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**LOAN NUMBER 7198 HR  
GEF TRUST FUND GRANT NUMBER TF 052141 HR**

# **Loan Agreement**

**(Energy Efficiency Project)**

**between**

**INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT**

**and**

**HRVATSKA ELEKTROPRIVREDA D.D.**

**Dated November 10, 2003**

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**LOAN NUMBER 7198 HR**  
**GEF TRUST FUND GRANT NUMBER TF 052141 HR**

**LOAN AGREEMENT**

AGREEMENT, dated November 10, 2003, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and HRVATSKA ELEKTROPRIVREDA D.D. (HEP), a power company established under the laws of the Republic of Croatia (the Borrower).

WHEREAS: (A) Republic of Croatia (the Guarantor) and the Borrower, having been satisfied as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, have requested the Bank to assist in the financing of Part A of the Project;

(B) by an agreement (the Guarantee Agreement) of even date herewith between the Guarantor and the Bank, the Guarantor has agreed to guarantee the obligations of the Borrower in respect of the Loan;

(C) by an agreement of even date herewith (the GEF Trust Fund Grant Agreement), the Bank, acting as the implementing agency of the Global Environment Facility (GEF) has agreed to make a grant (the GEF Trust Fund Grant) to the Guarantor in the amount of seven million Dollars (\$7,000,000) to assist in financing Parts B, C and D of the Project on the terms and conditions set forth in the GEF Trust Fund Grant Agreement;

(D) Part A of the Project will be carried out by HEP ESCO with the Borrower's assistance and, as part of such assistance, the Borrower will make the proceeds of the loan provided for in Article II of this Agreement (the Loan) available to HEP ESCO, as set forth in this Agreement; and

WHEREAS the Bank has agreed, on the basis, inter alia, of the foregoing, to extend the Loan to the Borrower upon the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

**ARTICLE I**

**General Conditions; Definitions**

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements for Fixed-Spread Loans" of the Bank, dated September 1, 1999, (the General Conditions) constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions, the Preamble to this Agreement and the GEF Trust Fund Grant Agreement

have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Beneficiaries" and "Beneficiary" mean collectively the individual energy end users and individually the individual energy end user meeting the Eligibility Criteria (hereinafter defined) for assistance under the Project;

(b) "Co-financing Bank" means a commercial bank duly established and operating in the Republic of Croatia, selected, in accordance with the criteria and procedures set forth in the PIP, to arrange a commercial loan facility for co-financing Energy Saving Investments under Part A of the Project;

(c) "Eligibility Criteria" means the criteria adopted by the Borrower and HEP ESCO (hereinafter defined) and included in the PIP (hereinafter defined), for selection of Beneficiaries and Energy Saving Investments (hereinafter defined) under the Project;

(d) "Energy Performance Service Contract" means a contract to be entered into between HEP ESCO and a Beneficiary, the content and terms and conditions of which are set forth in the PIP (hereinafter defined), as the same may be amended from time to time, and such term includes all schedules to any Energy Performance Service Contract;

(e) "Energy Saving Investment" means an energy saving investment eligible for financing with proceeds of the Loan under Energy Performance Service Contract, in accordance with the Eligibility Criteria;

(f) "Energy Service Providers" means commercial enterprises duly registered and operating in the Republic of Croatia and benefiting from commercial loans from Participating Banks (as such terms is defined in Section 1.02 (o) of the GEF Trust Fund Grant Agreement) under Part C of the Project for Energy Saving Investments meeting Eligibility Criteria;

(g) "Environmental Management Framework" means the framework, satisfactory to the Bank, prepared and adopted by the Borrower and included in the PIP (hereinafter defined), describing the environmental mitigation, monitoring and institutional measures for the Project, including the guidelines for environmental screening and assessment of Energy Saving Investments;

(h) "Financial Monitoring Report" means each report prepared in accordance with Section 4.02 of this Agreement;

(i) "HEP ESCO" means Energy Service Company of HRVATSKA ELEKTROPRIVREDA d.d., established pursuant to Statement on Establishment of March 14, 2002, and registered in the commercial court of Zagreb on April 24, 2002;"

(j) “HEP ESCO Project Implementation Agreement” means the agreement to be entered into between the Borrower and HEP ESCO pursuant to the provisions of paragraph 5 of Schedule 4 to this Agreement;

(k) “Partial Credit Guarantee Facility” means the guarantee facility provided under Part C of the Project;

(l) “PIP” means the Project Implementation Plan adopted by HEP (with respect to implementation of Parts A, B and D of the Project) and HBOR (with respect to implementation of Part C of the Project), setting forth rules and regulations for implementation of the Project, as the same may be amended from time to time with the agreement of the Bank; and

(m) “Special Account” means the account referred to in Section 2.02 (b) of this Agreement.

## **ARTICLE II**

### **The Loan**

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount equal to four million four hundred thousand Euro (EUR4,400,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.09 of this Agreement.

Section 2.02. (a) The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Bank shall so agree, to be made) in respect of: (i) the reasonable cost of goods and works required for carrying out Energy Saving Investment under Part A of the Project and to be financed out of the proceeds of the Loan; and (ii) the front-end fee referred to in Section 2.04 of this Agreement and any premium in respect of an Interest Rate Cap or Interest Rate Collar payable by the Borrower in accordance with Section 4.04 (c) of the General Conditions.

(b) The Borrower may open and maintain in Euro a special deposit account, in a commercial bank, on terms and conditions satisfactory to the Bank, including appropriate protection against set off, seizure and attachment.

Section 2.03. The Closing Date shall be June 30, 2010, or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower and the Guarantor of such later date.

Section 2.04. (a) The Borrower shall pay to the Bank a front-end fee in an amount equal to forty-four thousand Euro (EUR44,000). The Borrower agrees that on or promptly after the Effective Date, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amount of such fee.

Section 2.05. The Borrower shall pay to the Bank a commitment charge on the principal amount of the Loan not withdrawn from time to time, at a rate equal to: (i) eighty-five one-hundredths of one percent (0.85%) from the date on which such charge commences to accrue in accordance with the provisions of Section 3.02 of the General Conditions to but not including the fourth anniversary of such date; and (ii) seventy-five one-hundredths of one percent (0.75%) thereafter.

Section 2.06. The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, at a rate for each Interest Period equal to the Variable Rate; provided, that upon a Conversion of all or any portion of the principal amount of the Loan, the Borrower shall, during the Conversion Period, pay interest on such amount in accordance with the relevant provisions of Article IV of the General Conditions.

Section 2.07. Interest, commitment and other charges shall be payable semiannually in arrears on April 15 and October 15 in each year.

Section 2.08. (a) Subject to the provisions of paragraph (b) of this Section, the Borrower shall repay each Disbursed Amount in semiannual installments to be payable on each April 15 and October 15, the first such installment to be payable on the ninth (9<sup>th</sup>) Interest Payment Date following the Maturity Fixing Date for said Disbursed Amount and the last such installment to be payable on the twentieth (20<sup>th</sup>) Interest Payment Date following the Maturity Fixing Date for said Disbursed Amount. Each installment except for the last one shall be equal to one-twelfth (1/12) of said Disbursed Amount. The last installment shall be equal to the remaining outstanding amount of said Disbursed Amount.

(b) Notwithstanding the provisions of paragraph (a) of this Section, if any one or more installments of principal of any Disbursed Amount would, pursuant to the provisions of such paragraph (a), be payable after October 15, 2019, the Borrower shall also pay on such date the aggregate amount of all such installments.

(c) The Bank shall notify the Borrower and the Guarantor of the amortization schedule for each Disbursed Amount promptly after the Maturity Fixing Date for said Disbursed Amount.

(d) Notwithstanding the provisions of paragraphs (a) through (c) of this Section, in the event of a Currency Conversion of all or any portion of a Disbursed Amount to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by the Bank by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by the Bank under the Currency Hedge Transaction relating to said Conversion; or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

Section 2.09. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, withdrawn or unwithdrawn, to an Approved Currency;
  - (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan from a Variable Rate to a Fixed Rate, or vice versa; and
  - (iii) the setting of limits on the Variable Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Variable Rate.
- (b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by the Bank shall be considered a “Conversion”, as defined in Section 2.01 (7) of the General Conditions, and shall be effected in accordance with the provisions of Article IV of the General Conditions and of the Conversion Guidelines.
- (c) Promptly following the Execution Date for an Interest Rate Cap or Interest Rate Collar in respect of which the Borrower has requested that the premium be paid out of the proceeds of the Loan, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amounts required to pay any premium payable in accordance with Section 4.04 (c) of the General Conditions up to the amount allocated from time to time for such purpose in the table in paragraph 1 of Schedule 1 to this Agreement.

### **ARTICLE III**

#### **Execution of the Project**

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, without any limitation or restriction upon any of its other obligations under this Agreement, shall cause HEP ESCO to carry out Part A of the Project with due diligence and efficiency and in conformity with appropriate financial, administrative, engineering, and environmental practices, and shall take or cause to be taken all action, including provision of funds, facilities, services and other resources, necessary or appropriate to enable HEP ESCO to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Bank and the Borrower shall otherwise agree, the Borrower shall cause HEP ESCO to carry out Part A of the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

(c) The Borrower shall relend the proceeds of the Loan to HEP ESCO (the Subsidiary Loan) under the HEP ESCO Project Implementation Agreement to be entered into between the Borrower and HEP ESCO, under terms and conditions which shall have been approved by the Bank, including, but not limited to, the conditions for HEP ESCO to carry out

Part A of the Project in accordance with the provisions set forth in paragraph 5 of Schedule 4 to this Agreement.

(d) The Borrower shall exercise its rights under the HEP ESCO Project Implementation Agreement in such manner as to protect the interests of the Borrower and the Bank and to accomplish the purposes of the Loan, and, except as the Bank shall otherwise agree, the Borrower shall not assign, abrogate or waive the HEP ESCO Project Implementation Agreement or any provision thereof.

Section 3.02. Except as the Bank shall otherwise agree, procurement of the goods and works required for Part A of the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03. For the purposes of Section 9.08 of the General Conditions and without limitation thereto, the Borrower shall:

(a) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, a plan for the future operation of the Project; and

(b) afford the Bank a reasonable opportunity to exchange views with the Borrower on said plan.

## ARTICLE IV

### Financial Covenants

Section 4.01. (a) The Borrower shall, and shall cause HEP ESCO to maintain a financial management system, including records and accounts, and prepare financial statements, all in accordance with accounting standards acceptable to the Bank, consistently applied, adequate to reflect its operations and financial condition and to register separately the operations, resources and expenditures related to Part A of the Project.

(b) The Borrower shall, and shall cause HEP ESCO to:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) and the records and accounts for the Special Account for each fiscal year audited, in accordance with auditing standards acceptable to the Bank, consistently applied, by independent auditors acceptable to the Bank;

(ii) furnish to the Bank as soon as available, but in any case not later than six (6) months after the end of each such year, (A) certified copies of the financial statements referred to in paragraph (a) of this Section, for such

year as so audited, and (B) an opinion on such statements and report of such audit, by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and

- (iii) furnish to the Bank such other information concerning such records, accounts, and financial statements, and the audit thereof, and concerning said auditors, as the Bank may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Loan Account were made on the basis of statements of expenditures the Borrower shall and shall cause HEP ESCO to:

- (i) maintain or cause to be maintained, in accordance with paragraph (a) of this Section, records and separate accounts reflecting such expenditures;
- (ii) retain, until at least one (1) year after the Bank has received the audit report for the fiscal year in which the last withdrawal from the Loan Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Bank's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals.

Section 4.02. (a) Without limitation upon the Borrower's and HEP ESCO's progress reporting obligations set forth in Schedule 4 to this Agreement, the Borrower shall cause HEP ESCO to prepare and furnish to the Bank a Financial Monitoring Report (FMR), in form and substance satisfactory to the Bank, which:

- (i) sets forth actual sources and use of funds for Part A of the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Loan, and explains variances between the actual and planned use of such funds; and
- (ii) describes physical progress in Project implementation, both cumulatively and for the period covered by said report and explains variances between the actual and previously forecast implementation targets; and
- (iii) sets forth the status of procurement under Part A of the Project, as at the end of the period covered by said report.



(b) The first FMR shall be furnished to the Bank not later than forty-five (45) days after the end of the first calendar quarter after the Effective Date, and shall cover the period from the incurrence of the first expenditure under the Project through the end of such first calendar quarter; thereafter, each FMR shall be furnished to the Bank not later than forty-five (45) days after each subsequent calendar quarter, and shall cover such calendar quarter.

Section 4.03. (a) Except as the Bank shall otherwise agree, the Borrower shall not incur any debt, unless the net revenues of the Borrower for the fiscal year immediately preceding the date of such incurrence or for a later twelve-month period ended prior to the date of such incurrence, whichever is the greater, shall be at least 1.2 times the estimated maximum debt service requirements of the Borrower for any succeeding fiscal year on all debt of the Borrower, including the debt to be incurred.

- (b) For the purposes of this Section:
- (i) The term “debt” means any indebtedness of the Borrower maturing by its terms more than one (1) year after the date on which it is originally incurred.
  - (ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.
  - (iii) The term “net revenues” means the difference between:
    - (A) the sum of revenues from all sources related to operations adjusted to take account of the Borrower’s rates in effect at the time of the incurrence of debt even though they were not in effect during the twelve-month period to which such revenues relate and net non-operating income; and
    - (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.
  - (iv) The term “net non-operating income” means the difference between:
    - (A) revenues from all sources other than those related to operations; and
    - (B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.

- (v) The term “debt service requirements” means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on debt.
- (vi) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Guarantor, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 4.04. (a) Except as the Bank shall otherwise agree, the Borrower shall maintain a ratio of current assets to current liabilities of not less than 0.7 for fiscal years 2004 and 2005, and of not less than 1.0 for the fiscal year 2006 and thereafter until completion of the Project.

(b) Before November 30 in each of its fiscal years, the Borrower shall, on the basis of forecasts prepared by the Borrower and satisfactory to the Bank, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Bank the results of such review upon its completion.

(c) If any such review shows that the Borrower would not meet the requirements set forth in paragraph (a) for the Borrower’s fiscal years covered by such review, the Borrower shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its prices in order to meet such requirements).

(d) For the purposes of this Section:

- (i) The term “current assets” means cash, all assets which could in the ordinary course of business be converted into cash within twelve (12) months, including accounts receivable limited to fifty-five (55) days equivalent of sales, marketable securities, inventories and pre-paid expenses properly chargeable to operating expenses within the next fiscal year.
- (ii) The term “current liabilities” means all liabilities which will become due and payable or could under circumstances then existing be called for payment within twelve (12) months, including accounts payable, customer advances, debt service requirements, taxes and payments in lieu of taxes, and dividends.
- (iii) The term “debt service requirements” means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt.

- (iv) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Guarantor, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

## **ARTICLE V**

### **Other Covenants**

Section 5.01. The Borrower shall and shall cause HEP ESCO to:

- (a) carry on its operations and conduct its affairs in accordance with sound administrative, financial, engineering, and environmental practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers;
- (b) at all times operate and maintain its plants, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial and environmental practices; and
- (c) take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against risks and in such amounts as shall be consistent with appropriate practice.

## **ARTICLE VI**

### **Remedies of the Bank**

Section 6.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional events are specified:

- (a) The Borrower or HEP ESCO shall have failed to perform any of their respective obligations under the HEP ESCO Project Implementation Agreement; and
- (b) The PIP shall have been amended, suspended, abrogated or repealed without the prior agreement of the Bank, and such amendment, suspension, abrogation, repeal or waiver

affects materially and adversely the ability of the HEP to perform any of its obligations under this Agreement.

Section 6.02. Pursuant to Section 7.01 (k) of the General Conditions, the following additional events are specified:

(a) the event specified in paragraph (a) of Section 6.01 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Bank to the Borrower; and

(b) the event specified in paragraph (b) of Section 6.01 of this Agreement shall occur.

## **ARTICLE VII**

### **Effective Date; Termination**

Section 7.01. The following events are specified as additional conditions to the effectiveness of the Loan Agreement within the meaning of Section 12.01 (c) of the General Conditions:

(a) the GEF Trust Fund Agreement has been executed and delivered and all conditions precedent to the effectiveness of the GEF Trust Fund Grant Agreement or to the right of the Borrower to make withdrawals thereunder, except only the effectiveness of the Loan Agreement, have been fulfilled;

(b) the HEP ESCO Project Implementation Agreement between the Borrower and HEP ESCO, satisfactory to the Bank, has been duly executed; and

(c) the PIP, satisfactory to the Bank, has been adopted by the Borrower.

Section 7.02. The following is specified as an additional matter, within the meaning of Section 12.02 (c) of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank, namely that the HEP ESCO Project Implementation Agreement has been authorized and ratified by HEP and is legally binding upon HEP and HEP ESCO in accordance with their terms.

Section 7.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

## **ARTICLE VIII**

### **Representative of the Borrower; Addresses**

Section 8.01. The President of the Management Board of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 8.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Bank:

International Bank for  
Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

Telex:

Facsimile:

INTBAFRAD

248423 (MCI) or

(1-202) 477-

6391

Washington, D.C.

64145 (MCI)

For the Borrower:

Hrvatska Elektroprivreda d.d.  
Avenija Vukovar 37  
Zagreb 10000  
Republic of Croatia

Facsimile:

385 1 61 70 439

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Zagreb, Republic of Croatia, as of the day and year first above written.

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Anand K. Seth

Director  
South Central Europe Country Unit  
Europe and Central Asia

HRVATSKA ELEKTROPRIVREDA D.D.

By /s/ Darko Beli□

Authorized Representative

## SCHEDULE 1

### Withdrawal of the Proceeds of the Loan

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Loan, the allocation of the amounts of the Loan to each Category and the percentage of expenditures for items so to be financed in each Category:

<u>Category</u>	<u>Amount of the Loan Allocated (Expressed in EUR)</u>	<u>% of Expenditures to be Financed</u>
1. Goods	1,500,000	100% of foreign expenditures, 100% of local expenditures (ex-factory cost) and 85% of local expenditures for other items procured locally
2. Works	500,000	100% of foreign expenditures, and 85% of local expenditures
3. Supply and Installation of Equipment	1,800,000	100% of foreign expenditures, 100% of local expenditures (ex-factory cost) and 85% of local expenditures for other items procured locally
4. Fee	44,000	Amount due under Section 2.04 of this Agreement
5. Premia for Interest Rate Caps and Interest Rate Collars	-	Amount due under Section 2.09 (c) of this Agreement
6. Unallocated	<u>556,000</u>	
TOTAL	<u>4,400,000</u>	

2. For the purposes of this Schedule:

(a) the term “foreign expenditures” means expenditures in the currency of any country other than that of the Guarantor for goods or services supplied from the territory of any country other than that of the Guarantor; and

(b) the term “local expenditures” means expenditures in the currency of the Guarantor; or for goods or services supplied from the territory of the Guarantor.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawals, in an amount not exceeding EUR440,000 may be made on account of payments made for expenditures before that date but after July 1, 2003.

4. The Bank may require withdrawals from the Loan Account to be made on the basis of statements of expenditure, under such terms and conditions as the Bank shall specify by notice to the Borrower, for expenditures for contracts for works, contracts for goods and contracts for supply and installation costing less than \$200,000 equivalent each with the exception of such contracts for the first five Energy Performance Service Contracts for which withdrawals may be made on the basis of statements of expenditure only after they have been reviewed by the Bank in accordance with the provisions of Part D.2 of Schedule 3 to this Agreement.



## **SCHEDULE 2**

### **Description of the Project**

The objective of the Project is to increase the demand for and supply of energy efficiency projects and services in the Republic of Croatia.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Bank may agree upon from time to time to achieve such objectives:

#### Part A: Energy Saving Investments

Improvement of energy efficiency through delivery of energy management services to energy end users through the financing and carrying out under Energy Performance Service Contracts of Energy Saving Investments meeting Eligibility Criteria.

#### Part B: HEP ESCO Project Development and Project Financing

1. Provision of technical assistance to HEP ESCO for implementation of Part A of the Project, including identifying eligible Energy Savings Investments, pre-contract analysis, energy auditing and investment grade feasibility studies.
2. Financing and carrying out under Energy Performance Service Contracts of Energy Saving Investments meeting Eligibility Criteria.

#### Part C: Partial Credit Guarantee Facility

Establishment of a Partial Credit Guarantee Facility to help:

1. Establish a commercial loan facility to co-finance initial Energy Saving Investments under the Project and mitigate the risk of energy end user default in payment obligations to HEP ESCO.
2. HBOR underwrite credit guarantees issued by HBOR for Participating Banks providing loans to Beneficiaries and Energy Service Providers for Energy Saving Investments.

#### Part D: Technical Assistance

1. Provision of technical assistance to HEP ESCO for: (i) developing HEP ESCO's capacity to perform under Parts A and B of the Project; (ii) training staff of the Borrower, HEP ESCO and firms working with HEP ESCO on Parts A and B of the Project; (iii) disseminating information to the marketplace, and education for potential eligible beneficiaries on developing contracts with HEP ESCO under Parts A or B of the Project and with commercial banks under Part C of the Project; and (iv) program reporting, monitoring and evaluation.

2. Provision of technical assistance and training for carrying out Part C of the Project.

\* \* \*

The Project is expected to be completed by December 31, 2009.

### **SCHEDULE 3**

#### **Procurement**

##### Section I. Procurement of Goods and Works

###### Part A: General

Goods, works, and supply and installation contracts shall be procured in accordance with the provisions of Section I of the “Guidelines for Procurement under IBRD Loans and IDA Credits” published by the Bank in January 1995 and revised in January and August 1996, September 1997 and January 1999 (the Guidelines) and the following provisions of Section I of this Schedule.

###### Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods, works, and supply and installation contracts, shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods and supply and installation contracts to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B.

(a) Grouping of contracts

To the extent practicable, contracts for goods, works, and supply and installation contracts shall be grouped in bid packages estimated to cost US\$200,000 equivalent or more each.

(b) Preference for domestically manufactured goods

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Guarantor.

###### Part C: Other Procurement Procedures

1. Commercial Practices

Goods, works, and supply and installation contracts under Part A of the Project estimated to cost less than US\$350,000 equivalent per contract, up to an aggregate amount not to exceed US\$8,520,000 equivalent may be procured on the basis of commercial practices acceptable to the Bank.

Part D: Review by the Bank of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods, works, and supply and installation contracts shall be undertaken in accordance with such procurement plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

2. Prior Review

With respect to: (a) all contracts for goods, works, and supply and installation to be procured in accordance with the procedures referred to in Part B above; (b) all contracts for goods, works, and supply and installation to be procured in accordance with the procedures referred to in Part C.1 above, for the first five Energy Performance Service Contracts, irrespective of the value of the contracts; and (c) all contracts for goods, works, and supply and installation to be procured in accordance with the procedures referred to in Part C.1 above and estimated to cost US\$200,000 equivalent or more per contract, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

## SCHEDULE 4

### Implementation Program

1. The Borrower shall, and shall cause HEP ESCO to:
  - (a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators acceptable to the Bank, the carrying out of Part A of the Project and the achievement of the objectives thereof;
  - (b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank, on or about January 31, 2006, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section, on the progress achieved in the carrying out of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of Part A of the Project and the achievement of the objectives thereof during the period following such date; and
  - (c) review with the Bank, by April 30, 2006, or such later date as the Bank shall request, the report referred to in paragraph (b) of this Section, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Bank's views on the matter.
2. The Borrower shall, and shall cause HEP ESCO to, carry out Part A of the Project in accordance with the requirements set forth or referred to in the PIP.
3. The Borrower shall cause HEP ESCO to prepare and furnish to the Bank by November 30 in each year, for its review and concurrence, an annual work program for Part A of the Project for the following calendar year, including procurement and financing plans.
4. The Borrower shall cause HEP ESCO to: (a) follow the guidelines in the Environmental Management Framework for the selection and approval of Energy Saving Investments; and (b) include adequate information on the carrying out of such measures in the Financial Monitoring Reports referred to in Section 4.02 of this Agreement.
5. The Borrower shall cause HEP ESCO to carry out Part A of the Project in accordance with the requirements set forth or referred to in the PIP and the HEP ESCO Project Implementation Agreement to be entered into between the Borrower and HEP ESCO under terms and conditions set forth in the PIP and which shall include, inter alia, provisions whereby:
  - (a) HEP ESCO shall be required, to implement Part A of the Project in accordance with the PIP and the provisions of this Agreement, including the obligations of HEP ESCO for verification of fulfillment of the Eligibility Criteria in respect of Beneficiaries and proposed Energy Saving Investments under Part A of the Project;

(b) HEP ESCO shall be required, as part of its responsibility for Part A of the Project implementation: (i) to maintain the Project financial records and accounts and to make said records and accounts available to the Borrower; (ii) to supervise the implementation of Part A of the Project including supervising the progress of each Energy Saving Investment; and (iii) to prepare and furnish to the Borrower and the Bank quarterly reports on the progress of implementation of Part A of the Project, not later than forty-five (45) days after each subsequent calendar quarter; and the first such report shall be furnished to the Borrower and the Bank not later than forty-five (45) days after the end of the first calendar quarter after the Effective Date.

6. The Borrower shall cause HEP ESCO to provide to eligible Beneficiaries goods, works and services for approved Energy Saving Investments on the basis of an Energy Performance Service Contract to be entered into between HEP ESCO and each Beneficiary under standard terms and conditions which shall have been agreed upon with the Borrower and the Bank and which shall include, inter alia:

- (a) a description of the Energy Saving Investment, together with the cost thereof;
- (b) the implementation schedule and implementation arrangements for the Energy Saving Investment;
- (c) the degree to which cost sharing, in accordance with the principles set forth in the PIP, shall be required to be made by the Beneficiary with respect to the financing of the Energy Saving Investment for the implementation of which assistance is provided to such Beneficiary under the Energy Performance Service Contract;
- (d) the obligation of HEP ESCO and the Beneficiary to enable representatives of the Borrower and the Bank, if the Bank shall so request, to visit the facilities or other activities to be financed under the Energy Performance Service Contract, and to verify the performance of the Energy Saving Investment upon completion of said Investment;
- (e) the terms and conditions under which the Beneficiaries shall repay HEP ESCO for the financing provided for the Energy Saving Investment under the Energy Performance Service Contract financed from the proceeds of the Loan; and
- (f) the compliance of the Energy Saving Investments with the environmental guidelines in the Environmental Management Framework.

7. The Borrower shall cause HEP ESCO to obtain the Bank's prior approval of the first five Energy Performance Service Contracts, and thereafter shall cause HEP ESCO to submit for prior approval to the Bank Energy Performance Service Contracts as required by the Bank.

8. Not later than February 1, 2004, the Borrower shall cause HEP ESCO to hire an internationally reputable firm (the Strategic Partner) with qualifications and experience acceptable to the Bank for assisting HEP ESCO with institutional capacity building and implementation of Part A of the Project.

9. Not later than February 1, 2004, the Borrower shall cause HEP ESCO to obtain a commercial loan from the Co-financing Bank, on terms and conditions satisfactory to the Bank and the Borrower, for co-financing Energy Saving Investments under Part A of the Project.

## SCHEDULE 5

### Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories (1) through (3) set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods, works and services required for Part A of the Project and to be financed out of the proceeds of the Loan allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means an amount equal to EUR 440,000 to be withdrawn from the Loan Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule, provided, however, that unless the Bank shall otherwise agree, the Authorized Allocation shall be limited to an amount equal to EUR 220,000 until the aggregate amount of withdrawals from the Loan Account plus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions shall be equal to or exceeding EUR 500.000.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Bank has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Bank a request or requests for deposit into the Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.

(b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Bank requests for deposits into the Special Account at such intervals as the Bank shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall furnish to the Bank the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and



other evidence to have been paid out of the Special Account for eligible expenditures. All such deposits shall be withdrawn by the Bank from the Loan Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Bank shall reasonably request, furnish to the Bank such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Bank shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Bank shall have determined that all further withdrawals should be made by the Borrower directly from the Loan Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the Bank, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Bank pursuant to said Section in respect of the audit of the records and accounts for the Special Account;

(c) if, at any time, the Bank shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Loan allocated to the eligible Categories, minus the total amount of all outstanding special commitments entered into by the Bank pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation. Thereafter, withdrawal from the Loan Account of the remaining unwithdrawn amount of the Loan allocated to the eligible Categories shall follow such procedures as the Bank shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Bank shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Bank shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Bank, the Borrower shall, promptly upon notice from the Bank: (A) provide such additional evidence as the Bank may request; or (B) deposit into the Special Account (or, if the Bank shall so request, refund to the Bank) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Bank shall otherwise agree, no further deposit by the Bank into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Bank shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Bank, refund to the Bank such outstanding amount.

(c) The Borrower may, upon notice to the Bank, refund to the Bank all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Bank made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Loan Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.