

**Draft of:
July 28th, 2011**



Montenegro

Sponsor Support Agreement

between

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

and

[Sponsor]

Dated July 28th, 2011

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Schedules

1	Definitions
2	Terms of Financing & Expropriation Security and Construction Security

3 Reduction to Revenue Sharing Fee

THIS SPONSOR SUPPORT AGREEMENT (this “**Agreement**”) is entered into on the [•] day of [•] [2011] (the “**Execution Date**”) in [•], based on decision on granting a concession [•] issued by the Parliament of Montenegro no. [•] dated [•], by:

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

Each of the Sponsor 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 utilization of the hydro-energetic potential of the Morača river, that includes:
- (i) the design, research, engineering, financing, construction, operation, maintenance, Rehabilitation and transfer of the Morača HPPs to the Grantor following the expiration of the Concession Period;
 - (ii) the design, research, engineering, financing, construction of the Morača Transmission Lines and transfer to CGES of those specific parts within the Morača Transmission Lines being used not only for the transmission of electricity from the Morača HPPs, but also for the electric energy system of Montenegro as a whole;
 - (iii) the design, research, engineering, financing, construction, and the transfer of the Project 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 and the Project Roads; and
 - (v) the preservation by the Grantor of the Morača Monastery complex,
- on a build operate transfer basis and in each case conducted in a sustainable manner so as to ensure the mitigation of adverse environmental and social impacts and risks (the “**Project**”);
- B. Simultaneously with the execution of this Agreement between the Grantor and the Sponsor, the Sponsor shall enter the Concession Agreement with the Grantor to facilitate the implementation of the Project;

¹ The Sponsor will be the qualified applicant selected as the preferred applicant for the Project. In the event the qualified applicant selected as the preferred applicant is a consortium, then this Sponsor Support Agreement will be modified as appropriate and executed by both Sponsors

- C. It is a term of the Concession Agreement that the Sponsor enters into this Agreement with the Grantor;
- D. The Sponsor desires to post security in favor of the Grantor in support of, among other things, the Company's obligation to construct the Project Facilities (as hereinafter defined) and achieve the commercial operations of the Morača HPPs in a timely manner; and
- E. The Grantor anticipates being the beneficiary of such security.

NOW, THEREFORE, the 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 the Agreement and shall not be considered in construing the Agreement.
- (c) References in the body of the Agreement to Articles, Sections, and Schedules (and Annexes thereof) are to Articles and Sections of and Schedules (and Annexes thereof) to the 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 the 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 the 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 the Agreement and any Schedule or Annex, the provisions of the Agreement shall prevail.

Article 2 Effective Date

2.1 Effectiveness

This Agreement shall:

- (a) commence and be effective upon the Execution Date; and
- (b) unless extended or terminated earlier in accordance with the provisions of the Agreement, and subject to Section 12.3, continue in full force and effect until the earlier of:
 - (i) the expiration or prior termination of the Concession Agreement; or
 - (ii) the expiration of the Concession Period

(the “**Term**”).

Article 3 Equity Payment

3.1 Contribution

The Sponsor hereby agrees to contribute, directly or indirectly, equity into the Company in the amounts required under the Financing Documents, as and when required under the Financing Documents.

3.2 Right to Deliver Notice of Demand

Until the Company has delivered to the Grantor a certificate, pursuant to Section 3.5.3 (*Notification of the Sponsor Equity Contributions; Certification*) of the Concession Agreement, stating that all amounts required to be contributed by the Sponsor under the Financing Documents as equity have been contributed to the Company, the Grantor shall be entitled to deliver to the Sponsor a Notice of Demand, in the form set out in Article **Error! Reference source not found.**

Article 4 Demand Payment

4.1 Notice of Demand

Upon the receipt by the Sponsor, at any time after the Execution Date, of a written notice of demand (a “**Notice of Demand**”) from the Grantor certifying that to the best of its knowledge, a contribution of equity due from the Sponsor or one of its Affiliates, as provided under the Financing Documents, is more than ten (10) Business Days overdue, the Sponsor shall unconditionally and irrevocably contribute to the Company the amount then due to be contributed by the Sponsor within ten (10) Business Days of the date of receipt by the Sponsor of the Notice of Demand.

Article 5 Restrictions on Transfer of Ownership Interests

5.1 Transfer of Ownership Interests

The Sponsor (or any transferee of any Ownership Interest previously held by the Sponsor) shall not transfer any legal or beneficial interest in any Ownership Interest in the Company subscribed to or held by it without prior written consent of the Grantor to such transfer, which shall not be unreasonably withheld or delayed.

5.2 Other Restrictions

The Sponsor undertakes to procure that the Concessionaire shall not perform any corporate restructuring or change its corporate form or corporate seat without the prior written consent of the Grantor, which shall not be unreasonably withheld or delayed.

5.3 Financial and Technical Capacity; National Security

- (a) In connection with the proposed transfer by the Sponsor of an interest in any Ownership Interests in the Company subscribed to or held by it, the prospective transferor of such interest shall notify the Grantor and provide to the Grantor the following information regarding the proposed transferee:
- (i) the proposed transferee's name and the identity of the country in which the transferee is organized;
 - (ii) the names and nationalities of all natural Persons who directly or indirectly hold ten percent (10%) or more of, or exercise influence or control over, the proposed transferee;
 - (iii) the names and country of organization of all Persons that are not natural Persons who directly or indirectly hold ten percent (10%) or more of, or exercise influence or control over, the proposed transferee;
 - (iv) audited financial statements for the preceding five (5) fiscal years, together with any more recent unaudited quarterly financial statements;
 - (v) a description of its business, including a description of its experience with the operation of hydroelectric dams and related facilities; and
 - (vi) such additional information as the Grantor may reasonably request.
- (b) The Grantor shall use such information to evaluate:

- (i) the ability of the prospective transferee to fulfill the financial, managerial, and technical obligations of the transferor; and
 - (ii) whether the transfer of any Ownership Interest in the Company to such transferee could reasonably be expected to have an adverse impact on the national security interests of the Grantor.
- (c) The considerations of Section 5.3(b) shall be the sole basis for the approval or disapproval of the transfer under this Section 5.33, and the Grantor shall notify the proposed transferor of the approval or disapproval of the transfer within ninety (90) Days following its receipt of all the information requested pursuant to this Section 5.33.

5.4 Other Permitted Transfers

The foregoing restrictions of transfer of the Ownership Interests shall not apply to:

- (i) any transfer required by any Laws of Montenegro or by the operation of the Laws of Montenegro or by order of a Public Authority;
- (ii) any transfer resulting from the creation or enforcement of a security interest in or over any Ownership Interest in favor of the lender in accordance with the Financing Documents;
- (iii) any transfer between the Sponsor and any Affiliate of the Sponsor that is, directly or indirectly, wholly-owned by the Sponsor or owns one hundred percent (100%) of the Ownership Interests in the Sponsor; provided, however, that such Affiliate has entered into an agreement with the Grantor agreeing to be bound by the terms of the Sponsor Support Agreement, including the terms of this Article **Error! Reference source not found.**

Article 6 Liquidated Damages; Financing & Expropriation Security & Development Security

6.1 Obligation to Form Company, Novate Concession Agreement

- (a) The Sponsor shall timely:
 - (i) form the Company pursuant to Section 3.1 (*Formation of the Company*) of the Concession Agreement; and

- (ii) execute the Novation Agreement pursuant to Section 3.2 (*Novation of the Concession Agreement*) of the Concession Agreement.
- (b) Promptly upon learning any information suggesting that the Sponsor will be delayed in forming the Company or executing the Novation Agreement, the Sponsor shall notify the Grantor of such delay.

6.2 Financing & Expropriation Security

Not Later than the Execution Date, the Sponsor shall deliver to the Grantor a demand guarantee (the “Financing & Expropriation Security”) issued by the Qualified Bank having the terms set forth in Schedule 2. Except if otherwise set forth herein, the Sponsor shall continuously maintain the Financing & Expropriation Security, or a replacement thereof, in full force and effect in the required amount until Financial Closing.

6.3 Liquidated Damages for Failure to Form Company, Novate Concession Agreement

If the Sponsor fails to:

- (a) timely form the Company as required by Section 3.1 (*Formation of the Company*) of the Concession Agreement; or
- (b) timely execute the Novation Agreement as required by Section 3.2 (*Novation of the Concession Agreement*) of the Concession Agreement,

then the Sponsor shall pay to the Grantor as liquidated damages an amount of EUR 833,333.00 for each Month by which the formation of the Company or execution of the Novation Agreement (as the case may be) is delayed beyond the time limit therefor; provided, however, that the Sponsor’s payment of liquidated damages pursuant to this Section 6.3 shall not exceed five million Euros (€5,000,000).

6.4 Charging the Financing & Expropriation Security

In the event that either:

- (a) liquidated damages become payable under Section 6.3 of the Agreement, and are not paid by the Sponsor within ten (10) Business Days of the Day on which the payment is due from the Sponsor, then a Financing & Expropriation Security Drawing Event shall have occurred and the Grantor may draw on the Financing & Expropriation Security for the amount of liquidated damages that are outstanding pursuant to Section 6.3; or

- (b) liquidated damages become payable under Sections 3.7(a) or 3.7(b) of the Concession Agreement or liquidated damages or damages become payable under Section 3.7(d) of the Concession Agreement and such liquidated damages or such damages are not paid by the Concessionaire within ten (10) Business Days of the Day on which the payment is due from the Concessionaire, then the Sponsor shall pay the amount due to the Grantor within five (5) Business Days of the expiration of such ten (10) Business Day period, and, in the event that the Sponsor does not pay such amount to the Grantor within such five (5) Business Day period, then a Financing & Expropriation Security Drawing Event shall have occurred and the Grantor may draw on the Financing & Expropriation Security for the amount of the liquidated damages that are outstanding pursuant to Sections 3.7(a) and 3.7(b) of the Concession Agreement and for the amount of the liquidated damages or damages that are due under Section 3.7(d) of the Concession Agreement.

6.5 Construction Security

- (a) At Financial Closing, the Sponsor shall deliver to the Grantor a demand guarantee (the “**Construction Security**”) issued by a Qualified Bank having the terms set forth in Schedule 2 and thereafter continuously maintain such Construction Security, or a replacement thereof, in full force and effect in the required amount until the Commercial Operations Date. Upon delivery of the Construction Security, the Grantor shall return the Financing & Expropriation Security to the Sponsor after making any draws thereon that the Grantor is permitted to make pursuant to Section 6.4. In the event that either:
 - (i) liquidated damages become payable under Section 6.3 (*Liquidated Damages for Failure to Achieve Contract Capacities*) of the Concession Agreement and are not paid by the Concessionaire within ten (10) Business Days of the Day on which the payment is due from the Concessionaire, then the Sponsor shall pay the amount due to the Grantor within five (5) Business Days of the expiration of such ten (10) Business Day period, and, in the event that the Sponsor does not pay such amount to the Grantor within such five (5) Business Day period, then a Construction Security Drawing Event shall have occurred and the Grantor may draw on the Construction Security in the amount of the liquidated damages that are outstanding pursuant to Section 6.3 (*Liquidated Damages for Failure to Achieve Contract Capacities*) of the Concession Agreement; or
 - (ii) liquidated damages become payable under Section 6.5 (*Liquidated Damages for Delay in Achieving Commercial Operations Date; Notice of Delay*) of the Concession Agreement and are not paid by the Concessionaire within ten (10) Business Days of the Day on which the payment is due from the Concessionaire, then the Sponsor shall pay the amount due to the Grantor within five (5) Business Days of the expiration of such ten (10) Business Day period, and, in the event that the Sponsor

does not pay such amount to the Grantor within such five (5) Business Day period, then a Construction Security Drawing Event shall have occurred and the Grantor may draw on the Construction Security for the amount of liquidated damages that are outstanding pursuant to Section 6.5 (*Liquidated Damages for Delay in Achieving Commercial Operations Date; Notice of Delay*) of the Concession Agreement.

- (b) Upon attainment of the Commercial Operations Date, the Grantor shall return the Construction Security to the Sponsor after making any draws thereon that the Grantor is permitted to make pursuant to Section 6.5(a).

6.6 Obligations of the Sponsor

The Sponsor:

- (a) not less than thirty (30) Days prior to the stated expiration date of the then-effective Construction Security or Financing & Expropriation Security, shall deliver to the Grantor:
 - (i) a replacement Construction Security or Financing & Expropriation Security effective on such delivery Day; and
 - (ii) a certification from an officer of the Sponsor, dated as of the delivery Day, certifying that the issuer of such replacement Construction Security or Financing & Expropriation Security meets the requirements of a Qualified Bank, and that such Construction Security or Financing & Expropriation Security meets the requirements of Schedule 2; and
- (b) shall, in the event that the issuer of the Construction Security or Financing & Expropriation Security ceases to meet the qualifications of a Qualified Bank, within ten (10) Business Days of the date on which the issuer first failed to meet the qualifications of a Qualified Bank, deliver to the Grantor a replacement Construction Security or Financing & Expropriation Security together with a certification from an officer of the Sponsor, dated as of the delivery date, certifying that:
 - (i) the issuer of such replacement Construction Security or Financing & Expropriation Security meets the requirements of a Qualified Bank; and
 - (ii) such Construction Security or Financing & Expropriation Security meets the requirements of Schedule 2.

6.7 Replacement and Cancellation of Security

- (a) Within ten (10) Business Days after the delivery of any replacement Construction Security or Financing & Expropriation Security pursuant to Section 6.6, the Grantor shall deliver the Construction Security or Financing & Expropriation Security replaced by such replacement Construction Security or Financing & Expropriation Security to the Sponsor.
- (b) In the event that the Sponsor does not deliver a replacement Construction Security or Financing & Expropriation Security as required by Section 6.6(a) or Section 6.6(b), a Replacement Failure Draw Event shall have occurred and the Grantor may, in its sole discretion, draw on the Construction Security or Financing & Expropriation Security for the full amount thereof; provided, however, that the Grantor shall, unless a Financing & Expropriation Security Drawing Event or Construction Security Drawing Event shall have occurred (in which event the Grantor may apply the sums drawn as if drawn upon the occurrence of a Financing & Expropriation Security Drawing Event or Construction Security Drawing Event), upon the Sponsor's delivery of a replacement Construction Security or Financing & Expropriation Security, in accordance with Section 6.6, reimburse the Sponsor for the amount drawn (without interest or penalty).

Article 7 Default

7.1 Sponsor Events of Default

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

- (a) the failure by the Sponsor to make any contribution of equity in the Company required hereunder that the Sponsor has not cured within three (3) Business Days after receipt of a Notice of Demand from the Grantor that such contribution is overdue, which notice shall specify the payment failure in reasonable detail;
- (b) the failure of the Sponsor to pay to the Grantor any liquidated damages the Sponsor becomes obligated to pay to the Grantor pursuant to Sections 6.3, 6.4, and 6.5;
- (c) the appointment of a receiver, trustee or liquidator of the Sponsor, or of all or substantially all of the assets of the Sponsor, in any proceeding brought by the Sponsor, as applicable, or the appointment of any such receiver, trustee or liquidator in any proceeding brought against the Sponsor that is not discharged within ninety (90) Days after such appointment, or if the Sponsor consents to or acquiesces in such appointment;

- (d) the occurrence of a breach by the Sponsor of the restrictions on the transfer of Ownership Interests contained in Article **Error! Reference source not found.**;
- (e) the failure by the Sponsor to deliver or continuously maintain the Financing & Expropriation Security or the Construction Security as required hereunder;
- (f) the occurrence of a Concessionaire Event of Default (as this term is defined in the Concession Agreement) in accordance with the Concession Agreement;
- (g) the failure by the Sponsor in any respect in the observance or performance of any other material covenant of the Sponsor contained herein that the Sponsor has not commenced to cure within thirty (30) Days after written notice from the Grantor specifying the failure in reasonable detail and demanding that the same be remedied; provided, however, that if the Sponsor 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,

provided, however, that no such event shall be a Sponsor Event of Default if it is caused in whole or material part by a breach by the Grantor of or a default by the Grantor under the Agreement.

Article 8 Advisors' Fees

8.1 Advisors' Fees

- (a) The Sponsor shall pay a success fee in the amount of one million five hundred seventy-five thousand Euros (€1,575,000) to IFC within thirty (30) Days of the Execution Date.
- (b) The Sponsor shall, upon the request and at the direction of the Grantor, enter into one or more agreements reasonably acceptable to the Sponsor, the Grantor, and the Grantor's and IFC's technical, legal, financial, or other Project advisors (as the case may be) pursuant to which the Sponsor will commit to pay the fees and expenses of the Grantor's and IFC's technical, legal, financial, or other Project advisors (as the case may be) in connection with the Project that become payable by the Grantor or IFC (as the case may be) from and after the date on which the Sponsor was notified by the Grantor that it was the preferred bidder for the Project, including any fees and expenses incurred to negotiate any changes to the Project Agreements. Any such agreement shall provide, among other things, that:
 - (i) the fees and expenses of the Grantor's and IFC's technical, legal, financial, or other Project advisors (as the case may be) shall be

determined pursuant to separate agreements between the Grantor or IFC (as the case may be) and the relevant advisor;

- (ii) The Grantor's and IFC's technical, legal, financial, or other Project advisors (as the case may be) shall deliver invoices to the Grantor or IFC (as applicable) for fees and expenses incurred in connection with such advisors' representation of the Grantor or IFC (as the case may be) for this matter;
 - (iii) The Grantor or IFC (as the case may be) shall approve or disapprove each invoice (without review by the Sponsor), and issue payment instructions to the Sponsor for approved invoices;
 - (iv) the Sponsor shall pay the Grantor's or IFC's (as the case may be) technical, legal, financial, or other Project advisors (as the case may be) in accordance with the payment instructions of the Grantor or IFC (as the case may be) within thirty (30) Days of the Sponsor's receipt of each payment instruction; and
 - (v) The Grantor or IFC (as the case may be) shall not be required to communicate the contents of the invoices of the Grantor's or IFC's (as the case may be) technical, legal, financial, or transaction advisors (as the case may be) with the Sponsor or deliver copies of such invoices to the Sponsor.
- (c) The Grantor's and IFC's technical, legal, financial, and other Project advisors will remain the representatives of, and advisors to, the Grantor or IFC (as the case may be) and no client-advisor or client-attorney relationship shall result between the Sponsor and the Grantor's and IFC's technical, legal, financial, and other advisors as a result of the payment arrangements set forth in Sections 8.1(a) or 8.1(b).
- (d) In the event that the payments by the Sponsors of the fees and expenses of the Grantor's and IFC's technical, legal, financial, or other advisors, pursuant to Section 8.1(b) exceed five hundred thousand Euros (€500,000) then each of the first twenty (20) Revenue Sharing Fees shall be reduced by an amount calculated in accordance with Schedule 3; provided, however, that the Grantor may, in its sole discretion, elect to pay to the Sponsor on the Commercial Operations Date an amount equal to the amount by which such fees and expenses exceed five hundred thousand Euros (€500,000) in lieu of such reductions to the first twenty (20) Revenue Sharing Fees.

Article 9 Representations and Warranties

9.1 Representations and Warranties of the Sponsor

The Sponsor represents and warrants that:

- (a) the Sponsor is duly organized and validly existing under the laws of [•];
- (b) the execution, delivery, and performance of the 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 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 the 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 the Agreement, the compliance with the terms and provisions hereof, and implementation 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 Section 1.1.1(a) are true and correct in respect of the Sponsor.

9.2 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 limitations imposed by the general principles of equity;
- (b) the execution and delivery of the Agreement does not contravene any provision of, or constitute a default under the stipulations of 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 the Agreement, the compliance with the terms and provisions hereof, and the implementation 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 or decision of any Public Authority, against the Grantor.
- (d) the statements contained in Section 1.1.1(a) are true and correct in respect of the Grantor.

Article 10 Limitation of Liability

10.1 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 11 Dispute Resolution

11.1 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.

11.2 Dispute Resolution Procedures

Upon receipt by a Party of a notice from the other Party of a Dispute in accordance with Section 11.1 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 Dispute resolution procedures described in Section 11.3.

11.3 Arbitration

- (a) Any Dispute subject to this Section 11.3 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 (3rd) arbitrator.
- (d) No arbitrator appointed pursuant to this Section 11.3 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 production 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 production of documents, including production 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 11.3(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).

11.4 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 11.2, the rights of the Parties to proceed with Dispute resolution under Section 11.2 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 the 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 Sponsor or the Grantor hereunder.

11.5 Obligations Continue

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

11.6 Sovereign Immunity; Jurisdiction

- (a) The Grantor unconditionally and irrevocably agrees that the execution, delivery, and performance by it of the Agreement constitute a private and commercial act. 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 or any of the transactions contemplated by 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 Sponsor 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 Sponsor 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 11.6(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 before the courts of any jurisdiction.

Article 12
Miscellaneous

12.1 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 Parties specified below:

- (i) If to the Grantor:

Attention:
Fax:
E-mail:

with a copy to:

Attention:
Fax:
E-mail:

- (ii) If to the Sponsor:

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 12.1(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.

12.2 Amendment

An amendment or modification of the 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.

12.3 Survival

On the expiry of the Agreement or the earlier termination of the Agreement, all covenants, obligations, representations and warranties contained in the Agreement shall terminate and be of no force or effect and the Parties shall have no further obligations or liabilities under the Agreement, except for those obligations and liabilities that arose prior to and remain undischarged at the date of expiry or termination.

12.4 Third Party Beneficiaries

Except for the rights expressly granted to the Lenders and to the Grantor's and IFC's technical, legal, financial, and other advisors in connection with the Project herein, the Agreement is intended solely for the benefit of the Parties and nothing in the Agreement shall be construed to create any rights in, duty to, standard of care to, or any liability to, any Person not a Party.

12.5 No Waiver

No default by either Party in the performance of or compliance with any provision of the 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 the Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

12.6 Relationship of the Parties

- (a) The 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.

12.7 Expenses of the Parties

Except as otherwise agreed in Article **Error! Reference source not found.**1 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 the Agreement and the 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.

12.8 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.

12.9 Language

This Agreement has been drafted in English and Montenegrin. In the event of any discrepancies between the English and Montenegrin version, the English version shall prevail. All notices, certificates, and other documents and communications (given or made pursuant to the Laws of Montenegro by a Public Authority or submitted to the Public Authority pursuant to the Laws of Montenegro shall be in Montenegrin.

12.10 Governing Law

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

12.11 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 the Agreement are hereby abrogated and withdrawn.

12.12 Assignment

- (a) This Agreement shall not be assigned by the Sponsor to any other party without the prior written consent of the Grantor; provided, however, that the Sponsor may grant a security interest in its interest in the Agreement to a Lender or any financial institution or institutions participating in the financing of the Project.
- (b) This Agreement shall not be assigned by the Grantor without the prior written consent of the Sponsor.
- (c) The Agreement shall bind and inure to the benefit of the Parties and any successor or assignee acquiring an interest hereunder consistent with Section 12.12(a) and Section 12.12(b).
- (d) Any assignment in contravention of this Section 12.12 shall be null and void.

12.13 Confidentiality

- (a) This Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and, subject to Section 12.13(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 the Agreement or has been, or could have been, lawfully acquired by the Party.
- (c) Notwithstanding the provisions of Section 12.13(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 12.13;

- (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:
 - (A) any lending or other financial institution in connection with the financing of such Party's operations; or
 - (B) any bona fide intended assignee or transferee of the whole or any part of the rights and interests of the disclosing Party under the 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 12.13;
- (v) Independent Panel or to any arbitrator appointed pursuant to and under the terms of the Agreement; or
- (vi) according to the Laws of Montenegro.

12.14 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 the 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.

12.15 Specific Performance

In the event that any provision of the 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 the Agreement, without the necessity of demonstrating the inadequacy of monetary damages.

12.16 Affirmation

- (a) Neither the Sponsor 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 Sponsor 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 Sponsor 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 for services provided) paid or payable to any Person within or outside Montenegro in relation to the Project.
- (d) The Sponsor 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 null and void.

12.17 Counterparts

This Agreement is executed in eight (8) original copies, two (2) copies for the Sponsor and six (6) copies for the Grantor, each of which copies when executed and delivered by the Parties shall be an original, but all of which shall together constitute one and the same instrument.

12.18 Further Assurances

The Parties shall each execute any and all reasonable documents necessary to effectuate the purposes of the 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 implementation of the Project.

12.19 Severability

If any term or provision of the 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 the Agreement shall remain in full force and effect and will not be affected by such determination in any way.

12.20 Partial Invalidity

The illegality, invalidity, or unenforceability of any provision of the 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

Whenever the following capitalized terms appear in the Agreement, 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 CGES in respect of the transfer, operation and use of Morača Transmission Lines.

“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.

“CGES” – 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.

“Commercial Operations Date” – Has the meaning given thereto in the Concession Agreement.

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

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

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

“Concession Agreement” – The Concession Agreement executed between the Grantor and Sponsor dated as of the Execution Date relating to the Project, which will subsequently be novated to the Company pursuant to its terms.

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

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

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

“Constitutional Documents” – With respect to any particular 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 Security” – Has the meaning given thereto in Section 6.5(a).

“Construction Security Drawing Event” – The events identified as Construction Security Drawing Events in Section 6.5(a).

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

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

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

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

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

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

“Financing & Expropriation Security” – Has the meaning given thereto in Section 6.2.

“Financing & Expropriation Security Drawing Amount” – [•] Euros (€[•]).²

“Financing & Expropriation Security Drawing Event” – The events identified as Financing & Expropriation Security Drawing Events in Section 6.4.

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

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

“ICC Rules” – Has the meaning given thereto in Section 11.3(a).

² The Financing & Expropriation Security Drawing Amount will equal the sum of (a) five million Euros (€5,000,000), plus estimated costs of land expropriation that the Grantor must expropriate. The Financing & Expropriation Security Drawing Amount will be calculated based on the technical proposal submitted by the Preferred Applicant and will be inserted into the Sponsor Support Agreement as a hard number before it is executed.

“IFC” – The International Finance Corporation.

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

“Laws of Montenegro” – Means:

- (a) the laws of Montenegro, and all treaties, decrees, codes, ordinances, orders, resolutions, 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.

“Lead Member” – Has the meaning given in the Pre-Qualification Document.

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

“Month” – A calendar month according to the Gregorian calendar.

“Morača HPPs” – The series of cascading hydroelectric power generation plants to be located on the Morača River, as more particularly described in the Concession Agreement.

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

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

“Notice of Demand” – Has the meaning given thereto in Section 4.1.

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

“Ownership Interest” – Any ownership interest over the Company that includes voting rights or other managing and control rights, and any of the Company’s securities that are convertible into such ownership interest at the option of the holder.

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

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

“Pre-Qualification Document” – The public invitation for pre-qualification dated February 26th, 2010 and Pre-Qualification Documents in relation to the Project.

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

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

“Project Facility” or “Project Facilities” – Has the meaning given thereto in the Concession Agreement.

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

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

“Public Authority” – Any of:

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

“Qualified Bank” – A commercial bank whose long-term senior unsecured debt obligations denominated in Euros is rated at or above the Qualified Minimum Bank Rating and that is not engaged in any material litigation with the Grantor or any Public Authority.

“Qualified Minimum Bank Rating” – A rating of at least AA by S&P or its equivalent from another internationally recognized major credit rating institution.

“Replacement Failure Draw Event” – Any event, condition, or circumstance identified in Section 6.7 that entitles the Grantor to draw on the Financing & Expropriation Security or the Construction Security.

„Required Commercial Operations Date“ – Has the meaning given thereto in the Concession Agreement.

“Revenue Sharing Fee” – Has the meaning given thereto in the Concession Agreement.

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

“Sponsor Event of Default” – Has the meaning given thereto in Section 7.1.

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

“Technical Member” – Has the meaning given in the Pre-Qualification Document.

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

Schedule 2
Terms of Financing & Expropriation Security and Construction Security

The Financing & Expropriation Security and the Construction Security shall:

1. name the Grantor as the beneficiary thereof;
2. have a term of not less than one (1) year;
3. become drawable on first demand solely against delivery of a demand and notice to the issuer of the occurrence of a Financing & Expropriation Security Drawing Event or a Construction Security Drawing Event (as the case may be) or a Replacement Failure Draw Event;
4. include feasible and practical drawing procedures in the reasonable view of the Grantor; provided, however, that it shall not contain any condition to drawing other than the confirmation by the issuer that any drawing certificate required to be delivered in connection with a drawing appears to comply on its face with the requirements of such Financing & Expropriation Security or Construction Security (as the case may be);
5. be issued by a Qualified Bank (or branch thereof) located in, and be drawable in, the European Union or any other location approved by the Grantor;
6. provide for beneficiary's right of multiple drawings;
7. expressly state that it shall be subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce and, to the extent not inconsistent with the Uniform Rules for Demand Guarantees, the Laws of Montenegro.

The Financing & Expropriation Security shall, in addition to meeting the requirements set forth above:

1. have a maximum amount available for draw equal to the Financing & Expropriation Security Drawing Amount; and
2. be reasonably satisfactory in form to the Grantor; provided, however, that a demand guarantee in the form of the demand guarantee attached hereto as Annex 1 to this Schedule 2 that meets the other criteria set forth herein shall meet the requirements as to the form of the Financing & Expropriation Security.

The Construction Security shall, in addition to meeting the requirements set forth above:

1. have a maximum amount available for draw equal to fifty million Euros (€50,000,000); and

2. be reasonably satisfactory in form to the Grantor; provided, however, that a demand guarantee in the form of the demand guarantee attached hereto as Annex 2 to this Schedule 2 that meets the other criteria set forth herein shall meet the requirements as to the form of the Construction Security.

**Annex 1 to Schedule 2
Form of Financing & Expropriation Security**

[Letterhead of Issuing Bank]

DEMAND GUARANTEE

State of Montenegro

[•]

[•], Montenegro

Beneficiary: State of Montenegro

Subject: Financing & Expropriation Guarantee No. [•]

We refer to the Sponsor Support Agreement, dated [•] (as amended or otherwise modified, the “*Sponsor Support Agreement*”) between the [Sponsor] (the “*Principal*”) and the Beneficiary.

We have been informed that the Sponsor Support Agreement requires the Principal to post to the Beneficiary this financing and expropriation security guarantee (the “*Guarantee*”).

At the request of the Principal, [•] (the “*Bank*”) hereby irrevocably undertakes to pay the Beneficiary, or its assignee, any sum or sums not exceeding in total the amount of [•] Euros (€[•]) (the “*Guarantee Amount*”) upon receipt by the Bank, at this office, of the Beneficiary’s or its assignee’s demand in writing and the Beneficiary’s or its assignee’s written statement stating:

- (a) that the Principal is in breach of its obligations under the Sponsor Support Agreement;
- (b) the respect in which the Principal is in breach; and
- (c) the amount of the Beneficiary’s demand, which will not exceed the Guarantee Amount deducted for the amount previously drawn by the Beneficiary.

Any demand for payment must be purportedly signed (a) by the Beneficiary or its authorized representative or employee or (b) by its assignee or its authorized representative or employee.

The Bank hereby (i) acknowledges the Beneficiary’s drawing rights under this Guarantee, (ii) acknowledges that neither the Bank nor the Principal may terminate this Guarantee prior to its stated expiration date without written consent of the Beneficiary and (iii) undertakes to honor a demand made by the Beneficiary pursuant to this Guarantee to the extent such demand otherwise conforms to the requirements set forth herein, and to make payment in respect of such a demand directly to the Beneficiary.

If the Beneficiary or its assignee presents a demand for payment to the Bank by 10:00 a.m. local time on any day on which the Bank is open for business (each such day, a “*Business Day*”), in conformance with the terms and conditions of this Guarantee, the Bank will honor the same by making payment to the Beneficiary or its assignee in immediately available funds, in accordance with the Beneficiary’s payment instructions and without any restrictions, conditions, inquiry or right of objection whatsoever on the Bank’s part, without notice to the Principal prior to such payment and notwithstanding any conditions, demands, or objections by the Principal or any other party, without the Beneficiary having to further substantiate such demand, by 4:00 p.m. local time on such Business Day, otherwise the Bank will honor the Beneficiary’s demand for payment by 10:00 a.m. local time the following Business Day.

This Guarantee shall expire on [•]. Consequently, any demand for payment under it must be received by the Bank on or before that date. Neither the Bank nor the Principal may terminate this Guarantee prior to its stated expiration date without the written consent of the Beneficiary.

The Guarantee Amount may be subject to reduction upon the receipt by the Bank of a written request purportedly signed by the Beneficiary stating the amount by which the Beneficiary requests that the Guarantee Amount be reduced.

This Guarantee shall be subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce, and to the extent not inconsistent with the Uniform Rules for Demand Guarantees, governed by the laws of Montenegro.

[ISSUING BANK]

By: _____
Name:
Title:

**Annex 2 to Schedule 2
Form of Construction Security**

[Letterhead of Issuing Bank]

DEMAND GUARANTEE

State of Montenegro

[•]

[•], Montenegro

Beneficiary: State of Montenegro

Subject: Construction Guarantee No. [•]

We refer to the Sponsor Support Agreement, dated [•] (as amended or otherwise modified, the “*Sponsor Support Agreement*”) between the [Sponsor] (the “*Principal*”) and the Beneficiary.

We have been informed that the Sponsor Support Agreement requires the Principal to post to the Beneficiary a construction guarantee (the “*Guarantee*”).

At the request of the Principal, [•] (the “*Bank*”) hereby irrevocably undertakes to pay the Beneficiary, or its assignee, any sum or sums not exceeding in total the amount of fifty million Euros (€50,000,000) (the “*Guarantee Amount*”) upon receipt by the Bank, at this office, of the Beneficiary’s or its assignee’s demand in writing and the Beneficiary’s or its assignee’s written statement stating:

- (a) that the Principal is in breach of its obligations under the Sponsor Support Agreement;
- (b) the respect in which the Principal is in breach; and
- (c) the amount of the Beneficiary’s demand, which will not exceed the Guarantee Amount deducted for the amount previously drawn by the Beneficiary.

Any demand for payment must be purportedly signed (a) by the Beneficiary or its authorized representative or employee or (b) by its assignee or its authorized representative or employee.

The Bank hereby (i) acknowledges the Beneficiary’s drawing rights under this Guarantee, (ii) acknowledges that neither the Bank nor the Principal may terminate this Guarantee prior to its stated expiration date without written consent of the Beneficiary and (iii) undertakes to honor

a demand made by the Beneficiary pursuant to this Guarantee to the extent such demand otherwise conforms to the requirements set forth herein, and to make payment in respect of such a demand directly to the Beneficiary.

If the Beneficiary or its assignee presents a demand for payment to the Bank by 10:00 a.m. local time on any day on which the Bank is open for business (each such day, a “*Business Day*”), in conformance with the terms and conditions of this Guarantee, the Bank will honor the same by making payment to the Beneficiary or its assignee in immediately available funds, in accordance with the Beneficiary’s payment instructions and without any restrictions, conditions, inquiry or right of objection whatsoever on the Bank’s part, without notice to the Principal prior to such payment and notwithstanding any conditions, demands, or objections by the Principal or any other party, without the Beneficiary having to further substantiate such demand, by 4:00 p.m. local time on such Business Day, otherwise the Bank will honor the Beneficiary’s demand for payment by 10:00 a.m. local time the following Business Day.

This Guarantee shall expire on [•]. Consequently, any demand for payment under it must be received by the Bank on or before that date. Neither the Bank nor the Principal may terminate this Guarantee prior to its stated expiration date without the written consent of the Beneficiary.

The Guarantee Amount may be subject to reduction upon the receipt by the Bank of a written request purportedly signed by the Beneficiary stating the amount by which the Beneficiary requests that the Guarantee Amount be reduced.

This Guarantee shall be subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce, and to the extent not inconsistent with the Uniform Rules for Demand Guarantees, governed by the laws of Montenegro.

[ISSUING BANK]

By: _____
Name:
Title:

Schedule 3

Reduction to Revenue Sharing Fee

The reduction contemplated by Section 8.1(d) of the Agreement to each of the first twenty (20) Revenue Sharing Fees payable under the Concession Agreement shall be calculated as follows:

$$Reduction = ExcessAmt \times \frac{R}{1 - (1 + R)^{-20}}$$

where:

Reduction means the amount of the reduction to each of the first twenty (20) Revenue Sharing Fees calculated in accordance with this Schedule 3;

ExcessAmt means the amount by which the payments by the Sponsors of the fees and expenses of the Grantor's and IFC's technical, legal, financial, or other advisors, pursuant to Section 8.1(b) of the Agreement, exceed five hundred thousand Euros (€500,000) ; and

R means the result in percentages obtained by dividing the six (6) month LIBOR, established as the British Bankers Association Interest Settlement Rate for deposits in Euro for a period equal to six (6) months which appears on the appropriate page of the Reuters service at or about 11:00 a.m. in London on the Commercial Operations Date, plus three percent, by two (2).