

CONFORMED COPY

CREDIT NUMBER 4090 YF

ENERGY COMMUNITY OF SOUTH EAST EUROPE PROGRAM

Development Credit Agreement

(Serbia and Montenegro Component – Serbia Project)

between

SERBIA AND MONTENEGRO

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated September 8, 2005

CREDIT NUMBER 4090 YF

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated September 8, 2005, between SERBIA AND MONTENEGRO (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) the Borrower has expressed its commitment to the Energy Community of South East Europe (ECSEE) which serves as the framework for policy reform, institutional development and investments in the energy sector in the participating countries;

(C) the Borrower has sought assistance from the Association's regional ECSEE program which is designed to help the countries of South East Europe meet their commitments for ECSEE's development by implementing priority investments supporting electricity markets and power system operations, and technical assistance for institutional/systems development and project preparation and implementation;

(D) Part A of the Project will be carried out by Elektroprivreda Srbije (EPS, as defined hereinafter), and Part B of the Project will be carried out by Elektromreza Srbije (EMS, as defined hereinafter), with the Borrower's and Republic of Serbia's assistance and, as part of such assistance, the Borrower will make the credit provided for in Article II of this Agreement (the Credit) available, through the Sub-credit Agreement (as defined hereinafter), to the Republic of Serbia, and the Republic of Serbia will make such proceeds available, through the EPS Sub-credit Agreement (as defined hereinafter), to the EPS, and through the EMS Sub-credit Agreement (as defined hereinafter), to the EMS, as provided in this Agreement; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit 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 Development Credit Agreements” of the Association, dated January 1, 1985 (as amended through May 1, 2004), with the modifications set forth below (the General Conditions), constitute an integral part of this Agreement:

- (a) Section 5.08 of the General Conditions is amended to read as follows:

“Section 5.08. *Treatment of Taxes*

Except as otherwise provided in the Development Credit Agreement, the proceeds of the Credit may be withdrawn to pay for taxes levied by, or in the territory of, the Borrower on the goods, works or services to be financed under the Credit, or on their importation, manufacture, procurement or supply. Financing of such taxes is subject to the Association’s policy of requiring economy and efficiency in the use of the proceeds of its credits. To that end, if the Association shall at any time determine that the amount of any taxes levied on or in respect of any item to be financed out of the proceeds of the Credit is excessive or otherwise unreasonable, the Association may, by notice to the Borrower, adjust the percentage for withdrawal set forth or referred to in respect of such item in the Development Credit Agreement as required to be consistent with such policy of the Association.”

- (b) Section 6.03 (c) of the General Conditions is amended by replacing the words “corrupt or fraudulent” with the words “corrupt, fraudulent, collusive or coercive”.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth, and the following additional terms have the following meanings:

- (a) “EMP” means the environmental management plan dated May 6, 2005, which describes the environmental mitigation, monitoring and institutional measures to be undertaken by the EPS and the EMS during Project implementation, and satisfactory to the Association.

- (b) “EMS” means Elektromreza Srbije, a public enterprise owned by the Republic of Serbia and established by the Republic of Serbia Government Decision 05

No. 023/397-2005/1, published in Gazette No. 12, dated February 8, 2005, and to be registered by the Republic of Serbia Business Registration Agency, or any successor thereto.

(c) “EMS Sub-credit Agreement” means the agreement on the transfer of rights and responsibilities related to Part B of the Project entered into between the Republic of Serbia, through the MEM, and the EMS, referred to in Section 3.03 (a) of this Agreement, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the EMS Sub-credit Agreement.

(d) “EPS” means Elektroprivreda Srbije, a public enterprise owned by the Republic of Serbia and registered by the District Commercial Court of Belgrade on December 31, 1991, or any successor thereto.

(e) “EPS Sub-credit Agreement” means the agreement on the transfer of rights and responsibilities related to Part A of the Project entered into between the Republic of Serbia, through the MEM, and the EPS, referred to in Section 3.03 (a) of this Agreement, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the EPS Sub-credit Agreement.

(f) “Euro” or “€” means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty of European Union.

(g) “Financial Monitoring Report” or “FMR” means each report prepared in accordance with Section 4.02 (a) of this Agreement.

(h) “LAP” means the Land Acquisition Plan dated May 6, 2005, which describes the procedures, terms and conditions for the acquisition of land to be undertaken by the EPS and the EMS during Project implementation, and satisfactory to the Association.

(i) “MEM” means the Ministry of Energy and Mining of the Republic of Serbia, or any successor or successors thereto.

(j) “Procurement Plan” means the procurement plan dated June 6, 2005, covering the initial eighteen (18) month period (or longer) of Project implementation, as the same shall be updated from time to time in accordance with the provisions of Section 3.06 to this Agreement, to cover succeeding eighteen (18) month periods (or longer) of Project implementation.

(k) “Special Accounts” means the accounts referred to in Section 2.02 (b) of this Agreement.

(1) "Sub-credit Agreement" means the agreement on the transfer of rights and responsibilities related to the Project entered into between the Borrower and the Republic of Serbia, referred to in Section 3.02 (a) of this Agreement, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Sub-credit Agreement.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount in various currencies equivalent to thirteen million nine hundred thousand Special Drawing Rights (SDR 13,900,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods, works and services required for the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower may, for the purposes of each Part A and Part B of the Project, open and maintain, or authorize the EPS and the EMS to open and maintain, in Euro, separate special deposit accounts in a bank, acceptable to the Association, on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposit into, and payments out of each Special Account shall be made in accordance with the provisions of Schedule 4 to this Agreement.

Section 2.03. The Closing Date shall be February 28, 2010, or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty (60) days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent ($3/4$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on March 15 and September 15 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Credit in semiannual installments payable on each March 15 and September 15, commencing September 15, 2015, and ending March 15, 2025. Each installment shall be five percent (5%) of such principal amount.

Section 2.08. The Euro is hereby specified for the purposes of Section 4.02 of the General Conditions.

Section 2.09. The Minister of Finance of the Republic of Serbia, and any person or persons whom he or she shall designate in writing, is designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 of this Agreement and Article V of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project, and, to this end, without any limitation or restriction upon any of its other obligations under this Agreement, shall ensure that the Republic of Serbia shall ensure that the EPS shall carry out Part A of the Project and that the EMS shall carry out Part B of the Project, all with due diligence and efficiency, and in conformity with appropriate administrative, financial, engineering, environmental and technical practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section 3.01, and except as the Association, the Borrower and the Republic of Serbia shall otherwise agree, the Borrower shall ensure that the Republic of Serbia shall ensure that the EPS shall carry out Part A of the Project and the EMS shall carry out Part B of the

Project in accordance with the measures, procedures, and terms and conditions set forth in the EMP and the LAP, and that the EPS and the EMS shall select the additional investments under Part A.2 and Part B.2 of the Project in accordance with the procedures and eligibility criteria set forth in the Annex to Schedule 2 of this Agreement.

Section 3.02. (a) Without limitation upon the provisions of Section 3.01, and except as the Association, the Borrower and the Republic of Serbia shall otherwise agree, the Borrower shall make the proceeds of the Credit available to the Republic of Serbia, under a sub-credit agreement, to be entered between the Borrower and the Republic of Serbia, which shall be satisfactory to the Association.

(b) The Borrower shall exercise its rights under the Sub-credit Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate, repeal or waive the Sub-credit Agreement, or any provision thereof.

Section 3.03. (a) Without limitation upon the provisions of Section 3.01 or Section 3.02, and except as the Association, the Borrower and the Republic of Serbia shall otherwise agree, the Borrower shall ensure that the Republic of Serbia, through the MME, make a part of the proceeds of the Credit available to the EPS, under a sub-credit agreement to be entered between the Republic of Serbia and the EPS, and make a part of the proceeds of the Credit available to the EMS, under a sub-credit agreement to be entered between the Republic of Serbia and the EMS, both of which shall be satisfactory to the Association.

(b) The Borrower shall ensure that the Republic of Serbia, through the MEM, exercise its rights under the EPS Sub-credit Agreement and the EMS Sub-credit Agreement in such manner as to protect the interests of the Borrower, the Republic of Serbia and the Association and to accomplish the purposes of the Credit, and, except as the Association shall otherwise agree, the Borrower shall ensure that the Republic of Serbia not assign, amend, abrogate, repeal or waive the EPS Sub-credit Agreement or the EMS Sub-credit Agreement, or any provision thereof.

Section 3.04. The Borrower shall ensure that within sixty (60) days of the effectiveness of this Agreement, the Republic of Serbia ensures that the EMS shall inform the Association of the operational arrangements related to the implementation of Part B of the Project, which arrangements shall be satisfactory to the Association.

Section 3.05. The Borrower shall ensure that the Republic of Serbia, the EPS and/or the EMS, as applicable, shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators satisfactory to the Association, the carrying out of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Association, and furnish to the Association, by November 30, 2007, a report integrating the results of the monitoring and evaluation activities performed pursuant to paragraph (a) of this Section 3.05, 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 the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Association, by February 28, 2008, or such later date as the Association shall request, the report referred to in paragraph (b) of this Section 3.05, 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 Association's views on the matter.

Section 3.06. For the purposes of Section 9.06 of the General Conditions and without limitation thereto, the Borrower shall ensure that the Republic of Serbia, the EPS and/or the EMS, as applicable, shall:

(a) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Republic of Serbia, the EPS and/or the EMS, and the Association, a plan for the continued achievement of the objectives of the Project; and

(b) afford the Association a reasonable opportunity to exchange views with the Republic of Serbia, the EPS and/or the EMS, on said plan.

Section 3.07. (a) Except as the Association shall otherwise agree, procurement of the goods, works and services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement, as said provisions may be further elaborated in the Procurement Plan.

(b) The Borrower shall ensure that the Republic of Serbia shall ensure that the Procurement Plan is updated in accordance with terms of reference acceptable to the Association, and ensure that such update is furnished to the Association not later than twelve (12) months after the date of the preceding Procurement Plan, for the Association's approval.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall ensure that the Republic of Serbia shall ensure that the EPS and the EMS shall maintain financial management systems, including records and accounts, and prepare financial statements in accordance with consistently applied accounting standards acceptable to the Association, adequate to reflect the operations, resources and expenditures related to the Project.

(b) The Borrower shall ensure that the Republic of Serbia shall ensure that the EPS and the EMS shall:

- (i) have the financial statements referred to in paragraph (a) of this Section for each fiscal year (or other period agreed to by the Association) audited, in accordance with consistently applied auditing standards acceptable to the Association, by independent auditors acceptable to the Association;
- (ii) furnish to the Association as soon as available, but in any case not later than five (5) months after the end of each such year (or such other period agreed to by the Association): (A) certified copies of the financial statements referred to in paragraph (a) of this Section for such year (or other period agreed to by the Association), as so audited; and (B) an opinion on such statements by said auditors, in scope and detail satisfactory to the Association; and
- (iii) furnish to the Association such other information concerning such records and accounts, and the audit of such financial statements, and concerning said auditors, as the Association may from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall ensure that the Republic of Serbia shall ensure that the EPS and the EMS shall:

- (i) retain, until at least one (1) year after the Association has received the audit report for, or covering, the fiscal year in

which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;

- (ii) enable the Association's representatives to examine such records; and
- (iii) ensure that such reports and statements of expenditure are included in the audit for each fiscal year (or other period agreed to by the Association), referred to in paragraph (b) of this Section.

Section 4.02. (a) Without limitation upon the Borrower's progress reporting obligations set out in paragraph 1 of Schedule 4 to this Agreement, the Borrower shall ensure that the Republic of Serbia shall ensure that the EPS shall prepare and furnish to the Association financial monitoring reports, in form and substance satisfactory to the Association, which:

- (i) set forth sources and uses of funds for the Project, both cumulatively and for the period covered by said report, showing separately funds provided under the Credit, and explain variances between the actual and planned uses of such funds;
- (ii) set forth the Special Account for the Project separately for the EPS and the EMS, showing the period opening balance, movements during the period and the period closing balance;
- (iii) describe physical progress in Project implementation, both cumulatively and for the period covered by said report, and explain the variances between the actual and planned Project implementation; and
- (iv) set forth the status of procurement under the Project, as at the end of the period covered by said report.

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

thereafter, each FMR shall be furnished to the Association not later than forty-five (45) days after each subsequent half of the calendar year, and shall cover such period.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (l) of the General Conditions, the following additional events are specified:

- (a) the Republic of Serbia shall have failed to perform any of its obligations under the Sub-credit Agreement;
- (b) the Republic of Serbia or the EPS shall have failed to perform any of their respective obligations under the EPS Sub-credit Agreement; and
- (c) the Republic of Serbia or the EMS shall have failed to perform any of their respective obligations under the EMS Sub-credit Agreement.

Section 5.02. Pursuant to Section 7.01 (h) of the General Conditions, the following additional events are specified, namely that any of the events specified in Section 5.01 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Association to the Borrower.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 12.01 (b) of the General Conditions:

- (a) the Sub-credit Agreement has been signed and all conditions to the effectiveness of such agreement have been fulfilled;
- (b) the EPS Sub-credit Agreement has been signed and all conditions to the effectiveness of such agreement have been fulfilled;
- (c) the EMS has been legally established and registered;
- (d) the EMS Sub-credit Agreement has been signed and all conditions to the effectiveness of such agreement have been fulfilled; and

(e) the Republic of Serbia energy regulatory agency has been legally established and registered.

Section 6.02. The following are specified as additional matters, within the meaning of paragraph (b) of Section 12.02 of the General Conditions, to be included in the legal opinions to be furnished to the Association:

(a) that the Sub-credit Agreement has been duly authorized or ratified by the Borrower and the Republic of Serbia, and is legally binding upon the parties thereto;

(b) that the EPS Sub-credit Agreement has been duly authorized by the Republic of Serbia and the EPS, and is legally binding upon the parties thereto;

(c) that the EMS has been duly established and registered;

(d) that the EMS Sub-credit Agreement has been duly authorized by the Republic of Serbia and the EMS, and is legally binding upon the parties thereto; and

(e) that the Republic of Serbia energy regulatory agency has been duly established and registered.

Section 6.03. 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 VII

Representative of the Borrower; Addresses

Section 7.01. Except as provided in Section 2.09 hereof, the Minister for International Economic Relations of Serbia and Montenegro is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry for International Economic Relations
Bul. Mihajila Pupina 2
Belgrade 11070
Serbia and Montenegro

Facsimile:

(381 11) 311-2979

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:	Telex:	Facsimile:
INDEVAS Washington, D.C.	248423 (MCI) or 64145 (MCI)	(202) 477-6391

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

SERBIA AND MONTENEGRO

By /s/ Predrag Ivanovic
Authorized Representative

ASSOCIATION INTERNATIONAL DEVELOPMENT

By s/ Carolyn Jungr

Authorized Representative

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

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

<u>Category</u>	<u>Amount of the Credit Allocated Expressed in SDR</u>	<u>% of Expenditures to be Financed</u>
(1) Goods:		
(a) under Part A.1 of the Project	3,000,000	100%
(b) under Part A.2 of the Project	6,950,000	100%
(2) Works:		
(a) under Part B.1 of the Project	800,000	100%
(b) under Part B.2 of the Project	860,000	100%
(3) Consultants services for Part A.1 and Part B.1	165,000	100%
(4) Unallocated	<u>2,125,000</u>	
TOTAL	<u>13,900,000</u>	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures: (a) prior to the date of this Agreement; and (b) under Categories (1) (b) and (2) (b) unless both the EPS and the EMS have made satisfactory progress with respect to the implementation of Parts A.1 and B.1 of the Project.

SCHEDULE 2

Description of the Project

The objective of the Project is to improve electricity market access for consumers and suppliers through increase in the quantity, quality, reliability, safety and efficiency of the bulk power transmission system, and strengthen capacity of the institutions to participate in the regional electricity market.

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

Part A: Substations and Related Activities

1. Construction of two new substations, through the financing of goods and consultants' services.
2. Construction of three new substations and carrying out other related investments selected in accordance with the procedures and eligibility criteria set forth in the Annex to this Schedule 2, through the financing of goods.

Part B: Interconnecting Transmission Lines and Related Activities

1. Construction of three new interconnecting transmission lines for the substations under Part A.1 of the Project, through the financing of works and consultants' services.
2. Construction of two new interconnecting transmission lines for the substations under Part A.2 of the Project, and carrying out other related investments selected in accordance with the procedures and eligibility criteria set forth in the Annex to this Schedule 2, through the financing of works and goods.

* * *

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

**ANNEX
TO
SCHEDULE 2**

**Procedures and Eligibility Criteria of Investments
Under Parts A.2 and B.2 of the Project**

Part A: Procedures

1. No expenditures for goods, works and services required under Parts A.2 and B.2 of the Project shall be eligible for financing out of the proceeds of the Credit unless the investments have been approved by the Association in accordance with this Annex.
2. When presenting the proposed investments to the Association for approval, the Republic of Serbia, the EPS, or EMS, as applicable, shall present the Association, in form satisfactory to the Association description of the proposed investments, including information related to the eligibility criteria set forth in Part B of this Annex, technical, financial, operational, procurement, and environmental information related to the proposed investments, as applicable, and such other information as the Association may reasonably request.
3. The investments shall be proposed and all relevant information shall be provided to the Association on or by June 30, 2006.

Part B: Eligibility Criteria

The investments shall be selected and proposed to the Association based on the following eligibility criteria: (a) the proposed investments shall be in accordance with the ECSEE Program; (b) the proposed investments shall be a part of a medium term investment program of the EPS or EMS, as applicable; (c) the proposed investments shall be demonstrated to be technically feasible and economically viable to the satisfaction of the Association; and (d) when appropriate, the EMP and LAP for the proposed investments, satisfactory to the Association, shall be submitted to the Association.

SCHEDULE 3

Procurement

Section I. General

A. All goods, works and services (other than consultants' services) shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" dated May 2004 (the Procurement Guidelines), and with the provisions of this Schedule.

B. All consultants' services shall be procured in accordance with Section I and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" dated May 2004 (the Consultant Guidelines), and with the provisions of this Schedule.

C. The capitalized terms used below in this Schedule to describe particular procurement methods or methods of review by the Association of particular contracts, have the meanings ascribed to them in the Procurement Guidelines, or Consultant Guidelines, as the case may be.

Section II. Particular Methods of Procurement of Goods, Works and Services (other than Consultants' Services)

A. International Competitive Bidding

Except as otherwise provided in Part B of this Section, all contracts shall be awarded on the basis of international competitive bidding in accordance with the provisions of Section II of the Procurement Guidelines.

B. Other Procurement Procedures

National Competitive Bidding. Works estimated to cost less than \$1,500,000 equivalent per contract may be procured under contracts awarded on the basis of National Competitive Bidding and the following additional provisions:

- (i) Eligibility: foreign bidders shall not be precluded from bidding, and no preference of any kind shall be given to national bidders.
- (ii) Procedures: "Open Local Competitive Bidding" procedures shall be followed in all cases. Invitations to bid shall be advertised in at least one widely circulated national daily newspaper, allowing a minimum of thirty (30) days for the preparation and submission of bids.

- (iii) Pre-qualification: when pre-qualification shall be required for large or complex works, invitations to pre-qualify for bidding shall be advertised in at least one widely circulated national daily newspaper allowing a minimum of thirty (30) days prior to the deadline for the submission of pre-qualification applications. Minimum experience, technical and financial requirements shall be explicitly stated in the pre-qualification documents.
- (iv) Participation by government-owned enterprises: government-owned enterprises in Serbia and Montenegro shall be eligible to participate in bidding only if they can establish that they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the government. Such enterprises shall be subject to the same bid and performance security requirements as other bidders.
- (v) Bidding documents: procuring entities shall use the appropriate standard bidding documents for the procurement of works which shall contain draft contract and conditions of contract, satisfactory to the Association.
- (vi) Submission of bids: bidders may, at their option, deliver bids either in person, by courier service, or by mail at any time prior to the deadline set for the submission of bids.
- (vii) Bid opening and bid evaluation: bids shall be opened in public and, if two envelopes are submitted for technical and price components, both shall be opened simultaneously. The time for the bid opening shall be the same as for the deadline for receipt of bids or immediately thereafter; and shall be announced, together with the place for bid opening, in the solicitation documents. Evaluation of bids shall be made in strict adherence to the monetarily quantifiable criteria declared in the bidding documents. Extension of bid validity shall be allowed once only for not more than thirty (30) days. No further extensions should be requested without the prior approval of the Association. Contracts shall be awarded to qualified bidders having submitted the lowest evaluated substantially responsive bid. Negotiations shall not be allowed with the lowest evaluated bidder or any other bidder.
- (viii) Price adjustment: civil works contracts of long duration (e.g., more than eighteen (18) months) may contain an appropriate price adjustment clause.

- (ix) Rejection of bids: all bids shall not be rejected and new bids solicited without the Association's prior concurrence.
- (x) Contracts: all contracts shall be in writing, signed and stamped by authorized signatories of the purchaser and the supplier, and shall contain identical terms and conditions of contract to those included in the tender documents.
- (xi) Securities: bid securities shall not exceed two percent (2%) of the estimated cost of the contract; performance securities shall not exceed ten percent (10%). No advance payments shall be made to contractors without a suitable advance payment security. The wording of all such securities shall be included into the bidding documents and be acceptable to the Association.

Section III. Particular Methods of Procurement of Consultants' Services

A. Quality- and Cost-based Selection. Except as otherwise provided in Part B of this Section, consultants' services shall be procured under contracts awarded on the basis of Quality- and Cost-based Selection.

B. Other Procedures

Selection Under a Fixed Budget. Services for assignments which the Association agrees meet the requirements of paragraph 3.5 of the Consultant Guidelines may be procured under contracts awarded on the basis of a Fixed Budget in accordance with the provisions of paragraphs 3.1 and 3.5 of the Consultant Guidelines.

Section IV. Review by the Association of Procurement Decisions

The Procurement Plan shall set forth those contracts which shall be subject to the Association's Prior Review. All other contracts shall be subject to Post Review by the Association.

SCHEDULE 4

Special Accounts

1. For the purposes of this Schedule:

(a) the term “eligible Categories” means Categories (1) and (3) set forth in the table in paragraph 1 of Schedule 1 to this Agreement in respect of Part A of the Project, and means Category (2) set forth in the table in paragraph 1 of Schedule 1 to this Agreement in respect of Part B of the Project;

(b) the term “eligible expenditures” means expenditures in respect of the reasonable cost of goods required for the Project and to be financed out of the proceeds of the Credit 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 equivalent to □1,000,000 in respect of the Special Account for Part A of the Project, and an amount equivalent to □500,000 in respect of the Special Account for Part B of the Project, to be withdrawn from the Credit Account and deposited into the Special Accounts pursuant to paragraph 3 (a) of this Schedule, provided, however, that, unless the Association shall otherwise agree, said Authorized Allocation shall be limited to an amount equivalent to □500,000 in respect of the Special Account for Part A of the Project, and an amount equivalent to □250,000 in respect of the Special Account for Part B of the Project, until: (i) in respect of the Special Account for Part A of the Project, the aggregate amount of withdrawals from the Credit Account of amounts allocated to Categories (1) and (3), plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions for Part A of the Project shall be equal to or exceed the equivalent of SDR 2,900,000; and (ii) in respect of the Special Account for Part B of the Project, the aggregate amount of withdrawals from the Credit Account of amounts allocated to Category (2), plus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions for Part B of the Project shall be equal to or exceed the equivalent of SDR 500,000.

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

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

(a) For withdrawals of the Authorized Allocation, the Borrower shall ensure that the Government of the Republic of Serbia furnishes to the Association, on behalf of

the Borrower, a request or requests for deposit into the respective 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 Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount or amounts as the government of the Republic of Serbia shall have requested.

(b) (i) For replenishment of the respective Special Account, the Borrower shall ensure that the Government of the Republic of Serbia furnishes to the Association requests for deposits into the respective Special Account at such intervals as the Association shall specify.

(ii) Prior to or at the time of each such request, the Borrower shall ensure that the Government of the Republic of Serbia furnishes to the Association 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 Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount as the Government of the Republic of Serbia shall have requested on behalf of the Borrower, 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 Association from the Credit 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 Government of the Republic of Serbia on behalf of the Borrower out of the respective Special Account, the Borrower shall ensure that the Government of the Republic of Serbia, at such time as the Association shall reasonably request, furnishes to the Association 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 Association shall not be required to make further deposits into any Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower or the government of the Republic of Serbia on behalf of the Borrower directly from the Credit 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 Government of the Republic of Serbia shall have failed to furnish to the Association, 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 Association pursuant to said Section in respect of the audit of the records and accounts for the Special Accounts;

(c) if, at any time, the Association 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 Credit Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit allocated to eligible Categories, minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions in respect of expenditures to be financed out of the proceeds of the Credit allocated to said Categories, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the said eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the respective Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of any 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 Association, the Borrower shall promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the respective Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into any 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 Association shall have determined at any time that any amount outstanding in any Special Accounts will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

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

(d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for

cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.