The Concessionaire shall prepare and submit a Detailed Design (the “**Detailed Design**”) to the Grantor for its review and approval. This Detailed Design shall be used for Construction in accordance with the laws of Montenegro. It shall include the following at a minimum:
  - (i) Investigation work results;
  - (ii) a description of each structure;
  - (iii) assumptions, design objectives and methods adopted;
  - (iv) design criteria, parameters, loads and load cases used;
  - (v) applicable codes, standards, and references used;
  - (vi) a short description of each method of analyses used, including identification of any software used;
  - (vii) calculations and results of the detailed design analyses for each structure or feature;
  - (viii) testing requirements and criteria, including factory acceptance and shop tests as well as site tests of equipment;;
  - (ix) detailed design drawings and specifications ready for construction and
  - (x) additional detailed design requirements are contained elsewhere in these Technical Requirements.
- (d) The Concessionaire shall prepare and submit As-built Design to the Grantor for review and approval. The As-built Design shall be in accordance with the laws of Montenegro.

### **6.5. Reservoir Filling Plan**

The Concessionaire shall provide closure and reservoir filling and monitoring plans.

### **6.6. Operation License**

- (a) The Concessionaire shall prepare all documents required to obtain the Operation License in accordance with the laws of Montenegro. It shall include the following at a minimum:

- (i) The Morača HPPs, the Morača Transmission Lines and the Road Works design.
- (ii) Design for technical monitoring of dams and other construction facilities.
- (iii) Design of emergency alarm systems and action plans for potential dam failure
- (iv) Design of environmental protection (measures and monitoring)
- (v) Other documents in accordance with the laws of Montenegro

#### **6.7. Rehabilitation Study**

- (a) The Concessionaire shall prepare a Rehabilitation Study in accordance with Article 9 of the Concession Agreement. A Rehabilitation Study shall be prepared and include the following at a minimum:
  - (i) Due diligence report on existing conditions.
  - (ii) Program of additional investigations and testing of equipment and civil structures.
  - (iii) Design criteria, calculations, programs and protocols for testing of equipment and civil structures for required rehabilitation programs, in accordance with the laws of Montenegro.
  - (iv) Detailed design and As-built Design for the rehabilitation of each hydropower plant.
  - (v) Other documents according to the laws of Montenegro.

#### **6.8. Transfer Documentation**

- (b) The Concessionaire shall prepare a documentation package for transferring the HPPs, the Transmission Lines and the Road Works. These packages shall include the following at a minimum:
  - (i) As-built Design and drawings for each Project Facility and Components as originally designed and constructed, as well as any subsequent modifications and overhauls.
  - (ii) Operation and maintenance records.
  - (iii) Historical hydrology and generation data.
  - (iv) Historical reservoir and tailwater operation levels.

- (v) Environmental monitoring and mitigation reports, including minimum water releases.
- (vi) Health and safety records.
- (vii) Other documents according to the laws of Montenegro.

## Annex 1

### Testing

Below is a preliminary list of tests to be performed during the various phases of manufacturing, erection works, construction, operation, maintenance, rehabilitation and transfer. The tests shall be performed by the Concessionaire. A final list shall be provided in Schedule 8 of the Concession Agreement, which shall be subject to the Grantor's approval.

#### (1) Factory Acceptance and Shop Tests

Test	Acceptance Value
Hydraulic turbine CFD studies and scale model tests	Pass
Turbine distributor (wheelcase) assembly and functional test	Pass
Turbine runner assembly, dimensional, hydrostatic pressure test and functional test (for Kaplan turbine runners)	Pass
Draft tube liner assembly and dimensional inspection	Pass
Shaft dimensional and runout inspection	Pass
Spiral case assembly and dimensional inspection	Pass
Stay ring assembly and dimensional inspection	Pass
Material tests for all components	Pass
Visual and NDE inspections of castings, forgings and welds	Pass
Dimensional checks to confirm geometric similarity between turbine model and prototype turbine per IEC 60193 requirements	Pass
Painting inspection	Pass
Dielectric tests of individual stator bars windings	Pass

NDE tests of rotor shaft, shaft coupling bolts, and stator frame.	<b>Pass</b>
Stator Core Loop test.	<b>Pass</b>
Current transformer tests	<b>Pass</b>
Runout inspection of generator shafts.	<b>Pass</b>
Dimensional and dielectric testing of individual stator coils	<b>Pass</b>
Dimensional inspection of stator frame, core, slots, rotor rim, poles, generator shaft, upper and lower bracket, collector rings and bearings.	<b>Pass</b>
NDE test of the generator shaft, coupling bolts, stator frame, bearing runner, bearing pads and shoes.	<b>Pass</b>
Runout of the generator shaft, bearing runner and collector rings.	<b>Pass</b>
Measurement of stator and rotor winding resistance	<b>Pass</b>
Transformer oil sampling	<b>Pass</b>
Measurement of transformer windings resistance	<b>Pass</b>
Dielectric testing of the transformer windings	<b>Pass</b>
Check transformer protective devices, polarity, voltage ratio, calibration and setting of thermal relays	<b>Pass</b>
Operating test of the transformer cooling system and control system	<b>Pass</b>
Functional testing of the transformer tap changer	<b>Pass</b>
Towers, conductors, insulators, accessories, switches, voltage and current transformers	<b>Pass</b>
Governing system FAT including controls and HPU	<b>Pass</b>



Inlet valve assembly and dimensional inspection, functional, pressure and leakage test	<b>Pass</b>
Inlet valve operating system FAT including controls and HPU	<b>Pass</b>
Painting inspection	<b>Pass</b>
Check fabrication dimensions, tolerances and machined finish of each item of gate, stoplog and trashrack equipment including embedded parts	<b>Pass</b>
Check correct fit and alignment of separate interfacing parts of gates, stoplog and trashrack embedded parts	<b>Pass</b>
Check correct fit and alignment of the interfacing sections of sectionalized gates, stoplogs and trashracks	<b>Pass</b>
Non-destructive tests of welds	<b>Pass</b>
Checks for correct fit on seals for gates, stoplogs and valves	<b>Pass</b>
Plumbness checks for gates, trashracks, stoplogs and lifting beam	<b>Pass</b>
Operation of lifting beams	<b>Pass</b>
Completeness of Control Panels	<b>Pass</b>
Operation of Limit Switches (simulate)	<b>Pass</b>
Operation of Hydraulic and Electrical Controls of the Hydraulic Power Units	<b>Pass</b>
Pressure and leakage tests of hydraulic cylinders and valves	<b>Pass</b>
Verification of capacities of all hoists	<b>Pass</b>
Check fabrication dimensions, tolerances and machined finishes on each item of cranes and trashrakes.	<b>Pass</b>
Check correct fit and alignment of various interfacing items of cranes and trashrakes	<b>Pass</b>

Testing of all drives for the cranes and trashrakes	<b>Pass</b>
Dimensions of throats for crane hooks	<b>Pass</b>
Other tests as needed to ascertain correct assembly during installation	<b>Pass</b>
Operation of lubrication systems	<b>Pass</b>
Tests of electrical motors, pumps, brakes and other standard purchased equipment for gates, cranes, trashrakes and BOP mechanical systems	<b>Pass</b>
Measurement of winding resistance and voltage ratio for station service transformer, low voltage transformer feeding the power distribution panel	<b>Pass</b>
Insulation resistance test of station service, MCC and power distribution equipments	<b>Pass</b>
Check SS transformer protective devices and polarity	<b>Pass</b>
Check calibration and settings of relays, circuit breakers and protective devices of HPPs and Transmission grid substations.	<b>Pass</b>
Functional test of automatic transfer scheme.	<b>Pass</b>
Test of battery chargers for calibration of equalize and float voltage setpoints and of proportional load sharing	<b>Pass</b>
Dielectric test of the UPS	<b>Pass</b>
Operational test of the UPS static transfer switch and maintenance by-pas switch	<b>Pass</b>
Check ratio, polarity, winding resistance and dielectric testing of all instrument transformers	<b>Pass</b>

(2) Field Testing During Installation and Construction

Test	Acceptance Value
Assembly and embedment of draft tube liner	<b>Pass</b>
Assembly, welding, hydrostatic pressure test and embedment of spiral case	<b>Pass</b>
Assembly and embedment of stay ring	<b>Pass</b>
Assembly and embedment of bottom ring	<b>Pass</b>
Hydrostatic pressure test of all pressure piping prior to embedment	<b>Pass</b>
Visual and NDE inspections of castings, forgings and welds	<b>Pass</b>
Dimensional checks to confirm geometric similarity between turbine model and prototype turbine per IEC 60193 requirements	<b>Pass</b>
Painting inspection	<b>Pass</b>
Measurement of centering and leveling of turbine	<b>Pass</b>
Measurement of clearances	<b>Pass</b>
Measurement of wicket gate gaps	<b>Pass</b>
Relation between servomotor stroke and wicket gate opening	<b>Pass</b>
Determination of wicket gate openings for starting and no load run	<b>Pass</b>
Check of shaft alignment (per IEEE Std 810 requirements)	<b>Pass</b>
Dielectric testing the generator stator and rotor winding	<b>Pass</b>
Alignment of the stator frame and rotor (verticality, roundness, circularity, level, etc)	<b>Pass</b>
Measurement of the air gap between stator and rotor	<b>Pass</b>
Check bearing clearance and alignment	<b>Pass</b>

Transformer dielectric testing and winding resistance measurement	<b>Pass</b>
Analysis of the transformer oil	<b>Pass</b>
Check grounding of the transformer connections and surge arresters	<b>Pass</b>
Measurements of isolation resistance of each conductor phase	<b>Pass</b>
Measurement of the resistance of the conductor phases	<b>Pass</b>
Measurement of the homopolar resistance	<b>Pass</b>
Measurement of the current, tension, active and reactive power under hot and dead line	<b>Pass</b>
Adjust and test functioning of governing system and governor compressed air system (or accumulator)	<b>Pass</b>
Check and adjust wicket gate and runner blade opening and closing times with turbine dewatered	<b>Pass</b>
Check generator brake operation	<b>Pass</b>
Pressure test of pressure system piping	<b>Pass</b>
Check alignment, seal welding and grinding at corners, and cleanliness of embedded parts before installation of trashracks, gates and stoplogs	<b>Pass</b>
Check for alignment between gates and hoists	<b>Pass</b>
Check contact of seals of gates and stoplogs with embedded parts in the dry using feeler gages	<b>Pass</b>
Check leakage of gates and stoplogs in wet conditions	<b>Pass</b>
Operation test for all gates, stoplogs and lifting beams under dry and wet conditions and verify smoothness of operation under various conditions, speed of operation and	<b>Pass</b>

functioning of limit switches and controls per requirement	
Trashrake operation tests for all motions and controls, including correct raking movement on the trashracks, indexing, and trash dumping features under no load conditions	<b>Pass</b>
Crane operation tests for all motions and controls under rated load condition.	<b>Pass</b>
Crane hoists test under 125 % overload condition to ascertain that hoist can withstand these loads without damage and the hooks shall show no deformation.	<b>Pass</b>
Piping pressure tests	<b>Pass</b>
Oil piping flushing	<b>Pass</b>
Potable water piping sterilization	<b>Pass</b>
Perform dielectric testing of station service transformer and low voltage transformers	<b>Pass</b>
Perform functional operation of each circuit breaker and automatic transfer switches	<b>Pass</b>
Measurement of impedance and voltage of each battery cell, specific gravity of each cell and inter-cell resistance.	<b>Pass</b>
Perform functional operation of the battery chargers.	<b>Pass</b>
Perform functional check of the UPS transfer switch, maintenance by-pass switch and load transfer from inverter to AC source.	<b>Pass</b>
Functional check of all instrument, protective relays, auxiliary relay, switches including calibration of all gauges and instruments.	<b>Pass</b>
Functional check of all input and output of the plant control system.	<b>Pass</b>
Check ratio, polarity, winding resistance and dielectric testing of all instrument transformers installed at site	<b>Pass</b>

Check all electric rotating apparatus (pumps and fans) for direction of rotation and discharge and perform dielectric testing and winding resistance measurement of the electric motors	<b>Pass</b>
Measurement equipment	<b>Pass</b>

(3) Commissioning Tests

**3.1 Pre-Synchronization Tests**

<b>Test</b>	<b>Acceptance Value</b>
Alignment and rotation checks and shaft runouts	<b>Pass</b>
Mechanical rotational balance	<b>Pass</b>
Static and dynamic balance of rotor	<b>Pass</b>
Wave form deviation factor and TIF test	<b>Pass</b>
Bearing run	<b>Pass</b>
Vibration and noise measurements	<b>Pass</b>
No-load and no-excitation run	<b>Pass</b>
Adjustment and verification of the automatic voltage regulator	<b>Pass</b>
Governor verification, including over speed test	<b>Pass</b>
Generator short circuit and open circuit saturation curves	<b>Pass</b>
Winding resistance measurements	<b>Pass</b>
Dielectric testing of windings	<b>Pass</b>
Pressure and functional tests of brake and jack system, fire protection system and high-pressure oil lubricating system	<b>Pass</b>
Braking time test	<b>Pass</b>

Phase rotation test	<b>Pass</b>
Power transformer tests	<b>Pass</b>
Functional and operational test of the medium voltage and high voltage circuit breakers and disconnect switches	<b>Pass</b>
Adjustment and verification of the measurement, control instrumentation and protection equipment	<b>Pass</b>
Verification of trip-circuits between the plant and the interconnection installations	<b>Pass</b>
Station service, motor control center and power distribution switchboard tests	<b>Pass</b>
DC Station Service System Tests	<b>Pass</b>

### 3.2 Post-Synchronization Tests

<b>Test</b>	<b>Acceptance Value</b>
Heat run test	<b>Pass</b>
Load tests	<b>pass</b>
Segregated losses	<b>pass</b>
Unit load rejection and over-speed tests	<b>pass</b>
Emergency stop test	<b>pass</b>
Quick stop test	<b>pass</b>
Tests of the automatic excitation equipment	<b>pass</b>
Short circuit ratio	<b>pass</b>
Generator reactance and time constant measurement	<b>pass</b>
Net generating capacity	The Contract Capacity of each Unit, as specified in Schedule 8 of the Concession Agreement
Net reactive capacity	The Contract Capacity of each Unit, as specified in Schedule 8 of the Concession

	Agreement
Load ramping rate	The Contract Capacity of each Unit, as specified in Schedule 8 of the Concession Agreement

(4) Reliability Tests (During Trial Operation)

Test	Acceptance Value
Reliability test	Thirty (30) Days of continuous operation without a trip initiated by the Unit in accordance with the laws of Montenegro.

(5) Performance Tests During Operation

Test	Acceptance Value
Unit (Turbine-Generator) efficiency	As specified in Schedule 8 of the Concession Agreement

- (a) At least two (2) years before the Commercial Operation Date, the Concessionaire shall present to the Grantor for approval a detailed Operations and Maintenance Plan along with the selection of an Operations and Maintenance Contractor and associated staff.
- (b) The Concessionaire shall perform all the required maintenance programs on a regular basis, as specified in the Operations and Maintenance manuals provided by the Civil Contractors and Equipment Suppliers. Data sheets, checklists, observation forms, certificates, test results, etc. must be compiled in monthly and annual maintenance reports. These reports shall be made available to the Grantor or the Independent Engineer whenever they visit the Morača HPPs.
- (c) At least once every five (5) years, the Concessionaire shall perform a more detailed inspection of all civil works and equipment and report its findings in a separate report. This will include in-situ inspections and measurements of the turbines, generators, transformers and other electro-mechanical or hydro-mechanical components of the hydro power plants. Repairs as needed to maintain the hydro power plants in top conditions will be analyzed and implemented in the following six (6) months. One (1) electronic copy and two (2) copies of the reports shall be submitted to the Grantor for review and approval.
- (d) All Operations and Maintenance activities, testing protocols, and management of staff involved in these activities shall be performed in accordance with the laws of Montenegro.

(1) Rehabilitation Tests Before Transfer



- (a) Within three (3) months after the Rehabilitation Study Engineer is appointed, the Concessionaire shall present to the Grantor for approval a detailed list of Rehabilitation tests and testing protocols to be performed for all Project Facilities: civil, structural, electrical, mechanical, hydro-mechanical and other auxiliary components.
- (b) The Concessionaire shall also explain who will perform these tests and obtain the Grantor's approval.
- (c) Rehabilitation Study Engineer shall discuss the results of these tests with the Grantor and the Concessionaire, and propose a Rehabilitation program that will be submitted to the Grantor for approval.

(7) Testing Codes and Standards

- (a) The testing programs and procedures for Morača HPPs and Transmission Lines manufacturing and commissioning shall conform to the requirements of the Laws of Montenegro and international and national industry standards, including but not limited to:
  - (i) IEC 6004 – International Code for Field Acceptance Tests of Hydraulic Turbines;
  - (ii) IEC 60308 – International Code for Testing of Speed Governing Systems for Hydraulic Turbines;
  - (iii) IEC 60826 – International Code for Design criteria of overhead transmission lines
  - (iv) IEC 60545 – Guide for Commissioning, Operation and Maintenance of Hydraulic Turbines
  - (v) IEEE 125 – Recommended Practice for Preparation of Equipment Specifications for Speed-Governing of Hydraulic Turbines Intended to Drive Electric Generators
  - (vi) IEEE 115 – Test Procedure for Synchronous Machines;
  - (vii) IEEE 1248 – Guide for the Commissioning of Electrical Systems in Hydroelectric Power Plants;
  - (viii) IEEE 1020 – Guide for Control of Small Hydroelectric Plants;
  - (ix) IEEE C37.102 – Guide for AC Generator Protection;
  - (x) NEMA Publication – Hydraulic Turbine and Governor Field Erection Information;

- (xi) IEC 60034-2A – Methods for Determining Losses and Efficiency of Rotating Electrical Machinery from Tests (excluding machines for traction vehicles) – First Supplement: Measurement of losses by the calorimetric method;
  - (xii) ISO 1940 – Balance Quality of Rotating Rigid Bodies, quality level 6.3;
  - (xiii) IEEE 1095 – Guide for Installation of Vertical Generators and Generator/Motors for Hydroelectric Applications
  - (xiv) CMAA 70 – Top Running and Gantry Type Multiple Girder Electric Overhead Traveling Crane
  - (xv) AISC – American Institute of Steel Construction
  - (xvi) DIN – Relevant DIN Standards.
- (b) The testing programs and procedures shall include specific forms for each unit, which forms shall outline the detailed procedures to be followed in the performance testing and commissioning of that unit.

**Schedule 1  
Project Development Plan**

**[To be developed after the preferred bidder has been selected on the proposal of the preferred bidder.]**