

Subject: amendment to tender documents no 1. in accordance with Article 63 paragraph 1 of Public Procurement Law ("Official Gazette of the Republic of Serbia" number 124/12 and 14/15) in an open public procurement procedure for the procurement of services - Financial Advisor for Acquisitions, PP number 46/15/DEFP, for which Invitation to Tender was published on Public Procurement Portal on 21.07.2015.

Tender Documents for an open public procurement procedure number 46/15/DEFP is amended as follows:

1. In Form 6 of Tender Documents – Model Contract Article 15 paragraph 2 is amended and shall read as follows:

"Information, data and documents that either party has made available to the other party during the execution of the Contract, cannot be made available to third persons without the prior written consent of the party that has made available such information, data and documents."

2. In Form 6 of Tender Documents in English – Model Contract Article 20 paragraph 1 is amended and shall read as follows:

"In the event of Force Majeure – unforeseen events outside the control of the Contracting Parties, preventing any of the Contracting Parties to perform its obligations under this Contract – contractual obligations shall be suspended to the extent that Contracting Party is affected by this event and for the duration of the impossibility of performance of contractual obligations caused by this situation, provided that the other Contracting Party has been informed about the occurrence of Force Majeure within three working days."

3. In Form 6 of Tender Documents – Model Contract Article 24 is amended and shall read as follows:

"Within the period of 2 (two) years after the termination of this Contract, the Service Provider shall, and shall procure that its staff engaged in the execution of the Contract (to the extent such staff is still employed by Service Provider) neither be engaged (directly and indirectly) in activities aiming to acquire the ownership or managerial rights over the assets of the Employer or its subsidiaries nor represent or advise (directly or indirectly) any other party in relation with the acquisitions of these rights."

4. In Form 6 of Tender Documents – Model Contract Article 25 is amended and shall read as follows:

"During the term of this Contract, Service Provider shall not represent or advise any other party in relation with the services that are the subject of this contract without the prior written consent of Employer."

5. In Form 6 of Tender Documents – Model Contract Article 26 paragraph 2 is amended and shall read as follows:

“Regarding previous paragraph hereof, Employer agrees to indemnify and release from liability Service Provider from all losses, claims, liabilities or actions related to or arising from this Contract, or arising from the role of Service Provider accordingly, and also to remunerate Service Provider all justified costs (including justified legal fees) to which Service Provider is exposed regarding research, preparation or defense of any such action or claim, provided that the provisions of this paragraph shall not apply to any claim, liability, loss, damage or costs that are result of bad intention or gross negligence of Service Provider, due to intentional misuse or breach of existing laws.”

6. In Form 6 of Tender Documents in Serbian – Model Contract, wording “Пружалац услуге” is replaced with the word “Извршилац” in appropriate case.
7. In Form 6 of Tender Documents in Serbian – Model Contract, part Contracting Parties, item 2, after words „кога заступа” (“represented by”) the following words are added „законски заступник” (“legal representative”).
8. In Form 6 of Tender Documents in English – Model Contract, part Contracting Parties, item 1, words “EPS, 11000” are deleted.
9. In Form 6 of Tender Documents in English – Model Contract and Form 12 - Model Confidentiality Agreement, word “Director” is replaced with the wording “General Manager”.
10. In Form 12 of Tender Documents in English – Model Confidentiality Agreement, Article 1 is amended and shall read as follows:

*„Parties have agreed, related to provision of services for public procurement of services – **“Financial advisor for acquisitions”** Public Procurement No. 46/15/DEFP (hereinafter referred to as: Services), to allow an access and exchange of information which constitute Business Secret, as well as of personal data, and to protect their confidentiality in the manner and under the terms and conditions established by this Agreement, Law and internal acts of the Parties.*

This Agreement makes an annex to the basic Contract No. _____ dated _____.”

11. In Form 12 of Tender Documents – Model Confidentiality Agreement, Article 10 paragraph 2 the second sentence is added and it shall read:

“This shall not prevent any Receiving Party to keep (but not use) Confidential Information to the extent necessary to comply with all applicable laws, regulations or internal compliance rules or as part of an electronic back-up system, being specified that such information shall remain subject to the terms hereof”

12. In Form 12 of Tender Documents – Model Confidentiality Agreement, Article 17 paragraph 1 is amended and it shall read:

“This agreement is signed in 6 (six) copies each in Serbian and English, out of which each represents original of the agreement. Each Party keeps 3 (three) copies each of this agreement in Serbian and 3 (three) copies each of this agreement in English. In the case of inconsistencies, Serbian version shall prevail.”

13. In Form 12 of Tender Documents in Serbian – Model Confidentiality Agreement, wording “Пружалац услуге” is replaced with the word “Извршилац” in appropriate case.

Amended Form 6 - Model Contract and Form 12 Model Confidentiality Agreement, both from Tender Documents, are attached to this letter.



Attachment:

- *Amendment to Tender Documents no 1. in English/Serbian*

Copy:

- *Records Management Office*
- *Public Procurement Committee e-mail delivery*

MODEL CONTRACT

In accordance with the given Model Contract and elements of the most favorable tender Contract on Public Procurement shall be concluded. Tenderer is obliged to submit in the tender the given Model Contract signed and stamped.

CONTRACTING PARTIES:

1. Javno preduzeće "Elektroprivreda Srbije" Beograd, Carice Milice 2, Identification number 20053658, Tax Identification Number 103920327, Current account 160-700-13 Bank Intesa represented by legal representative Aleksandar Obradović, General Manager (hereinafter referred to as: the Employer)

and

2. _____ from _____, St. _____, Identification number: _____, Tax Identification Number _____, Current account _____, represented by legal representative _____, _____, (as a Leader for and on behalf of the group of Tenderers [*note: this will be stated in the text of the Contract in the event of joint Tender*]) (hereinafter referred to as 'The Service Provider')

(hereinafter jointly referred to as: contracting parties)

signed in Belgrade on _____ the following:

CONTRACT ON SERVICE PROVISION

WHEREAS:

- The Employer has executed an open public procurement procedure for the services – **Financial Advisor for Acquisitions**, pursuant to Article 32 of the Public Procurement Law, No. 46/15/DEFP;
- Invitation to Tender concerning subject public procurement was published on 21.07.2015 on the Public Procurement Portal as well as on the Portal of Official Gazette and legislation database and the website of the Employer;
- The Service Provider's Tender under an open procedure that is filed in PE EPS under No. _____ dated _____ fully corresponds to the Employer's requirements stated under the Invitation and the Tender Documents;
- The Employer has on the basis of the Service Provider's Tender and the Decision on contract awarding, selected the Service Provider to implement the services: **Financial Advisor for Acquisition**.

ARTICLE 1.

The Service Provider shall for the needs of the Employer perform the services "**Financial Advisor for Acquisitions**" fully in accordance with the Tender

Documentation indicated under Annex 1, according to the type, description and specification of activities indicated in detail under Annex 2 (hereinafter referred to as: deliverables), Service Execution Time Schedule indicated under Annex 3, constituting an integral part of this Contract, and Service Provider's Tender, while the Employer shall pay the agreed price for the services executed to the Service Provider.

ARTICLE 2

Total value of contracted services stipulated under Article 1 hereof amounts to _____ (in _____ letters: _____) _____ (RSD/EUR) without VAT.

Appertaining amount of the tax in accordance with relevant regulations shall be calculated to the value under paragraph 1 of this Article.

Price includes all costs related to implementation of contracted services.

The price is fixed, i.e. it may not be changed throughout the service execution period.

ARTICLE 3

This Contract and its Annexes 1-9 are made out in Serbian and English, while in the case of interpretation disputes the Serbian text shall prevail.

This Contract shall be governed by the laws of the Republic of Serbia. In the event of dispute, laws of the Republic of Serbia will be applied.

ARTICLE 4

Addresses of Contracting Parties are as follows:

The Employer: **Public Enterprise 'Electric Power Industry of Serbia'**
Address: Carice Milice St. № 2
11000 Belgrade

The Service Provider: _____

[note: in the event of joint Tender, leader and members will be listed here]

Subcontractor: _____

[note in the event of the Tender with subcontractor, subcontractor/s will be listed here]

Representatives authorized to monitor the service implementation stipulated under Article 1 hereof are:

- For the Employer: _____
- For the Service Provider: _____

Project Secretary: _____ e-mail: _____.

Contracting Parties shall have correspondence through Project Secretary, otherwise, the correspondence shall be deemed invalid.

ARTICLE 5

Service Provider shall submit to the Employer:

- Periodical reports and corresponding invoices,
- Final Report on realization of all activities and corresponding invoice.

Service Provider shall provide dynamics of activities execution during service provision as follows:

- up to **90%** of total value of services shall be included in periodical reports, accepted by the Employer.
- no less than **10%** of total value of services shall be included in Final Report on realization of all activities, accepted by the Employer.

ARTICLE 6

Service Provider shall periodically issue reports on executed services i.e. within the period of two days after expiry of the period for which periodical report is being prepared.

Periodical report is being prepared for the period starting from the beginning of service provision pursuant to Article 11 of this Contract and expiring on the day which by its number corresponds to the day in the next month. If such day does not exist in the following month, period for which the periodical report is being issued ends on the last day of that month.

Periodical report under paragraph 1 hereof shall include: overview of activities executed in the given period; status of deliverables – submitted/accepted; general overview of the remaining activities until the end of Contract execution according to Annex 2; detailed overview of staff engagement.

Employer is entitled to submit comments in writing to the periodical report to Service Provider within three days from the date of receipt of periodical report or to accept and approve submitted report with no comments.

In the event when the Employer submits comments to Service Provider regarding the received periodical report it shall simultaneously determine the deadline for Service Provider within which the Service Provider shall act upon given comments.

ARTICLE 7

After realization of all activities Service Provider shall submit Final Report on realization of all activities to the Employer.

Final Report on realization of all activities shall include: project name, Service Provider name, contract conclusion date, project duration, reporting period, date of report, management summary, service execution time schedule, status of deliverables – submitted/accepted, time of engagement of team members during reporting period, amount that will be invoiced for the reporting period, conclusion, list of realized meetings, approved deliverables from terms of reference as well as the overview of all submitted and approved periodical reports with the reporting structure given in the previous Article of this Contract.

Employer is entitled to submit comments in writing to the Final Report on realization of all activities to Service Provider within seven days from the date of receipt of Final Report on realization of all activities or to accept and approve submitted Final Report in writing, with no comments.

In the event when the Employer submits comments to Service Provider regarding the received Final Report it shall simultaneously determine the deadline for Service Provider within which the Service Provider shall act upon given comments.

ARTICLE 8

Service Provider shall submit to the Employer invoices upon accepted periodical report under Article 6 hereof and Final Report under Article 7 hereof within three days from the date of receipt of the approval of Employer in writing.

Invoicing of contracted value, i.e. performed services for the price expressed in euros domestic Tenderer shall perform in dinars by calculating it according to middle exchange rate of the National Bank of Serbia on turnover date *[note: final text of the Contract depends on whether the Tenderer is domestic or foreign, of the status of members of the Group of Tenderers and the manner which defines payment according to Joint Service Execution Contract]*

ARTICLE 9

Employer shall pay Service Provider for the executed services in RSD/by foreign transfer, *[note: final text in the Contract depends on whether Service Provider is domestic or foreign, on status of members of the Group of Tenderers, as well as on the manner of payment determined by Joint Service Execution Contract]* within up to 45 days from the date of receipt of correct invoice for accepted and approved periodical/Final Report.

Payment of contracted value i.e. executed services for the price expressed in EUR to domestic Service Provider (as well as domestic member of the Group of Tenderers, *[note: unless defined by Joint Service Execution Contract that the payment shall be made through the Leader]*) shall be in RSD at middle exchange rate of EUR of the National Bank of Serbia on the day of payment. *[note: final text in the Contract depends on whether Service Provider is domestic or foreign, on status of members of the Group of Tenderers, as well as on the manner of payment determined by Joint Service Execution Contract]*

The total of all payments under this Contract cannot exceed the amount of _____ RSD which corresponds to the estimated value of public procurement of the services.

ARTICLE 10

Employer shall pay the Service Provider the price of services in accordance with executed activities under Annex 2 and 3 hereof, within the deadline determined in Article 9 hereof.

All payments related to this contract shall be made to the following account:

[note: final text in the Contract depends on whether Service Provider is domestic or foreign, on status of members of the Group of Tenderers, as well as on the manner of payment determined by Joint Service Execution Contract]

ARTICLE 11

Service Provider shall start with realization of the activities related to provision of services upon the invitation of the Employer, no later than seven days as of the date of conclusion of this contract, otherwise, this contract shall be deemed terminated by the fault of Service Provider.

ARTICLE 12

Deadline for execution of services is ___ consecutive calendar months starting from the date of beginning of implementation of activities in accordance with Article 11 hereof. Dynamics and deadlines for realization of activities defined for certain modules under Annex 2 are defined in Annex 3 hereof.

ARTICLE 13

The Service Provider shall appoint the executors that shall provide the service. The list of executors containing their qualifications and precisely defined activities related to services approved by the Employer is provided under Annex 4 hereof.

If need for replacement of one or more members arises during the period of providing the services, the Service Provider is obliged to replace the abovementioned member with another, who at the least has equivalent professional qualification and qualities, with prior approval in writing of the Employer.

The list of executors changes from paragraph 1 hereof, as well as any other changes related to executors providing the services shall be previously approved in writing by the Employer.

The Employer retains the right to request from the Service Provider to replace any of the team members not meeting the conditions and/or not executing conscientiously services assigned, as well as for any other reason, without specific justification, and which Service Provider shall do in the appropriate deadline, otherwise this Contract shall be deemed terminated for the reasons caused by Service Provider.

In the case that the Service Provider needs to withdraw or replace any of the service providers for the duration of the Contract, all costs incurred by such a replacement shall be borne by the Service Provider.

Written approval by Employer, for the replacement of executors, from paragraph 2 of this Article is integral part of Annex 4 hereof, therefore the Parties shall not conclude separate annex to this Contract in order to change individual executors.

ARTICLE 14

Service Provider shall at the moment of Contract conclusion and no later than eight days from the date of Contract conclusion, as suspensive condition under Article 74 paragraph 2 of Law on Contracts and Torts submit to the Employer irrevocable, unconditional (without protest) and payable on first demand performance bond in the amount of _____ (RSD/EUR), which is 10% of contracted value VAT excluded under Article 2 paragraph 1 hereof, with validity period 30 days longer than the date of approval of Final Report, entirely in compliance with the conditions defined in Annex 1 of this Contract.

The Employer may submit a guarantee for collection in any of the cases of non-performance and/or untimely performance and/or partial non-performance and/or poor quality performance of any of the contracted obligations of the Service provider.

If deadlines for execution of contracted services are changed during the validity period of the Contract in accordance with Article 20 and/or 21 hereof the validity of bank guarantee shall be extended.

Bank guarantee under this Article may not include additional payment conditions, shorter deadlines, smaller amount or changed jurisdiction for dispute settlement.

In the event that the business seat of the bank guarantor is in the Republic of Serbia in the event of dispute under this Guarantee, the competence of the Court in Belgrade is determined and substantial law of the Republic of Serbia is applicable. In the event that the business seat of the bank guarantor is outside the Republic of Serbia in the event of dispute under this guarantee, the competence of Foreign Trade Arbitration at the Chamber of Commerce in Belgrade, by applying its Rulebook and substantive and procedural law of the Republic of Serbia.

If Service Provider submits guarantee by a foreign bank, such bank shall at least have credit rating of credit of quality 3 (investment rank).

ARTICLE 15

The Service Provider and its staff engaged on the execution of activities being the subject of this Contract shall preserve the confidentiality of all information contained in documents, reports, financial data, technical data and notices, obtained in the course of implementation of services stipulated under Annex 2 hereof, and they shall use them exclusively for the performance of such services, in accordance with the Confidentiality agreement, which as Annex 7 makes an integral part of this Contract.

Information, data and documents that either party has made available to the other party during the execution of the Contract, cannot be made available to third persons without the prior written consent of the party that has made available such information, data and documents.

ARTICLE 16

The Service Provider shall in all expert activities offer services to the Employer in accordance with its entire knowledge and experience and notify the Employer on advancements and improvements, innovations and technical achievements concerning the subject of this Contract.

The Service Provider shall invest all its expert, technical and technological knowledge and experience, as well as reasonable efforts and diligence in the performance of tasks under this Contract.

The Service Provider shall offer services in accordance with the best professional practice and current scientific and universally accepted standards for this type of activities, observing legal regulations (laws, standards and technical norms) related to this type of services in the Republic of Serbia.

ARTICLE 17

During the overall period of implementation of the subject of this Contract, the Employer shall provide to the Service Provider all relevant data, documents, and information that it has at its disposal and that are related to execution of this Contract.

Patent use fee, as well as potential responsibility for infringement of protected intellectual property rights of third parties shall be fully borne by the Service Provider.

The Employer has the right of permanent and unlimited use of all delivered deliverables that are the subject of this contract, with no specific fee except for the price foreseen by the contract and it can exercise the same in subsidiaries whose founder it is and companies where it is a member.

ARTICLE 18

Invalidity of any of the provisions of this Contract shall not have an impact on the validity of other provisions, if it does not significantly affect the execution of this Contract.

ARTICLE 19

Service Provider that uses intellectual property of third persons (regardless of the type of intellectual property), shall guarantee to the Employer that it is the holder of the right or that it has legal right to use such intellectual property.

ARTICLE 20

In the event of Force Majeure – unforeseen events outside the control of the Contracting Parties, preventing any of the Contracting Parties to perform its obligations under this Contract – contractual obligations shall be suspended to the extent that Contracting Party is affected by this event and for the duration of the impossibility of performance of contractual obligations caused by this situation, provided that the other Contracting Party has been informed about the occurrence of Force Majeure within three working days.

In the event of Force Majeure, contracting parties may agree on extension of deadline for consulting services execution by the time for which delay in execution of contractual obligations occurred as the result of Force Majeure.

In the event under previous paragraph of this Article hereof, the Employer shall act in accordance with Article 115 of the Public Procurement Law.

Each of the Contracting Parties shall bear its expenses incurred during the period of Force Majeure, i.e. for the period of contract dormancy caused by Force Majeure, for which the Contract is extended.

If Force Majeure event continues over a period longer than 90 days, any of the Contracting Parties may terminate this Contract within 30 days, by submitting a written notice on termination, provided that in the case of termination of Contract on this ground none of the Parties is entitled to reimbursement for any damage.

ARTICLE 21

Amendment to this Contract shall be possible only in accordance with Article 115 of Public Procurement Law in the part of contracted deadline under Article 12 hereof, as

an important part of the Contract, due to objective reasons that can be seen in the need to extend provision of assistance and support to the Employer in the dialogues with the relevant state/local (including also international) bodies regarding selected acquisition project(s), and which did not occur as the result of action or omission at the side of selected Tenderer.

ARTICLE 22

In the event that the Service Provider by its own fault does not execute contractual obligations within the deadline, Service Provider shall pay the Employer contractual penalties, in the amount of 0.2% of contracted value under Article 2 paragraph 1 hereof for each day of delay that started, in the maximum amount of 10% of the contracted value under Article 2 paragraph 1 hereof VAT excluded.

Payment of penalties according to the previous paragraph shall be due within 10 (ten) days from the date of invoice issuance by the Employer for the contracted penalties.

ARTICLE 23.

All deliverables defined under Modules 1 to 5 of Terms of Reference given in Annex 2 hereof, shall be delivered by the Service Provider to the Employer in 3 (three) copies each, in both Serbian and English, and both in hardcopy and softcopy in Microsoft Excel, Microsoft Word or Microsoft PowerPoint format depending on the requirements of the Employer.

ARTICLE 24.

Within the period of 2 (two) years after the termination of this Contract, the Service Provider shall, and shall procure that its staff engaged in the execution of the Contract (to the extent such staff is still employed by Service Provider) neither be engaged (directly and indirectly) in activities aiming to acquire the ownership or managerial rights over the assets of the Employer or its subsidiaries nor represent or advise (directly or indirectly) any other party in relation with the acquisitions of these rights.

ARTICLE 25.

During the term of this Contract, Service Provider shall not represent or advise any other party in relation with the services that are the subject of this contract without the prior written consent of Employer.

ARTICLE 26

Employer agrees to bear all risk and liabilities that arise as a consequence of accepting this Contract regarding contracted services.

Regarding previous paragraph hereof, Employer agrees to indemnify and release from liability Service Provider from all losses, claims, liabilities or actions related to or arising from this Contract, or arising from the role of Service Provider accordingly, and also to remunerate Service Provider all justified costs (including justified legal fees) to which Service Provider is exposed regarding research, preparation or defense of any such action or claim, provided that the provisions of this paragraph shall not apply to any claim, liability, loss, damage or costs that are result of bad intention or gross negligence of Service Provider, due to intentional misuse or breach of existing laws.

ARTICLE 27

All misunderstandings arising from or related to this Contract shall be settled amicably by the Contracting Parties and in the event of failure, Contracting Parties agree that each dispute arising from this Contract shall be resolved by the competent court in Belgrade (Foreign Trade Arbitration at the Chamber of Commerce of Serbia, arbitration place in Belgrade, by applying its Rulebook *[note: final text of the Contract depends on whether the local or foreign Service Provider is selected]*).

In the case of dispute, the governing law shall be the material and procedural law of the Republic of Serbia and dispute shall be conducted in the Serbian language.

ARTICLE 28

The Parties agree that to all relations and issues that are not regulated by this Contract, and relating to the execution of this Contract or related to it, apply the relevant provisions of the Law on Obligations and other regulations of the Republic of Serbia, applicable with respect to the subject matter of this Contract

ARTICLE 29

This Contract shall be deemed concluded under suspensive condition, when signed by legal representatives of the Contracting Parties, and shall become effective when the Service Provider fulfills suspensive condition within the agreed deadline and submits bank guarantee from Article 14 of this Contract.

ARTICLE 30

Integral parts of this Contract:

- Annex 1 Tender Documents;
- Annex 2 Description and type of service;
- Annex 3 Service Execution Time Schedule;
- Annex 4 List of Executors of Service Provider with Statements on Availability;
- Annex 5 Price Structure;
- Annex 6 Tender Form
- Annex 7 Confidentiality Agreement
- Annex 8 Performance bond
- and
- Annex 9 (Joint Service Execution Contract, *(note: it shall be stated in the text of the Contract in the event of joint Tender)*).

ARTICLE 31

This Contract is made out in 6 (six) counterparts, in Serbian and English, each being the original of the Contract. Each Contracting Party shall retain 3 (three) counterparts in Serbian and 3 (three) counterparts in English. In the case of inconsistencies, Serbian version shall prevail.

SERVICE PROVIDER
Name

L.S.

EMPLOYER
JP EPS

name and surname
position

Aleksandar Obradović
General Manager

MODEL CONFIDENTIALITY AGREEMENT

Concluded between

1. Javno preduzeće “Elektroprivreda Srbije”, Beograd, Carice Milice 2, registration number: 20053658, TIN 103920327, current account No.: 160-700-13 Banca Intesa, represented by Aleksandar Obradović, General Manager (hereinafter referred to as: Employer), on one side

and

2. _____, registration number: _____, TIN _____, current account No: _____ represented by Director _____, _____ (hereinafter referred to as: Service Provider),

Group members /subcontractors _____
 _____,
 collectively referred to as the Parties.

Article 1

Parties have agreed, related to provision of services for public procurement of services – “**Financial advisor for acquisitions**” Public Procurement No. 46/15/DEFP (hereinafter referred to as: Services), to allow an access and exchange of information which constitute Business Secret, as well as of personal data, and to protect their confidentiality in the manner and under the terms and conditions established by this Agreement, Law and internal acts of the Parties.

This Agreement makes an annex to the basic Contract No. _____ dated _____.

Article 2

Parties agree that the terms used, i.e. arise from this contractual relationship shall have the following meaning:

Business secret is any information that has a commercial value because it is not generally known or available to third parties who may have an economic benefit by using or disclosing them and which is protected by appropriate measures by its holder in accordance with the law, business logic, contractual obligations or relevant standards in order to maintain its confidentiality and whose disclosure can harm the holder of business secret.

Business secret holder – entity controlling the use of business secrets under the law

Information Carriers – are material and electronic media, voice-speech, signals, physical field and information data bases in which the Business Secret is contained or through which it is being transmitted.

Level of classification markings – requisites (markings and descriptions), which testify about the confidentiality on the information carrier and which are placed on the carrier and (or) its supporting documents;

Disclosing Party – Party, holding Business Secret and disclosing to Receiving Party such information which represents Business Secret.

Receiving Party – Party receiving from Disclosing Party information which represents Business Secret thus becoming the Holder of Business Secret.

Personal data is any information concerning a natural person, regardless of the form in which it is expressed and the data format (paper, tape, film, electronic medium and the like), under whose mandate, in whose name or for whose account the information is stored, the date when information originated, the place where the information is stored, the mode of learning the information (directly, by listening, watching and the like, or indirectly, by insight into documents containing the information and the like), and regardless of other characteristics of the information

Natural person is an individual to whom the personal data relates, who is identified or identifiable by reference to personal name, personal identification number, address code or other mark of his physical, psychological, mental, economic, cultural or social identity.

Article 3

Business Secret and confidential information relate to: professional knowledge, innovation, research, techniques, processes, programs, charts, original documents, software, production plans, business plans, projects, business opportunities, all information designated in writing as "Business Secret" or "confidential" which, under any circumstances, may be interpreted as a Business Secret or confidential information, terms and circumstances of all negotiations and any contract between the Employer and Service Provider, as well as all data on employees and third parties who are engaged on any basis by the Employer.

Each Party acknowledges that business secret or confidential information of the other Party of essential importance to the other Party, whose importance would be reduced if such information is disclosed to the third party.

Each Party shall while processing confidential information related to personal data protection regarding Business activities shall act in accordance with the valid Law on Personal Data Protection in Serbia.

Unless it was not explicitly otherwise agreed,

- (I) Neither Party shall use business secret or confidential information of the other Party,
- (II) Shall not disclose these information to the third party, except to employees and advisors of each party that need such information (and are subject to

- limited use and limitations in disclosing that are at least restrictive in the same manner as those performed by employees and advisors in writing); and
- (III) Shall try to keep business secret/confidential information of the other party confidential in the same manner it keeps its business secret and/or confidential information of the same importance, but never less than reasonable.

Article 4

The Receiving Party shall keep the Business Secret of the Disclosing Party in the extent as if it were its own, as well as to undertake all economically justifiable preventive measures for the purpose of keeping the received Business Secret confidential

The Receiving Party shall keep the Business Secret of the Disclosing Party that is disclosed or received via any information carrier. The Receiving Party shall not sell, exchange, publish i.e. disclose Business Secret of the Disclosing Party to third parties in any way without a previous written consent of the Disclosing Party.

The obligation under the previous paragraph does not apply in the cases:

- a) when full or partial submission of Business Secret of the Disclosing Party to the competent authorities is required from the Receiving Party, in accordance with the relevant order or any court request, other competent authority or any state body of comparable competence, provided that party disclosing shall inform in writing the Disclosing Party prior to such disclosing in order to enable Disclosing Party to object to such order or request;
- b) when Receiving Party discloses the Business Secret of the Disclosing Party to its employees and other authorized entities in order to fulfill the obligations of the Receiving Party towards the Disclosing Party provided that Receiving Party remains responsible for compliance with the provisions of this Confidentiality Agreement;
- c) when Receiving Party discloses Business Secret of the Disclosing Party to legal entities considered to be their affiliates, provided that Receiving Party undertakes the full responsibility for the acts of the aforementioned legal entities who obtained the data in compliance with the obligations of the Receiving Party under this Confidentiality Agreement
- d) when the Receiving Party discloses Business Secret of the Disclosing Party to the Receiving party's legal or financial advisors who are obliged to keep the confidentiality of such Receiving Party.

Besides, aforementioned obligations and limitations do not refer to the information that Disclosing Party gives to Receiving Party, so that the Receiving Party may document that:

- (i) the Receiving Party was aware of it at the time of disclosing,
- (ii) it became available to public but not by the fault of Receiving Party
- (iii) it was received in legal manner without limitation of use by the third party that is authorized to disclose,

- (iv) it was independently developed by the Receiving Party without access to or use of Business Secret and/or confidential information of the owner; or
- (v) written consent for disclosure was given by the Disclosing Party.

Article 5

The Parties shall exchange Business Secret by using mutually acceptable encryption methods and appropriate procedures which together ensure data confidentiality preservation, when such exchange of information is performed via unsecured means of communication (fax, Internet etc.).

Article 6

Each party is obliged to determine:

- name and surname of the person responsible for the exchange of Business Secret (hereinafter: Responsible Person),
- postal address for the exchange of documents in hard copy when information is exchanged in a hard copy
- e-mail address for the exchange of electronic documents, when information is exchanged via Internet

and inform the other Party by a written document signed by the authorized representative of the Party sending information.

The exchange of information which represents Business Secret cannot commence before the fulfillment of obligations under the previous paragraph.

All notices, requests and other correspondence during the term of this Agreement, as well as correspondence in the case of court dispute between the Parties shall be made in a written form, as follows: by registered mail with a return receipt or direct delivery to the contracting party address or by e-mail to the contacts determined in accordance with the paragraph 1 under this Article.

Article 7

If the transfer is done by e-mail, the Receiving Party shall send a message confirming that the message with enclosed Business Secret is received, immediately upon the message receipt.

If the Responsible Person of the Disclosing Party does not receive the confirmation about receipt of message with enclosed Business Secret within the two working days including the day of sending the message, the Responsible Person shall suspend further sending of data and initiate the procedure for determining the reasons for delay in providing the information that the message with the Business Secret attached is received.

Sending data may continue when and if it is established that data confidentiality or the provisions under this Agreement were not violated.

Article 8

The submission of Business Secret to the Receiving Party in a hard copy or by e-mail shall be performed with the following note: "Information contained in this document represent Business Secret of _____. The document or its parts cannot be copied, reproduced or disclosed without a prior consent of the" _____".

During the submission of Business Secret in accordance with the previous paragraph, the name of the Party who is disclosing Business Secret shall be entered in the provided blank space in the previous paragraph.

Material and electronic media in which the Business Secret is, shall possess classification markings of level of secrecy:

On behalf of the Employer:

Business Secret
Javno preduzeće "Elektroprivreda Srbije"
Carice Milice 2, Beograd

or:

Confidential
Javno preduzeće "Elektroprivreda Srbije"
Carice Milice 2, Beograd

On behalf of the Service Provider:

Business Secret

or:

Confidential

If information is delivered orally, information shall be considered a Business Secret of the Disclosing Party if it is specified during the oral delivery and if within the 3 (three) working days as of the oral disclosure a note in a written form (hard copy or e-mail) is delivered to the Receiving Party.

Article 9

Obligations under this Agreement shall also apply to Business Secret to which the parties have had an access or which they have exchanged up to the moment of conclusion of this Agreement.

Obligations under this Agreement shall also apply to information of the Disclosing Party which represent Business Secret in terms of this Agreement and to which the Receiving Party have had an access or have discovered them by accident during the realization of the Business Activities under the Article 1 hereof.

Article 10

Disclosing Party remains owner of the submitted Confidential Information that constitute Business secret. Disclosing Party is entitled, at any time, to demand from Receiving Party to return all the original Information Carriers containing Business Secret of the Disclosing Party.

No later than thirty (30) days from the date of receiving such request, the Receiving Party shall return all received Information Carriers which contain Business Secret of

the Disclosing party and destroy all copies and reproductions of this information (in any form, including but not limiting to electronic media) in possession of Receiving Party and/or possession of persons to whom the same were disclosed pursuant to the provisions of this Agreement. This shall not prevent any Receiving Party to keep (but not use) Confidential Information to the extent necessary to comply with all applicable laws, regulations or internal compliance rules or as part of an electronic back-up system, being specified that such information shall remain subject to the terms hereof.

Article 11

If during the term of obligations under this Agreement, the contracting Parties undergo any status changes, the rights and responsibilities shall be transferred to the corresponding legal successor (successors). In the case of possible liquidation of Receiving Party, Receiving Party shall upon the completion of liquidation procedure return all received originals and destroy all copies and copy forms of received Information Carriers.

Article 12

Receiving Party is responsible for any damage or all damages suffered by the Disclosing Party due to the breach of provisions herein, as well as possible disclosure of the Business Secret of the Disclosing Party by the third parties to whom the Business secret was disclosed by the Receiving Party.

Receiving Party acknowledges that business secret and/or confidential information of the Disclosing Party contain valuable data of the Disclosing Party and that any material breach hereof shall cause consequences defined by the law.

Article 13

The Parties shall endeavor to settle amicably all disputes arising from, in relation to or due to the breach of the provisions under this Agreement. If no agreement is reached, the subject matter jurisdiction of the court in Belgrade shall be contracted. (International Commercial Arbitration with the Chamber of Commerce of Serbia, place of arbitration in Belgrade, with the application of the Rules of Chamber *[note: final text of the Contract depends on whether the local or foreign Service Provider is selected]*).

Article 14

Any amendments to Agreement are effective only in the event if they are made in a written form and signed by the authorized representatives of the Parties.

Article 15

All the issues not regulated by the provision hereof shall be governed by the applicable legislation of Republic of Serbia, relevant to the scope of this Agreement.

Article 16

This Agreement shall be considered concluded as of the date of signing by the authorized representatives of the Parties, and in case such signing is not executed the same date, then on the latter date of signing.

Obligations of the protection of confidentiality of business secret and confidential information that were previously defined shall be valid permanently.

Article 17

This agreement is signed in 6 (six) copies each in Serbian and English, out of which each represents original of the agreement. Each Party keeps 3 (three) copies each of this agreement in Serbian and 3 (three) copies each of this agreement in English. In the case of inconsistencies, Serbian version shall prevail.

Parties mutually declare that they have read and understood the Agreement and that provisions thereof fully represent expression of their true will.

SERVICE PROVIDER
Name

EMPLOYER
PE EPS

Name and surname
position

L.S.

L.S.

Aleksandar Obradovic
General Manager