

**DOHODA O SPOPLUPRÁCI A ZMLUVA O BUDÚCEJ ZMLUVE O
POSTÚPENÍ POHLADÁVOK A PREVODE PRÁV A POVINNOSTÍ**

medzi

**MINISTERSTVO HOSPODÁRSTVA SLOVENSKEJ REPUBLIKY KONAJÚCE V MENE
SLOVENSKEJ REPUBLIKY**

a

VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK

Túto **DOHODU O SPOLUPRÁCI A ZMLUVU O BUDÚCEJ ZMLUVE O POSTÚPENÍ POHLÁDÁVOK A PREVODE PRÁV A POVINNOSTÍ** (ďalej len „**Zmluva**“) uzatvárajú tieto zmluvné strany v zmysle ust. § 269 ods. 2 v spojení s ust. § 289 a nasl. Zákona č. 513/1991 Zb. Obchodného zákonníka v znení neskorších predpisov (ďalej len „**ObZ**“):

- (1) **Ministerstvo hospodárstva Slovenskej republiky**, Mlynské nivy 44/a, 827 15 Bratislava 212, Slovenská republika konajúce v mene Slovenskej republiky (ďalej len „**Ministerstvo**“);
a
- (2) **VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK**, so sídlom P.O.BOX 45, Karloveská 2, 842 04 Bratislava, Slovenská republika, zapísaná v Obchodnom registri Okresného súdu Bratislava I, IČO: 00 156 752, oddiel: Pš, vložka č. 32/B (ďalej len „**Veriteľ**“).

KEĎŽE:

- (A) Spoločnosť Enel Produzione S.p.A. (ďalej len „**ENEL**“) informovala Ministerstvo, že:
 - (i) Spoločnosť (ako je tento pojem definovaný nižšie) čelí určitým finančným problémom v značnej miere vyplývajúcim zo zníženia trhovej ceny elektriny, ktoré si vyžiadali úpravu rozpočtu okrem iného s cieľom vyriešiť dostavbu 3. a 4. bloku jadrovej elektrárne v Mochovciach (ďalej len „**MO 34**“) a odloženie termínu ich komerčnej prevádzky;
 - (ii) Spoločnosť potrebuje finančné zdroje na financovanie dostavby MO 34 a takisto na podporu optimalizácie štruktúry finančnej zadlženosti Spoločnosti;
 - (iii) bankové inštitúcie financujúce Spoločnosť podmieňujú odloženie splatnosti existujúcich úverov poskytnutých Spoločnosti (i) poskytnutím pôžičky zo strany akcionárov Spoločnosti, a (ii) podriadením určitých nárokov Slovenskej republiky voči Spoločnosti tak, aby boli nároky bánk uspokojované prednostne.
- (B) Ministerstvo a Slovenská republika majú strategický záujem na dostavbe MO 34.
- (C) Ministerstvo rokovalo s väčšinovým akcionárom Spoločnosti, spoločnosťou Slovak Power Holding B.V., holdingovou spoločnosťou založenou podľa práva Holandského kráľovstva (ďalej len „**SPH**“) ohľadom možného poskytnutia úveru Spoločnosti spoločnosťou SPH.
- (D) Spoločnosť SPH súhlasila s poskytnutím pôžičky Spoločnosti. Poskytnutie pôžičky Spoločnosti však spoločnosť SPH podmienila požiadavkou, aby Veriteľ podriadil a odložil svoje Pohládavky (ako je tento pojem definovaný nižšie) voči pohľadávkam vyplývajúcim z úverových zmlúv týkajúcich sa existujúcich úverov poskytnutých bankovými inštitúciami financujúcimi Spoločnosť.
- (E) Ministerstvo zvážilo požiadavku spoločnosti SPH na podriadenie Pohládávok a po prerokovaní tejto žiadosti priamo s Veriteľom Ministerstvo predložilo vláde SR návrh postupu vo veci dofinancovania dostavby 3. a 4. bloku jadrovej elektrárne v Mochovciach, ktorý obsahoval takéto podriadenie Pohládávok.
- (F) Dňa 22.08.2018 vláda SR schválila zmluvy v Aktualizácii informácie o aktuálnom stave projektu dostavby EMO 3,4 a finančnej situácii v spoločnosti Slovenské elektrárne, a.s.
- (G) Veriteľ berie na vedomie strategický záujem Slovenskej republiky, potrebu vyriešenia dofinancovania dostavby MO 34 ~~ako aj súvisiacim dojednaniam medzi Ministerstvom a súkromnými akcionármi Spoločnosti~~. Dotknuté majetkové práva Veriteľa ako štátneho podniku však predstavujú štátny majetok, ktorý musí Veriteľ spravovať v súlade so všeobecne záväznými právnymi predpismi. Štatutárny orgán Veriteľa predovšetkým zodpovedá za

hospodárnosť pri nakladaní s majetkom v správe Veriteľa a podriadením Pohľadávok bez ďalších dojednaní by došlo k zhoršeniu právnej a majetkovej situácie Veriteľa vo vzťahu k Pohľadávkam. Z uvedeného dôvodu pristupuje Veriteľ k uzavretiu tejto Zmluvy a pristúpi k uzavretiu nižšie definovaných Zmluvy o podriadenosti a Zmluvy o odložení vymáhania práv výlučne za splnenia podmienky, že Ministerstvo v celom rozsahu odškodnení Veriteľa a nahradí mu akékoľvek a všetky škody, náklady, poplatky (vrátane súdnych a administratívnych poplatkov a trov právneho zastúpenia), pokuty, peňažné nároky, ktoré môžu Veriteľovi v dôsledku alebo v súvislosti s uzavretím tejto Zmluvy, Zmluvy o podriadenosti alebo Zmluvy o odložení vymáhania práv vzniknúť alebo byť voči Veriteľovi uplatňované zo strany akýchkoľvek osôb.

- (H) Aby nedošlo k zhoršeniu právnej a majetkovej situácie Veriteľa v súvislosti s podriadením Pohľadávok, Zmluvné strany sa dohodli, že podľa podmienok tejto Zmluvy dôjde k úplnému odškodneniu a náhrade škody vzniknutej Veriteľovi v zmysle ods. 4.1 tejto Zmluvy a s účinnosťou odo dňa splnenia Odkladacích podmienok (ako je tento pojem definovaný nižšie) k vzniku záväzku Ministerstva zabezpečiť postúpenie Pohľadávok a prevod práv a povinností zo Zmluvy o podriadenosti záväzkov (*Subordination Agreement*), ktorá bude uzavretá medzi Spoločnosťou, spoločnosťou GLAS TRUST CORPORATION LIMITED, so sídlom 45 Ludgate Hill, EC4M 7JU Londýn, Spojené kráľovstvo, ako „agentom pre zabezpečenie“, Veriteľom, ako „podriadeným veriteľom“, a spoločnosťou SPH, ako „investorom“ a ktorej konečný návrh tvorí prílohu č. 2 tejto Zmluvy (ďalej len „**Zmluva o podriadenosti**“).

ZMLUVNÉ STRANY SA DOHODLI nasledovne:

1. DEFINÍCIE A VÝKLAD

1.1 Definície

V tejto Zmluve:

„**Odkladacie podmienky**“ má význam uvedený v ods. 3.1 tejto Zmluvy.

„**Nadobúdateľ**“ znamená Ministerstvo alebo osobu určenú Ministerstvom, nad ktorou bude Ministerstvo v čase plnenia záväzkov podľa tejto Zmluvy vykonávať kontrolu, a ktorá bude v prípade nadobudnutia Pohľadávok spôsobilá na plnenie záväzkov zo Zmluvy o podriadenosti.

„**Pohľadávky**“ znamená všetky pohľadávky Veriteľa (vrátane, avšak bez obmedzenia, istiny, akýchkoľvek úrokov k istine priznaných príslušným súdom za obdobie končiace v deň vydania príslušného rozsudku a priznaných trov konania) voči Spoločnosti (i) určené vo vykonateľnom rozsudku príslušného slovenského súdu v súvislosti s príslušnými nárokmi Veriteľa, ktoré sú v súčasnosti vznesené na slovenských súdoch voči Spoločnosti v ktoromkoľvek z konaní uvedených v prílohe č. 3 (*Vznesené nároky Podriadeného veriteľa*) Zmluvy o podriadenosti, (ii) vyplývajúce z nárokov, ktoré môže Veriteľ vzniesť voči Spoločnosti v súvislosti s vodnou elektrárnou Gabčíkovo pred akýmkoľvek súdom alebo rozhodcovským tribunálom v príslušnej jurisdikcii odo dňa uzavretia Zmluvy o podriadenosti, a/alebo (iii) vo vzťahu k akýmkoľvek úrokom, ktoré sa pripíšu k Pohľadávkam v zmysle Zmluvy o podriadenosti (kde sú Pohľadávky definované ako „podriadené pohľadávky“) a „**Pohľadávka**“ znamená akúkoľvek takúto pohľadávku.

„**Spoločnosť**“ znamená spoločnosť Slovenské elektrárne, a.s., so sídlom Mlynské nivy 47, 821 09 Bratislava, Slovenská republika, zapísanú v Obchodnom registri Okresného súdu Bratislava I, IČO: 35 829 052, oddiel: Sa, vložka č. 2904/B.

„**Zmluva o odložení vymáhania práv**“ znamená zmluvu o odložení vymáhania práv (*Agreement on postponement of enforcement*), ktorá bude uzavretá medzi Spoločnosťou, SPH, ENEL, Energetický a průmyslový holding, a.s., so sídlom Pařížská 130/26, Josefov, 110 00 Praha 1, Česká republika, IČO: 283 56 250, zapísanou v Obchodnom registri Mestského súdu v Prahe pod č. B 21747, Ministerstvom a Veriteľom a ktorej konečný návrh tvorí prílohu č. 1 tejto Zmluvy.

„**Zmluva o podriadenosti**“ má význam uvedený v písm. (H) vyššie.

„**Zmluva o postúpení**“ má význam uvedený v ods. 2.1 tejto Zmluvy.

„**Zmluvné strany**“ znamená Ministerstvo a Veriteľ a „**Zmluvná strana**“ znamená ktoréhokoľvek z nich.

1.2 Výklad

S výnimkou prípadov, kde z kontextu vyplýva inak, platia v tejto Zmluve nasledujúce pravidlá výkladu:

- (a) nadpisy slúžia výlučne pre uľahčenie orientácie v tejto Zmluve a nemajú vplyv na jej výklad;
- (b) slová v jednotnom čísle zahŕňajú množné číslo a naopak;
- (c) odkaz na akýkoľvek článok, odsek alebo písmeno je odkazom na príslušný článok, odsek alebo písmeno tejto Zmluvy;
- (d) prílohy k tejto Zmluve tvoria neoddeliteľnú súčasť tejto Zmluvy;
- (e) odkaz na akúkoľvek zmluvnú stranu akéhokoľvek dokumentu zahŕňa právnych nástupcov a postupníkov takej zmluvnej strany.

2. PREDMET ZMLUVY

2.1 Záväzok zabezpečiť postúpenie Pohládavy

- (a) Zmluvné strany sa zaväzujú zabezpečiť, aby najneskôr do 5 (piatich) pracovných dní odo dňa splnenia Odkladacích podmienok vo vzťahu ku každej príslušnej Pohládávke bola uzatvorená medzi Veriteľom, ako budúcim postupcom, a Nadobúdateľom, ako budúcim postupníkom, zmluva, na základe ktorej Veriteľ odplatne postúpi na Nadobúdateľa príslušnú Pohládávku a Ministerstvo zabezpečí, že Nadobúdateľ postupovanú Pohládávku od Veriteľa prijme a zaplatí za postúpenie Pohládavy odplatu podľa písm. (c) odseku 2.1 Zmluvy („**Zmluva o postúpení**“).
- (b) Ministerstvo sa zaväzuje zabezpečiť, že Zmluvou o postúpení sa Nadobúdateľ tiež zaviazal pristúpiť k Zmluve o podriadenosti a prevziať na seba práva a povinnosti, ktoré Veriteľovi, ako zmluvnej strane Zmluvy o podriadenosti, vo vzťahu k postúpenej Pohládávke vyplývajú zo Zmluvy o podriadenosti s tým, že Nadobúdateľ pristúpi ako zmluvná strana k Zmluve o podriadenosti ako „podriadený veriteľ“ na účely Zmluvy o podriadenosti, a to v rozsahu príslušnej Pohládavy. Pre vylúčenie pochybností platí, že v prípade, ak spolu s postupovanou Pohládavkou

podľa písm. (a) odseku 2.1 Zmluvy nedôjde zároveň k postúpeniu všetkých Pohľadávok, resp. všetkých zostávajúcich Pohľadávok (ako je tento pojem definovaný v tejto Zmluve), Nadobúdateľ pristúpi k Zmluve o podriadenosti iba v rozsahu postúpenej Pohľadávky a Veriteľ zostane naďalej zmluvnou stranou Zmluvy o podriadenosti v rozsahu zúženom o Pohľadávku postúpenú na Nadobúdateľa. V prípade, ak postúpením Pohľadávky dôjde k postúpeniu všetkých pohľadávok na Nadobúdateľa, Nadobúdateľ vstúpi do všetkých práva a povinností Veriteľa zo Zmluvy o podriadenosti a Veriteľ prestane byť zmluvnou stranou Zmluvy o podriadenosti. Pohľadávka bude účinne postúpená až po pristúpení Nadobúdateľom k Zmluve o podriadenosti a zaplatení celej odplaty za postúpenie Pohľadávky v súlade s písm. (c) odseku 2.1 Zmluvy.

- (c) Ministerstvo na základe zmluvy uzatvorenej podľa písm. (a) odseku 2.1 Zmluvy zaplatí alebo zabezpečí, aby Nadobúdateľ zaplatil Veriteľovi za postúpenú Pohľadávku odplatu vo výške istiny a príslušenstva prisúdených súdnym rozhodnutím podľa odseku 3.1(c) a zákonného úroku z omeškania do dňa zaplatenia odplaty podľa tohto odseku. Odplata bude splatná do 5 pracovných dní odo dňa uzavretia Zmluvy o postúpení. Účinnosť postúpenia Pohľadávky podľa Zmluvy o postúpení nastane až po zaplatení odplaty Veriteľovi v celom rozsahu.
- (d) Ministerstvo sa zaväzuje zabezpečiť, aby Nadobúdateľ splňal podmienky Zmluvy o podriadenosti.
- (e) Pre vylúčenie pochybností platí, že dojednanie obsiahnuté v tomto ods. 2.1 umožňuje uzatváranie viacerých zmlúv predpokladaných v týchto ustanoveniach, a to až do momentu postúpenia všetkých Pohľadávok (ako je tento pojem definovaný v tejto Zmluve) na Nadobúdateľa podľa tejto Zmluvy. V záujme vyhnúť sa viacnásobnému postupovaniu samostatných Pohľadávok sa Zmluvné strany môžu kedykoľvek písomne dohodnúť, že bez ohľadu na splnenie odkladacích podmienok podľa tejto Zmluvy zabezpečia uzatvorenie dojednaní podľa ods. 2.1 naraz vo vzťahu k viacerým Pohľadávkam (ako je tento pojem definovaný v tejto Zmluve).
- (f) V prípade, ak Nadobúdateľ nezabezpečí uzavretie Zmluvy o postúpení alebo zaplatenie odplaty za postúpenie Pohľadávky v lehote a v rozsahu podľa tohto ods. 2.1 Zmluvy, zaväzuje sa Ministerstvo nahradiť Veriteľovi všetku škodu, ktorá v dôsledku porušenia povinností Ministerstva Veriteľovi vznikne. Zmluvné strany sa dohodli, že Veriteľ je súčasne oprávnený
 - (i) požadovať v lehote troch (3) rokov odo dňa splnenia Odkladacích podmienok, aby súd určil obsah Zmluvy o postúpení, ktorý bude vychádzať z ustanovení tejto Zmluvy alebo
 - (ii) odstúpiť od tejto Zmluvy dorúčením písomného oznámenia o odstúpení Ministerstvu.
- (g) Zmluvné strany sa dohodli, že na záväzok z tejto Zmluvy sa nevzťahuje ust. § 292 ods. 5 ObZ a preto záväzok uzavrieť Zmluvu o postúpení alebo doplniť jej obsah nezaniká v prípade zmeny okolností, z ktorých pri uzavretí tejto Zmluvy vychádzali Zmluvné strany.

3. ODKLADACIE PODMIENKY A ROZVÄZOVACIA PODMIENKA

3.1 Odkladacie podmienky

Účinky predpokladané v ods. 2.1 tejto Zmluvy vo vzťahu k príslušnej Pohládávke sú podmienené kumulatívnym splnením nasledovných podmienok alebo vzdaním sa nároku na splnenie týchto podmienok zo strany oboch Zmluvných strán:

- (a) bude uzatvorená Zmluva o podriadenosti,
- (b) bude uzatvorená Zmluva o odložení vymáhania práv,
- (c) bude vydané súdne rozhodnutie, na základe ktorého bude Spoločnosti uložená povinnosť zaplatiť príslušnú Pohládávku, a takéto súdne rozhodnutie nadobudne vykonateľnosť,
- (d) Veriteľ oznámi Ministerstvu, že súd priznal Veriteľovi Pohládávku rozhodnutím, ktoré nadobudlo vykonateľnosť a Veriteľ preto požaduje, aby došlo k postúpeniu Pohládávky a postúpeniu/prevodu príslušných práv a povinností zo Zmluvy o podriadenosti z Veriteľa na Nadobúdateľa. K žiadosti Veriteľ pripojí aj originál alebo overenú kópiu príslušného vykonateľného súdneho rozhodnutia ako aj ďalšiu potrebnú súvisiacu dokumentáciu vo vzťahu k Pohládávke,
- (e) vo vzťahu k Spoločnosti bude platiť, že ku dňu nadobudnutia vykonateľnosti rozhodnutia podľa písm. (c) tohto odseku:
 - (i) Spoločnosť nie je v úpadku (platobne neschopná alebo predĺžená),
 - (ii) žiadna osoba nevymenovala žiadneho správcu konkurznej podstaty alebo podobného správcu k celému podniku alebo majetku Spoločnosti alebo k ich časti a nebol vydaný ani žiadny príkaz alebo podaný návrh na vymenovanie takého správcu konkurznej podstaty alebo iného správcu v súvislosti so Spoločnosťou.

(Odkladacie podmienky podľa písm. (a) až (e) vyššie ďalej len „**Odkladacie podmienky**“).

3.2 Rozvázovacia podmienka

Bez toho aby tým boli dotknuté články 4, 5. a 6 tejto Zmluvy a vo vzťahu k Pohládkám, ktoré boli priznané Veriteľovi súdom v rozhodnutí, ktoré nadobudlo vykonateľnosť do momentu splnenia rozvázovacej podmienky uvedenej v tomto ods. 3.2 Zmluvy aj bez toho, aby tým boli dotknuté tiež ustanovenia ods. 2.1 a ods. 3.1 tejto Zmluvy, práva a povinnosti Zmluvných strán podľa tejto Zmluvy automaticky zaniknú *ex nunc* v momente:

- (a) ukončenia alebo zániku Zmluvy o podriadenosti, alebo
- (b) kedy vo vzťahu k Spoločnosti nastane niektorá z nasledovných udalostí:
 - (i) Spoločnosť je v úpadku (platobne neschopná alebo predĺžená),
 - (ii) bol vymenovaný správca konkurznej podstaty alebo podobná správca k celému podniku alebo majetku Spoločnosti alebo k ich časti alebo bol vydaný príkaz alebo podaný návrh na vymenovanie takého správcu konkurznej podstaty alebo iného správcu v súvislosti so Spoločnosťou.

4. DODATOČNÉ DOJEDNANIA

4.1 Náhrada škody

Ministerstvo v celom rozsahu odškodní Veriteľa, jeho štatutára a zamestnancov a nahradí im akékoľvek a všetky škody, náklady, poplatky (vrátane súdnych a administratívnych poplatkov a trov právneho zastúpenia), pokuty, peňažné nároky, ktoré môžu Veriteľovi, jeho štatutárovi alebo zamestnancom v dôsledku alebo v súvislosti s uzavretím tejto Zmluvy, Zmluvy o podriadenosti alebo Zmluvy o odložení vymáhania práv a s ich plnením vzniknúť alebo byť voči Veriteľovi, jeho štatutárovi a zamestnancom uplatňované zo strany akýchkoľvek osôb. Bez vplyvu na ustanovenie predchádzajúcej vety tohto ods. 4.1 Zmluvy v prípade, že Ministerstvo poruší svoje záväzky podľa ods. 2.1 tejto Zmluvy, Ministerstvo sa Veriteľovi zaväzuje nahradiť v plnom rozsahu všetku škodu, ktorá Veriteľovi vznikne v dôsledku uzavretia tejto Zmluvy, Zmluvy o podriadenosti a Zmluvy o odložení vymáhania práv.

4.2 Pretrvanie uskutočnených úkonov podľa Zmluvy

- (a) Bez ohľadu na akékoľvek ukončenie tejto Zmluvy sa Zmluvné strany zaväzujú zabezpečiť, že Pohľadávky, ktoré už boli na základe tejto Zmluvy postúpené Zmluvou o postúpení z Veriteľa na Nadobúdateľa, zostanú aj v prípade ukončenia tejto Zmluvy pohľadávkami Nadobúdateľa a nebudú vrátené Veriteľovi, a Veriteľ nebude povinný vrátiť odplatu, ktorú dostal za postúpenie Pohľadávky.
- (b) V prípade, ak by Veriteľ nedostal odplatu za postúpenú Pohľadávku podľa tejto Zmluvy alebo by mu vznikla povinnosť takúto odplatu vrátiť, Ministerstvo je povinné Veriteľovi nahradiť v plnom rozsahu všetku škodu, ktorá v tejto súvislosti Veriteľovi vznikne.

5. OZNÁMENIA

Akékoľvek oznámenia, inštrukcie alebo iné dokumenty a akákoľvek komunikácia (ďalej len „**písomnosť**“) budú doručované podľa tejto Zmluvy v písomnej forme v slovenskom jazyku alebo, ak budú v akomkoľvek inom jazyku, spolu s prekladom do slovenského jazyka, na nasledujúce adresy:

- (a) Ministerstvu:

Ministerstvo hospodárstva Slovenskej republiky

adresa: Mlynské nivy 44/a, 827 15 Bratislava 212, Slovenská republika

do rúk: minister

tel. č.: 02/4854 7002 (7003)

č. faxu: 02/4342 3949

e-mail: minister@mhsr.sk

- (b) Veriteľovi:

VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK

adresa: P.O.BOX 45, Karloveská 2, 842 04 Bratislava, Slovenská republika

do rúk: Ing. Daniel Kvocera, generálny riaditeľ štátneho podniku

tel. č.: +421 906 311 111
č. faxu: +421 906 311 011
e-mail: daniel.kvocera@vzb.sk

Akákoľvek písomnosť doručovaná na základe tejto Zmluvy môže byť doručená osobne alebo zaslaná doporučenou poštou Zmluvnej strane, ktorej má byť doručená, na jej adresu uvedenú v tomto článku 5 (*Oznámenia*), prípadne na inú adresu, ktorú Zmluvná strana oznámila druhej Zmluvnej strane v súlade s týmto článkom 5 (*Oznámenia*). Akákoľvek písomnosť sa bude považovať za doručenie v okamihu prijatia oprávneným zástupcom Zmluvnej strany alebo v prípade jej neprevzatia príjemcom, v deň (i) uplynutia úložnej (odbernej) lehoty písomnosti zasielanej doporučenou poštou, ak nedôjde k jej vráteniu podľa bodu (iii) tohto článku 5 Zmluvy, (ii) odopretia prevzatia písomnosti doručovanej osobne alebo doporučenou poštou alebo (iii) vrátenia písomnosti odosielaajúcej Zmluvnej strane v prípade vrátenia zásielky späť odosielaajúcej Zmluvnej strane.

6. RÔZNE USTANOVENIA

6.1 Platnosť

Táto Zmluva je v plnom rozsahu platná a záväzná pre Zmluvné strany odo dňa jej podpisu v súlade s jej podmienkami. Táto Zmluva nadobudne účinnosť v deň nasledujúci po dni jej zverejnenia v Centrálnom registri zmlúv vedenom Úradom vlády Slovenskej republiky.

6.2 Rozhodné právo

Táto Zmluva, práva a povinnosti z nej vyplývajúce alebo s ňou súvisiace vrátane všetkých mimozmluvných práv a povinností, ktoré vzniknú v súvislosti s touto Zmluvou, alebo vzťah či postavenie Zmluvných strán založené touto Zmluvou sa riadia a vykladajú podľa práva Slovenskej republiky.

6.3 Predčasné ukončenie Zmluvy

Táto Zmluva môže byť ukončená kedykoľvek písomnou dohodou Zmluvných strán formou dodatku k Zmluve za predpokladu úplného vysporiadania nárokov Veriteľa, ktoré vznikli počas trvania Zmluvy v zmysle článku 4 tejto Zmluvy, ak sa Zmluvné strany nedohodnú písomne inak.

6.4 Riešenie sporov

O akomkoľvek spore, ktorý vznikne na základe Zmluvy alebo v súvislosti s ňou, rozhodne príslušný slovenský súd.

6.5 Postúpenie

Pokiaľ nie je uvedené v tejto Zmluve inak, túto Zmluvu, ani žiadne práva alebo povinnosti, ktoré z nej vyplývajú, nesmie žiadna Zmluvná strana postúpiť/previesť bez predchádzajúceho písomného súhlasu druhej Zmluvnej strany.

6.6 Opravné prostriedky a vzdanie sa práv

Neuplatnenie, nevykonanie ani žiadne omeškanie sa s uplatnením alebo vykonaním akéhokoľvek práva, oprávnenia alebo výsady podľa tejto Zmluvy zo strany príslušnej Zmluvnej strany sa nebude vykladať ako vzdanie sa tohto práva, oprávnenia alebo výsady, ani iného práva, oprávnenia alebo výsady príslušnej Zmluvnej strany, a ani

akékoľvek čiastočné uplatnenie alebo vykonanie akéhokoľvek práva, oprávnenia alebo výsady nebude brániť ich neskoršiemu uplatneniu alebo vykonaniu, alebo uplatneniu alebo vykonaniu akéhokoľvek iného práva, oprávnenia alebo výsady príslušnej Zmluvnej strany podľa tejto Zmluvy.

6.7 Oddeliteľnosť ustanovení

Ak niektoré z ustanovení tejto Zmluvy je alebo sa stane protiprávnym, neplatným, neúčinným alebo nevykonateľným, nebude tým dotknutá ani oslabená zákonnosť, platnosť, účinnosť či vykonateľnosť zostávajúcich ustanovení Zmluvy. Zmluvné strany sa zaväzujú akékoľvek takéto protiprávne, neplatné, neúčinné alebo nevykonateľné ustanovenie nahradiť takým iným ustanovením formou písomného dodatku k tejto Zmluve, ktoré (i) najlepšie vedie k dosiahnutiu obchodného zámeru Zmluvných strán, ktorý zamýšľali tým pôvodným ustanovením, a (ii) je zákonné, platné, účinné a vykonateľné v súlade s príslušnými právnymi predpismi.

6.8 Dodatky

Táto Zmluva sa môže meniť a dopĺňať len písomnými dodatkami podpísanými všetkými Zmluvnými stranami.

6.9 Rovnopisy a jazyk

Táto Zmluva je vyhotovená v štyroch (4) rovnopisoch v slovenskom jazyku. Každá Zmluvná strana dostane dva (2) rovnopisy.

[PODPISY NA NASLEDUJÚCEJ STRANE]

NA DÔKAZ TOHO riadne oprávnení zástupcovia Zmluvných strán pripájajú svoje nižšie uvedené podpisy, ku dňu a roku uvedenému vyššie.

Ministerstvo hospodárstva Slovenskej republiky

podpis: _____

meno: Ing. Peter Žiga, PhD.

funkcia: minister

VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK

podpis: _____

meno: Ing. Daniel Kvocera

funkcia: generálny riaditeľ

Príloha:

1. Zmluva o odložení vymáhania práv – konečný návrh
2. Zmluva o podriadenosti záväzkov – konečný návrh
3. Vznesené nároky Podriadeného veriteľa

PRÍLOHA č. 1
ZMLUVA O ODLOŽENÍ VYMÁHANIA PRÁV

AGREEMENT ON POSTPONEMENT OF ENFORCEMENT

between

Slovenské elektrárne, a.s.
as Company

Slovak Power Holding B.V.
as SPH

Enel Produzione S.p.A.
as Enel

Energetický a průmyslový holding, a.s.
as EPH

the Slovak Republic
acting through the Ministry of Economy of the Slovak Republic
as Ministry

VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK
as VV

This **AGREEMENT ON POSTPONEMENT OF ENFORCEMENT** (the “**Agreement**”) is made on _____, 2018 by and between:

- (1) **Slovenské elektrárne, a.s.**, with its registered seat at Mlynské nivy 47, 821 09 Bratislava, Slovak Republic, registered in the Commercial Register maintained by the District Court Bratislava I, Identification No. 35 829 052, Section Sa, Insert No. 2904/B (the “**Company**”);
- (2) **Slovak Power Holding B.V.**, with its corporate seat in Amsterdam, the Netherlands and office address at Herengracht 471, 1017 BS Amsterdam, the Netherlands, registered in the Trade Register of the Dutch Chamber of Commerce under number 66060575 (the “**SPH**”);
- (3) **Enel Produzione S.p.A.**, with its registered seat at Viale Regina Margherita n. 125, 00198 Rome, Italy, Italian tax code (*codice fiscale*) and V.A.T. number 05617841001 (“**ENEL**”);
- (4) **Energetický a průmyslový holding, a.s.**, with its registered seat at Pařížská 130/26, Josefov, 110 00 Prague 1, Czech Republic, registered in the Commercial Register maintained by the Municipal Court in Prague under No. B 21747, Identification No. 283 56 250 (the “**EPH**”);
- (5) the **Slovak Republic**, acting through the **Ministry of Economy of the Slovak Republic** (the “**Ministry**”);
- (6) **VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK**, with its registered seat at P.O.BOX 45, Karloveská 2, 842 04 Bratislava, Slovak Republic, registered in the Commercial Register maintained by the District Court Bratislava I, Identification No. 00 156 752, Section Pš, Insert No. 32/B (the “**VV**”).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**ENEL Group**” means ENEL and its direct and indirect Subsidiaries from time to time.

“**Enforcement Action**” means:

- (a) in relation to any Postponed Liabilities:
 - (i) the suing for, commencing or joining of any legal or arbitration proceedings against any State Entity (including VV) to enforce any final and enforceable judgments, awards or other decisions which the Company, SPH, any member of ENEL Group or any member of EPH Group may have or may obtain against the State Entity (including VV) in relation to any Postponed Liabilities;
 - (ii) the making of a demand for payment of any enforceable judgment, award or other decision which the Company, SPH, any member of ENEL Group or

any member of EPH Group may have or may obtain against the State Entity (including VV) in relation to any Postponed Liabilities

- (iii) the exercise of any right to require any State Entity (including VV) to acquire any Postponed Liability (including exercising any put or call option against any State Entity (including VV) for the redemption or purchase of any Postponed Liability); and
 - (iv) the exercise of any right of set-off, account combination or payment netting against any State Entity (including VV) in respect of any Postponed Liabilities (other than the Permitted Set-off);
- (b) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration, Insolvency Event, or reorganisation of any State Entity (including VV), or any of the State Entity's (including VV's) assets or any suspension of payments or moratorium of any indebtedness of any State Entity (including VV), or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(i) or (b) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Postponed Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods.

“EPH Group” means EPH and its direct and indirect Subsidiaries from time to time.

“Existing Senior Discharge Date” has the meaning ascribed to this term in the Subordination Agreement.

“Insolvency Event” means, in relation to any State Entity (including VV):

- (a) a Slovak Insolvency Event;
- (b) any resolution is passed or order made for the winding up, dissolution (other than in connection with a consolidation, merger or demerger), administration or reorganisation of the State Entity (including VV), a moratorium is declared in relation to any indebtedness of the State Entity (including VV) or an administrator is appointed to the State Entity (including VV);
- (c) any composition, compromise, assignment or arrangement is made with any of its creditors;
- (d) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the State Entity (including VV) or any of its assets; or

(e) any analogous procedure or step is taken in any jurisdiction.

“**Parties**” means the Company, SPH, ENEL, EPH, the Ministry and VV, and “**Party**” means any of them.

“**Permitted Set-Off**” means the set-off pursuant to Clause 2.8 of the Subordination Agreement, and any other set-off of any mutual payment obligations of any Postponed Creditor owed to any State Entity (including VV) (or viceversa) deriving from any final and enforceable judgments, awards or other decisions obtained against each other in connection with VEG (including any judgments, awards or other decisions concerning the restitution of VEG).

“**PIK Interest**” means any interest payable in the form of an increase in the outstanding principal amount of the relevant liabilities.

“**Postponed Creditor**” means the Company, SPH, any member of ENEL Group and any member of EPH Group.

“**Postponed Liabilities**” means all liabilities of a State Entity (including VV) owed to a Postponed Creditor (including, without limitation, the principal amount and any interest on the principal amount awarded by the relevant court in respect of the period ending on the date of the relevant judgment and any adjudicated reimbursements of costs) (i) determined by the enforceable (*vykonateľné*) judgments of the relevant Slovak courts in connection with claims of the Postponed Creditor currently pending before Slovak courts against a State Entity (including VV) as listed in Schedule 1 (*Pending Claims of the Postponed Creditor*), (ii) resulting from claims that may be brought by the Postponed Creditor against any State Entity (including VV) in relation to VEG before any court or arbitral tribunal of competent jurisdiction after the date of this Agreement and/or (iii) with respect to interest (including, for the avoidance of doubt, any PIK Interest accrued under Clause 2.4 (*Interest*)) accruing on any amount under limb (i) or (ii) of this definition.

“**Postponement Period**” means the period starting on the date on which the Subordination Agreement enters into full force and effect and ending on the earlier of (i) the later of (A) the Existing Senior Discharge Date or (B) the date on which the liabilities under the SPH Facility have been discharged in full and SPH is under no further obligation to provide financial accommodation to the Company thereunder and (ii) the date on which the Subordinated Creditor otherwise ceases to be restricted from taking any Enforcement Action (as defined in the Subordination Agreement) pursuant to the Subordination Agreement with respect to any Subordinated Liabilities.

“**Slovak Insolvency Event**” means either of the following events:

- (a) the declaration of bankruptcy (*vyhlásenie konkurzu*) with respect to the assets of the respective State Entity (including VV) in the Slovak Republic; or
- (b) the opening of a restructuring (*povolenie reštrukturalizácie*) of the respective State Entity (including VV) in the Slovak Republic.

“**SPH Facility**” has the meaning ascribed to this term in the Subordination Agreement.

“State Entity” means the Slovak Republic or any authority, agency or department, public corporation or other entity established or controlled (directly or indirectly) by the Slovak Republic.

“Subordinated Creditor” has the meaning ascribed to this term in the Subordination Agreement.

“Subordinated Liabilities” has the meaning ascribed to this term in the Subordination Agreement.

“Subordination Agreement” means the Subordination Agreement dated on or about the date hereof made by and between the Company as the company, VV as the subordinated creditor, Glas Trust Corporation Limited as the security agent and SPH as the investor.

“Subsidiary” means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

“VEG” means the GABČÍKOVO hydroelectric power plant, namely (including, but not limited to) HPP Gabčíkovo, HPP Čunovo, Small HPP Mošon and Small HPP on the S VII channel. For the avoidance of doubt, VEG shall include both the power-generating part (technological equipment) and the building part of these power plants.

1.2 Interpretation

- (a) In this Agreement, except where the context requires otherwise, the following interpretation rules shall apply:
 - (i) a reference to an **amendment** includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and **amended** will be construed accordingly;
 - (ii) a reference to a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (iii) a reference to **liabilities** includes any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;
 - (iv) headings shall serve solely to facilitate orientation herein and shall not affect interpretation of this Agreement;
 - (v) words importing the singular shall include the plural and vice versa;

- (vi) any reference to Article, Clause, paragraph shall be construed as a reference to the Article, Clause, paragraph of this Agreement;
- (vii) references to a party of any document or any other person shall include its legal successors, permitted assignees and permitted transferees; and
- (viii) for the purposes of Clause 2.4 (*Interest*) a reference to a **principal amount of the Postponed Liabilities** includes (i) any interest on the principal amount of the relevant claim awarded by the relevant court or arbitral tribunal of competent jurisdiction in respect of the period ending on the date of the relevant judgment, award or other decision in respect of the relevant claim and any adjudicated reimbursement of costs and (ii) any PIK Interest previously capitalized and added to the principal amount of the Subordinated Liabilities pursuant to Clause 2.4 (*Interest*).

1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Agreement (in particular, subject to paragraph (c)), a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind, waive or vary this Agreement at any time.
- (c) The Parties acknowledge that this Agreement is made for the benefit of the Ministry, VV and any other State Entity which might be from time to time obliged to perform the Postponed Liabilities.

1.4 Slovak law terms

In this Agreement (except if expressly stipulated otherwise in this Agreement), a reference to:

- (a) **winding up, dissolution** or **administration** under Slovak law includes liquidation (*likvidácia*), winding-up with liquidation (*zrušenie s likvidáciou*), winding up without liquidation and without legal succession (*zrušenie bez likvidácie bez právneho nástupcu*) and bankruptcy (*konkurz*);
- (b) a **liquidator, receiver, administrative receiver, administrator, compulsory manager** or **similar officer** under Slovak law includes a liquidator (*likvidátor*), bankruptcy trustee (*konkurzný správca*), restructuring trustee (*reštrukturalizačný správca*) and compulsory administrator (*nútený správca*); and
- (c) a **moratorium** under Slovak law includes restructuring proceedings (*reštrukturalizačné konanie*) and restructuring (*reštrukturalizácia*).

2. RESTRICTION ON ENFORCEMENT

2.1 Restriction on enforcement

Subject to Clause 2.2 (*Permitted Enforcement following a Payment under the Subordination Agreement*) and Clause 2.3 (*Permitted Enforcement following an Insolvency Event*),

- (a) the Company, SPH, ENEL and EPH (each a “Postponed Creditor Representative”) shall not be entitled to take, and shall not take, any Enforcement Action in respect of any of the Postponed Liabilities;
- (b) ENEL shall ensure that any member of the ENEL Group shall not take any Enforcement Action in respect of any of the Postponed Liabilities; and
- (c) EPH shall ensure that any member of the EPH Group shall not take any Enforcement Action in respect of any of the Postponed Liabilities,

at any time during the Postponement Period.

2.2 Permitted Enforcement following a Payment under the Subordination Agreement

Notwithstanding any contrary provisions in Clause 2.1 above:

- (a) If at any time the Subordinated Creditor (or any other State Entity, including VV) receives any Payment (as defined in the Subordination Agreement) from the Company under Clause 4.1 (*Pari Passu Payments*) of the Subordination Agreement (a “**Recovered Payment**”), the ENEL Group, the EPH Group and SPH will be entitled to take Enforcement Actions in respect of any Postponed Liabilities in an aggregate amount calculated as (i) the amount of such Recovered Payment multiplied by (ii) the amount calculated as (x) the aggregate principal amount of Postponed Liabilities resulting from enforceable judgments of the relevant court or tribunal of competent jurisdiction in favour of, respectively, (A) each member of the ENEL Group, (B) each member of the EPH Group and/or (C) SPH, as the case may be (excluding, for avoidance of any doubt, the Company) divided by (y) the aggregate principal amount of Subordinated Liabilities resulting from enforceable judgments of the relevant court or tribunal of competent jurisdiction (the “**Permitted Enforcement Amount**”), each in the proportion specified in paragraph (b) below.
- (b) Each of (A) the ENEL Group (considered as a whole), (B) the EPH Group (considered as a whole) and (C) SPH shall be entitled to take Enforcement Actions up to an amount equal to such portion of the Permitted Enforcement Amount (the “**Permitted Enforcement Share**”) as may be determined according to the following ratio between:
 - (i) the aggregate amount of Postponed Liabilities awarded by a final judgment of the relevant court or tribunal of competent jurisdiction in favour of, respectively, (A) each member of the ENEL Group, (B) each member of the EPH Group and/or (C) SPH, as the case may be, as of the date of the Recovered Payment, and

- (ii) the amount of all such Postponed Liabilities awarded in aggregate to the ENEL Group, the EPH Group and SPH as of that date.

2.3 Permitted Enforcement following an Insolvency Event

After the occurrence of an Insolvency Event in relation to the State Entity (including VV) (if applicable), the respective Postponed Creditor may exercise any right it may otherwise have against the State Entity (including VV) to:

- (a) accelerate any of the Postponed Liabilities or declare them prematurely due and payable or payable on demand;
- (b) make a demand under any guarantee, indemnity or other assurance against loss given by the State Entity (including VV) in respect of any Postponed Liabilities;
- (c) exercise any right of set-off or take or receive any payment, prepayment, repayment, redemption, defeasance or discharge in respect of the Postponed Liabilities; or
- (d) claim and prove in the liquidation of the State Entity (including VV) (if applicable) for the Postponed Liabilities owing to it.

2.4 Interest

Interest (including, for the avoidance of doubt, any PIK Interest) shall accrue on the principal amount of the Postponed Liabilities at the same rate and on the same terms at which interest accrues on the Subordinated Liabilities in accordance with the Subordination Agreement from the date on which the relevant amount of the Postponed Liabilities is awarded by a final (*právoplatný*) judgment of the relevant Slovak court or arbitral tribunal of competent jurisdiction which is immediately enforceable (and for so long as it remains immediately enforceable) up to the date of actual payment of the relevant amount of the Postponed Liabilities.

Any interest accruing under this Clause 2.4 (whether payable in cash or as PIK Interest) shall be payable by the relevant State Entity to the Postponed Creditor on the same terms as the interest accruing on the Subordinated Liabilities is payable in accordance with the Subordination Agreement. For the avoidance of doubt, to the extent a final judgment which is no longer appealable, including by extraordinary appeal or constitutional complaint, determines that all or a portion of the Postponed Liabilities were not due, no interest shall be due on all or such portion of the Postponed Liabilities under this Clause 2.4 and the relevant Postponed Creditor shall reimburse all or the applicable portion of any interest paid by the relevant State Entity hereunder prior to such final judgement (whether such interest had been paid in cash or as PIK Interest, and provided, for the avoidance of doubt, that also any cash interest paid with respect to capitalized PIK Interest determined not to be due shall be so reimbursed).

2.5 Representations

Each of the Company, SPH, ENEL and EPH represents and warrants to the Ministry and VV that:

- (a) it is a duly incorporated entity validly existing under the laws of its jurisdiction of incorporation;
- (b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations;
- (c) all necessary approvals and consents have been obtained for its entry into and performance by it of this Agreement;
- (d) the entry into and performance by it of this Agreement does not and will not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets;
 - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets; and
- (e) it is not bankrupt or insolvent under any law applicable to it, it is not unable and has not admitted inability to pay its debts as they fall due, it has not suspended making payments on any of its debts or, by reason of actual or anticipated financial difficulties, it has not commenced negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness (except, for the avoidance of any doubt, the Company's negotiations with the creditors of the Company's financial indebtedness in relation to amendments to the terms of such financial indebtedness including, without limitation, with respect to the extension of final maturity dates thereunder, which are pending on the date of this Agreement).

ENEL represents and warrants to the Ministry and VV that any member of ENEL Group (other than the Company) which shall perform obligations under this Agreement is not bankrupt or insolvent under any law applicable to it, it is not unable and has not admitted inability to pay its debts as they fall due, it has not suspended making payments on any of its debts or, by reason of actual or anticipated financial difficulties, it has not commenced negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

EPH represents and warrants to the Ministry and VV that any member of EPH Group (other than the Company) which shall perform obligations under this Agreement is not bankrupt or insolvent under any law applicable to it, it is not unable and has not admitted inability to pay its debts as they fall due, it has not suspended making payments on any of its debts or, by reason of actual or anticipated financial difficulties, it has not commenced negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

3. WAIVER OF DEFENCES

The obligations of the Postponed Creditors under this Agreement will not be affected by any act, omission or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Agreement including (without limitation and whether or not known to it or Ministry or VV):

- (a) any time, waiver or consent granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement with any creditor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person; or
- (f) any insolvency or similar proceedings.

4. NOTICES

Notices and other documents to be served under this Agreement shall be addressed as follows:

- (a) To the Company:

Slovenské elektrárne, a.s.

Address: Mlynské nivy 47, 821 09 Bratislava, Slovak Republic

Attention: Finance and Insurance Manager

Tel. No.: +421 2 5866 3313

Fax No.: +421 2 5866 3471

E-mail: treasury@seas.sk

- (b) To SPH:

Slovak Power Holding B.V.

Address: Herengracht 471, 1017 BS Amsterdam, the Netherlands

Attention: Ms. Irina Dushina, Copy: Mr. Avogadro Di Vigliano Rodolfo and Mr. Jan Střiteský

Tel. No.: + 31 20 521 7877

Fax No.: + 31 20 521 7899

E-mail: irina.dushina@enel.com, copy: rodolfo.avogadrodivigliano@enel.com and stritesky@epholding.cz

- (c) To ENEL:

Enel Produzione S.p.A.

Address: Viale Regina Margherita, 125, 00198 Rome, Italy

Attention: Maria Antonietta Giannelli and Rodolfo Avogadro Di Vigliano

Fax No.: +39 06 8305 2042

E-mail: rodolfo.avogadrodivigliano@enel.com

(d) To EPH:

Energetický a průmyslový holding, a.s.

Address: Pařížská 130/26, Josefov, 110 00 Prague 1, Czech Republic

Attention: Marek Spurný and Jan Střiteský

Tel. No.: +420 232 005 200

Fax No.: +420 232 005 400

E-mail: spurny@epholding.cz, stritesky@epholding.cz

(e) To the Ministry:

Ministry of Economy of the Slovak Republic

Address: Mlynské nivy 44/A, 827 15 Bratislava 212, Slovak Republic

Attention: Minister

Tel. No.: 02/4854 7002 (7003)

Fax No.: 02/4342 3949

E-mail: minister@mhsr.sk

(f) To VV:

VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK

Address: P.O.BOX 45, Karloveská 2, 842 04 Bratislava, Slovak Republic

Attention: Ing. Daniel Kvocera, generálny riaditeľ štátneho podniku

Tel. No.: +421 906 311 111

Fax No.: +421 906 311 011

E-mail: daniel.kvocera@vvb.sk

Any notice, instruction, notification or other document to be served under this Agreement shall be in writing and in English or, if in any other language, accompanied by a translation into English. Any document to be served under this Agreement may be delivered personally or by courier or sent by registered mail to the Party to be served at its address set out in this Clause 4 (*Notices*) or at such other address as the Party may have notified to the other Party in accordance with this Clause 4 (*Notices*). Any notices, instructions or any other instruments shall be deemed delivered as of the moment of their receipt or hand-over at the specified address (in the case of the notice delivered in person, by courier or by registered mail), or, if not accepted by the recipient, ten (10) days after a certified letter is sent by courier or or registered mail.

5. MISCELLANEOUS

5.1 Validity

This Agreement shall become fully valid and binding upon the Parties as of the date on which the Subordination Agreement enters in full force and effect in accordance with its terms.

VV shall procure publication of this Agreement in the Central Registry of Agreements in accordance with the Act No. 211/2000 Coll.

5.2 Governing Law

This Agreement and any non-contractual obligations arising in relation to this Agreement or the relationship or position of the Parties established under this Agreement shall be governed by and interpreted and construed in accordance with the laws of England & Wales.

5.3 Dispute Resolution

Any disputes arising out of, related to or in connection with this Agreement shall be finally settled by three arbitrators acting in accordance with the rules of the Vienna International Arbitral Centre (the “**Rules**”). The seat of the arbitration shall be Vienna. The language of the arbitration shall be English. Arbitration tribunal shall consist of three arbitrators. The claiming party shall nominate one arbitrator in its statement of claim and the responding party shall nominate one arbitrator in its answer to the statement of claim. Within 30 days from their confirmation, the party-nominated arbitrators shall nominate a third arbitrator who shall act as President of the Arbitral Tribunal. If such nomination is not made within this time period, that arbitrator shall be appointed pursuant to the Rules.

5.4 Assignments and transfers

No Party may, and, in relation to the Postponed Liabilities, the Postponed Creditor Representatives shall procure that none of the members of the EPH Group or of the ENEL Group will:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of this Agreement or the Postponed Liabilities except that any member of the ENEL Group, any member of the EPH Group, SPH and the Company may assign any of its Postponed Liabilities to any member of the ENEL Group, any member of the EPH Group, SPH or the Company, respectively. If any member of the ENEL Group, any member of the EPH Group, SPH or the Company to which any of the Postponed Liabilities has been assigned ceases to be controlled by the relevant Postponed Creditor Representative, it must (and the assignor shall procure that it will) immediately assign back such Postponed Liabilities to the relevant Postponed Creditor Representative or any other entity controlled by the relevant Postponed Creditor Representative.

5.5 Waiver of Immunity

To the extent that the Company, any Postponed Creditor, the Ministry, VV or any other State Entity may be entitled in any jurisdiction to claim for themselves or their revenues, assets or properties immunity in respect of their obligations under this Agreement from any suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process or to the extent that in any jurisdiction such immunity (whether or not claimed) may be attributed to them or their revenues, assets or properties, the Company, such Postponed Creditor, VV and the Ministry irrevocably agree (in case of Postponed Creditors or State Entities not being a Party, the respective ENEL, EPH or the Ministry shall ensure that such Postponed Creditor or State Entity shall irrevocably agree) not to claim and irrevocably waive such immunity to the fullest extent permitted by the laws of such jurisdiction. Such waiver of immunities by the Ministry, VV or any other State Entity constitutes only a limited and specific waiver by the Ministry, VV or any other State Entity for the purposes of this Agreement and under no circumstances shall it be construed as a general waiver by the Ministry, VV or any other State Entity or a waiver with respect to proceedings unrelated to the Agreement. Further, this waiver shall not apply to (i) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences; (ii) property of a military character or used or intended for use in the performance of military functions; (iii) property of the central bank or other monetary authority of the State; (iv) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale; (v) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale; (vi) mineral resources, underground waters, natural resources and water streams of the Slovak Republic; and (vii) with respect to the assets of the Slovak Republic necessary for the proper functioning of the Slovak Republic as a sovereign power.

5.6 Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the respective Party, of any right, power, or privilege under this Agreement shall be construed as its waiver or a waiver of any other right, power, or privilege of such respective Party, nor shall any partial exercise of any such right, power, or privilege prevent its further exercise or the exercise of any other right, power, or privilege of such respective Party under this Agreement.

5.7 Severability

If any provision of the Agreement is or becomes illegal, invalid, or unenforceable in any jurisdiction, neither the legality, validity, nor enforceability of the remaining provisions hereof nor the legality, validity, or enforceability of such provision in any other jurisdiction shall be affected or impaired thereby. The Parties undertake to replace such illegal, invalid or unenforceable provision by incorporation in form of an amendment to this Agreement of a provision which (i) best achieves the commercial effect that the Parties hereto intended thereby, and (ii) shall be legal, valid and enforceable under the applicable law.

5.8 Amendments

This Agreement may only be amended by means of written amendments signed by all the Parties.

5.9 Counterparts and Language

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement. This Agreement has been executed in English language which shall be the governing language despite translation of the same into Slovak language.

This Agreement has been delivered as a deed on the date stated at the beginning of this Agreement

[SIGNATURES ON THE FOLLOWING PAGES]

AS WITNESS hereof, the signatures of the duly authorized representatives of the parties hereto are set forth below effective as of the day and year first before written.

Executed as a Deed by:

Slovenské elektrárne, a.s. as Company

By: _____

Name:

Title:

By: _____

Name:

Title:

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

SLOVAK POWER HOLDING B.V., as SPH

By: _____

Name:

Title:

By: _____

Name:

Title:

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

Enel Produzione S.p.A., as ENEL

By: _____

Name:

Title:

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

By: _____

Name:

Title:

Energetický a průmyslový holding, a.s., as EPH

By: _____

Name:

Title:

By: _____

Name:

Title:

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

Slovak Republic acting through Ministry of Economy of the Slovak Republic, as Ministry

By: _____

Name: Peter Žiga

Title: Minister

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK as VV

By: _____

Name: Daniel Kvocera

Title: Director General

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

SCHEDULE 1
PENDING CLAIMS OF THE POSTPONED CREDITOR

	Relevant Court	File No.
1	District Court Bratislava II	22Cb/162/2008
2	District Court Bratislava II	22Cb/163/2008
3	District Court Bratislava II	22Cb/120/2009
4	District Court Bratislava II	22Cb/162/2008
5	District Court Bratislava II	24Cb/87/2013
6	District Court Bratislava II	25Cb/176/2014
7	District Court Bratislava II	23Cb 140/2014
8	District Court Bratislava II	24Cb 176/2014
9	District Court Bratislava II	24Cb 167/2015
10	District Court Bratislava II	25Cb 253/2015
11	District Court Bratislava II	42Cb/309/2015
12	District Court Bratislava II	23Cb/162/2008
13	District Court Bratislava II	23Cb/163/2008
14	District Court Bratislava IV	12Cb/161/2014
15	District Court Bratislava IV	10Cb/299/2014

PRÍLOHA č. 2
ZMLUVA O PODRIADENOSTI ZÁVÄZKOV

SUBORDINATION AGREEMENT

between

SLOVENSKÉ ELEKTRÁRNE, A.S.
as Company

VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK
as Subordinated Creditor

GLAS TRUST CORPORATION LIMITED
as Security Agent

SLOVAK POWER HOLDING B.V.
as Investor

This **SUBORDINATION AGREEMENT** (the “**Agreement**”) is dated _____, 2018 and made by and between:

- (1) **SLOVENSKÉ ELEKTRÁRNE, A.S.**, with its registered seat at Mlynské nivy 47, 821 09 Bratislava, Slovak Republic, registered in the Commercial Register maintained by the District Court Bratislava I, Identification No. 35 829 052, Section Sa, Insert No. 2904/B (the “**Company**”);
- (2) **VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK**, with its registered seat at P.O.BOX 45, Karloveská 2, 842 04 Bratislava, Slovak Republic, registered in the Commercial Register maintained by the District Court Bratislava I, Identification No. 00 156 752, Section Pš, Insert No. 32/B (the “**Subordinated Creditor**”);
- (3) **GLAS TRUST CORPORATION LIMITED**, with its registered office at 45 Ludgate Hill, London, England EC4M 7JU and registered in England and Wales with company number 07927175, as security agent for the Secured Parties (as defined in the ICA defined below) (the “**Security Agent**”); and
- (4) **SLOVAK POWER HOLDING B.V.**, with its corporate seat in Amsterdam, the Netherlands and office address at Herengracht 471, 1017 BS Amsterdam, the Netherlands, registered in the Trade Register of the Dutch Chamber of Commerce under number 66060575 (the “**Investor**” or “**SPH**”).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Agreement on Postponement of Enforcement**” means agreement of which copy forms Schedule 1 entered into between the Company, SPH, Enel Produzione S.p.A., Energetický a průmyslový holding, a.s., Ministry and Subordinated Creditor.

“**Commercial Code**” means Slovak Act No. 513/1991 Coll., the Commercial Code, as amended.

“**Company VEG Claims**” means claims that were or may be brought by the Company against the Subordinated Creditor or any State Entity in relation to VEG (including in relation to the restitution of VEG).

“**Subordinated Creditor Accession Undertaking**” means an undertaking substantially in the form set out in Schedule 2 (*Form of Subordinated Creditor Accession Undertaking*).

“**ENEL Group**” means ENEL Produzione S.p.A. and its direct and indirect Subsidiaries from time to time.

“**Enforcement Action**” means:

- (a) in relation to any Subordinated Liabilities:
 - (i) the suing for, commencing or joining of any legal or arbitration proceedings against the Company to enforce any final and enforceable judgments, awards or other decisions which the Subordinated Creditor may have or may obtain against the Company in relation to any Subordinated Liabilities;
 - (ii) the making of a demand for payment of any enforceable judgment, award or other decision which the Subordinated Creditor may have or may obtain against the Company in relation to any Subordinated Liabilities;
 - (iii) the exercise of any right to require the Company to acquire any Subordinated Liability (including exercising any put or call option against the Company for the redemption or purchase of any Subordinated Liability); and
 - (iv) the exercise of any right of set-off, account combination or payment netting against the Company in respect of any Subordinated Liabilities (other than the Permitted Set-off);
- (b) in relation to any liabilities in respect of the SPH Facility:
 - (i) the suing for, commencing or joining of any legal or arbitration proceedings against the Company to enforce any final and enforceable judgments, awards or other decisions which the Investor may have or may obtain against the Company in relation to any such liabilities;
 - (ii) the exercise of any right to require the Company to acquire any such liabilities (including exercising any put or call option against the Company for the redemption or purchase of any such liability);
 - (iii) the exercise of any right of set-off, account combination or payment netting against the Company in respect of any such liabilities (other than the Permitted Set-off);
- (c) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration, Insolvency Event (as defined below), or reorganisation of the Company, or any of the Company's assets or any suspension of payments or moratorium of any indebtedness of the Company, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(i), (b)(i) or (c) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of the Subordinated Liabilities or the liabilities under the SPH Facility, as the case may be, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods.

“EPH Group” means Energetický a průmyslový holding, a.s. and its direct and indirect Subsidiaries from time to time.

“Event of Default” means any event or circumstance specified as such in an Existing Senior Facilities Agreement.

“Existing Senior Agent” means each facility agent under and specified as such in the Existing Senior Facilities Agreements.

“Existing Senior Arranger” means each arranger under and specified as such in the Existing Senior Facilities Agreements.

“Existing Senior Discharge Date” means the first date on which:

- (a) all Existing Senior Facility Liabilities have been fully and finally discharged to the satisfaction of each Existing Senior Lender or, if applicable, the relevant Existing Senior Agents, whether or not as the result of an enforcement; and
- (b) the Existing Senior Lenders are under no further obligation to provide financial accommodation to the Company under any of the Existing Senior Finance Documents.

“Existing Senior Facilities Agreements” means the facility agreements listed in Schedule 3 (*Existing Senior Facilities Agreements*).

“Existing Senior Facility” means each facility under and specified as such in an Existing Senior Facilities Agreement.

“Existing Senior Facility Creditors” means each Existing Senior Agent, each Existing Senior Arranger and each Existing Senior Lender.

“Existing Senior Finance Documents” means each finance document under and specified as such in each Existing Senior Facilities Agreement.

“Existing Senior Facility Liabilities” means all liabilities of the Company owed to an Existing Senior Facility Creditor under or in connection with the Existing Senior Finance Documents to which such Existing Senior Facility Creditor is party, including those arising in connection with any refinancing, novation, deferral or extension (subject to Clause 2.9), together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (b) any claim for damages or restitution; and
- (c) any claim as a result of any recovery by the Company of a payment, prepayment, repayment, redemption, defeasance or discharge in respect of liabilities under Existing Senior Finance Documents on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, nonprovability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

“Existing Senior Lender” means each lender under and as specified as such in each Existing Senior Facilities Agreement.

“Hedge Counterparty” means any bank or financial institution which becomes a party to the ICA as a Hedge Counterparty pursuant to the terms of the ICA.

“Hedging Agreement” means any agreement based on an ISDA Master Agreement entered into by the Company and a Hedge Counterparty for the purpose of hedging the types of liabilities and/or risks of the Company arising in relation to an Existing Senior Facility.

“ICA” means the Intercreditor Agreement dated 18 August 2017 between, among others, certain financial institutions named on its signing pages as Existing Senior Agents, Existing Senior Arrangers and Existing Senior Lenders, Slovenské elektrárne, a.s., Slovak Power Holding B.V. and Glas Trust Corporation Limited.

“Insolvency Event” means, in relation to the Company:

- (a) a Slovak Insolvency Event;
- (b) any resolution is passed or order made for the winding up, dissolution (other than in connection with a consolidation, merger or demerger), administration or reorganisation of the Company, a moratorium is declared in relation to any indebtedness of the Company or an administrator is appointed to the Company;
- (c) any composition, compromise, assignment or arrangement is made with any of its creditors;
- (d) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Company or any of its assets; or
- (e) any analogous procedure or step is taken in any jurisdiction.

“Liabilities Acquisition” means, in relation to a person and to any Subordinated Liabilities, a transaction where that person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

the rights in respect of those Subordinated Liabilities.

“Majority Senior Creditors” has the meaning given to such term in the ICA.

“Ministry” means the Slovak Republic acting through the Ministry of Economy of the Slovak Republic.

“Parties” means the Company, the Subordinated Creditor, the Investor and the Security Agent and **“Party”** means any of them.

“Payment” means, in respect of any Subordinated Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Subordinated Liabilities (or other liabilities or obligations).

“Permitted Payment” means the Payments permitted by Clause 2.3 (*Permitted Payments*).

“Permitted Set-off” means set-off pursuant to Clause 2.8.

“PIK Interest” means any interest payable in the form of an increase in the outstanding principal amount of the relevant liabilities.

“Security” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“Slovak Insolvency Event” means either of the following events:

- (a) the declaration of bankruptcy (*vyhlásenie konkurzu*) with respect to the assets of the Company in the Slovak Republic; or
- (b) the opening of a restructuring (*povolenie reštrukturalizácie*) of the Company in the Slovak Republic.

“SPH Facility” means the facility granted under the SPH Facility Agreement.

“SPH Facility Agreement” means a facility agreement, to be entered into between SPH as lender and the Company as borrower, under which SPH will provide a facility to the Company of up to Euro 700 million.

“State Entity” means the Slovak Republic or any authority, agency or department, public corporation or other entity established or controlled (directly or indirectly) by the Slovak Republic.

“Subordinated Liabilities” means all liabilities of the Company owed to the Subordinated Creditor (including, without limitation, the principal amount and any interest on the principal amount awarded by the relevant court in respect of the period ending on the date of the relevant judgment and any adjudicated reimbursements of costs) (i) determined by the enforceable (*vykonateľné*) judgments of the relevant Slovak courts in connection with claims of the Subordinated Creditor currently pending before Slovak courts against the Company as listed in Schedule 4 (*Pending Claims of the Subordinated Creditor*), (ii) resulting from claims that may be brought by the Subordinated Creditor against the Company in relation to VEG before any court or arbitral tribunal of competent jurisdiction after the date of this Agreement and/or (iii) with respect to interest (including, for the avoidance of doubt, any PIK Interest accrued under Clause 3 (*Interest*)) accruing on any amount under limb (i) or (ii) of this definition.

“**Subsidiary**” means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

“**VEG**” means the GABČÍKOVO hydroelectric power plant, namely (including, but not limited to) HPP Gabčíkovo, HPP Čunovo, Small HPP Mošon and Small HPP on the S VII channel. For the avoidance of doubt, VEG shall include both the power-generating part (technological equipment) and the building part of these power plants.

1.2 Interpretation

- (a) In this Agreement, except where the context requires otherwise, the following interpretation rules shall apply:
- (i) a reference to an **amendment** includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and **amended** will be construed accordingly;
 - (ii) a reference to a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (iii) a reference to **liabilities** includes any payment obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;
 - (iv) headings shall serve solely to facilitate orientation herein and shall not affect interpretation of this Agreement;
 - (v) words importing the singular shall include the plural and vice versa;
 - (vi) any reference to Article, Clause, paragraph shall be construed as a reference to the Article, Clause, paragraph of this Agreement;
 - (vii) references to a party of any document or any other person shall include its legal successors, permitted assignees and permitted transferees;
 - (viii) for the purposes of paragraph (a) of Clause 3 (*Interest*) and paragraph (a) of Clause 4.1 (*Pari-Passu Payments*) a reference to a **principal amount of the Subordinated Liabilities** includes (i) any interest on the principal amount of the relevant claim awarded by the relevant court or arbitral tribunal of competent jurisdiction in respect of the period ending on the date of the relevant judgment, award or other decision in respect of the relevant claim and any adjudicated reimbursement of costs and (ii) any PIK Interest previously capitalized and added to the principal amount of the Subordinated Liabilities pursuant to Clause 3 (*Interest*).

1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Agreement, a person other than a Secured Party who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind, waive or vary this Agreement at any time.

1.4 Slovak law terms

In this Agreement (except if expressly stipulated otherwise in this Agreement), a reference to:

- (a) a **novation** under Slovak law includes privative novation (*privatívna novácia*) and cumulative novation (*kumulatívna novácia*);
- (b) a **Security** governed by Slovak law includes a pledge (*záložné právo*), a right of retention (*zádržné právo*), a security transfer (*zabezpečovací prevod práva*) and a security assignment of receivables (*zabezpečovacie postúpenie pohľadávky*);
- (c) **winding up, dissolution** or **administration** under Slovak law includes liquidation (*likvidácia*), winding-up with liquidation (*zrušenie s likvidáciou*), winding up without liquidation and without legal succession (*zrušenie bez likvidácie bez právneho nástupcu*) and bankruptcy (*konkurz*);
- (d) a **liquidator, receiver, administrative receiver, administrator, compulsory manager** or **similar officer** under Slovak law includes a liquidator (*likvidátor*), bankruptcy trustee (*konkurzný správca*), restructuring trustee (*reštrukturalizačný správca*) and compulsory administrator (*nútený správca*); and
- (e) a **moratorium** under Slovak law includes restructuring proceedings (*reštrukturalizačné konanie*) and restructuring (*reštrukturalizácia*).

2. SUBORDINATION OF LIABILITIES

2.1 Subordination of Subordinated Liabilities

Until the Existing Senior Discharge Date, each of the Parties agrees that the Subordinated Liabilities are postponed and subordinated to the Existing Senior Facility Liabilities except as expressly provided otherwise in this Agreement.

2.2 Restriction on Payment

Prior to the Existing Senior Discharge Date, the Company shall not make any Payments of the Subordinated Liabilities at any time unless:

- (a) that Payment is permitted under Clause 2.3 (*Permitted Payments*); or
- (b) the making, taking or receipt of that Payment is permitted under Clause 2.7 (*Permitted Enforcement*),

provided, in any event, that, unless the Investor otherwise consents, any such Payment shall only be made in accordance with Clause 4 (*Investor Liabilities*).

2.3 Permitted Payments

- (a) Subject to paragraph (b) below and Clause 4 (*Investor Liabilities*), the Company may make Payments of cash-pay interest payable under the terms of Clause 3 (*Interest*) in respect of the Subordinated Liabilities from time to time when due.
- (b) Unless the Security Agent (acting on the instructions of the Majority Senior Creditors) consents to that Payment being made, Payments in respect of the Subordinated Liabilities may not be made pursuant to paragraph (a) above, if at the time of the Payment, an Event of Default has occurred and is continuing or would occur under any of the Existing Senior Finance Documents in respect of Existing Senior Facility Liabilities or if a Hedge Counterparty is or would be entitled to terminate or close-out in whole or in part any hedging transaction under any Hedging Agreement prior to its stated maturity in accordance with the terms of the ICA in each case following such Payment being made.

2.4 No acquisition of Subordinated Liabilities

Prior to the Existing Senior Discharge Date, the Company shall not:

- (a) enter into any Liabilities Acquisition; or
- (b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any of the Subordinated Liabilities, unless the prior written consent of the Security Agent, acting on the instructions of the Majority Senior Creditors, is obtained, and provided that any such transaction shall only be made in accordance with Clause 4 (*Investor Liabilities*) unless the prior consent of the Investor is obtained.

2.5 Security

Prior to the Existing Senior Discharge Date, the Subordinated Creditor may not take, accept or receive the benefit of any security, guarantee, indemnity or other assurance against loss in respect of the Subordinated Liabilities, other than the rights (including an indemnity) provided by the Ministry to the Subordinated Creditor with respect to a transfer of Subordinated Liabilities to a State Entity in compliance with Clause 9.6.

2.6 Restriction on enforcement

Subject to Clause 2.7 (*Permitted Enforcement*), the Subordinated Creditor shall not be entitled to take, and shall not take, any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Existing Senior Discharge Date.

2.7 Permitted Enforcement

After the occurrence of an Insolvency Event in relation to the Company, the Subordinated Creditor may exercise any right it may otherwise have against the Company to:

- (a) accelerate any of the Company's Subordinated Liabilities or declare them prematurely due and payable or payable on demand;
- (b) make a demand under any guarantee, indemnity or other assurance against loss given by the Company in respect of any Subordinated Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Subordinated Liabilities of the Company; or
- (d) claim and prove in the liquidation of the Company for the Subordinated Liabilities owing to it.

Prior to the Existing Senior Discharge Date, the Subordinated Creditor shall distribute (or, to the extent it is legally able to do so, shall direct the person responsible for distribution of the assets of the Company to distribute) to the Security Agent any Payments, proceeds or assets received by it as a result of the exercise of any of its rights under this Clause, for application by the Security Agent in accordance with the ICA.

Any excess cash (resulting from payments made by the Subordinated Creditor under this Clause 2.7 (*Permitted Enforcement*)) that may be held by the Security Agent (or any Secured Party) following the Existing Senior Discharge Date shall be returned to the Subordinated Creditor without undue delay.

2.8 Permitted Set-Off

Notwithstanding anything to the contrary in this Agreement:

- (a) the Subordinated Creditor may at any time set-off (i) any amounts due to the Subordinated Creditor pursuant to any final and enforceable judgments, awards or other decisions which the Subordinated Creditor may obtain against the Company in relation to any Subordinated Liabilities; against (ii) any amounts due to the Company pursuant to any final and enforceable judgments, awards or other decisions which the Company may obtain against the Subordinated Creditor or any State Entity in connection with VEG (including any judgments, awards or other decisions concerning the restitution of VEG).
- (b) the Company may at any time set-off (i) any amounts due to the Subordinated Creditor pursuant to any final and enforceable judgments, awards or other decisions which the Subordinated Creditor may obtain against the Company in relation to any Subordinated Liabilities; against (ii) any amounts due to the Company pursuant to any final and enforceable judgments, awards or other decisions which the Company may obtain against the Subordinated Creditor or (insofar as those liabilities have been assumed by the Subordinated Creditor) any State Entity in connection with VEG (including any judgments, awards or other decisions concerning the restitution of VEG).
- (c) The Company shall provide all necessary consents to assignment of any Subordinated Liability to the relevant State Entity for the purposes of set-off.
- (d) The Subordinated Creditor, the relevant State Entity and the Company (as the case may be) shall retain all economic benefits of such set-off and the Security Agent and

Senior Creditors shall not have any right to distribution, pass-through or other compensation in connection therewith, notwithstanding anything to the contrary in this Agreement.

2.9 Extension

In the event the Company enters into any refinancing, novation, deferral or extension of any Existing Senior Facility Liabilities resulting in the final maturity date thereof moving to a date later than 31 December 2026 without the prior written consent of the Subordinated Creditor, the Subordinated Liabilities shall no longer be postponed and subordinated, pursuant to the terms of this Agreement, to the Existing Senior Facility Liabilities that have been so refinanced, novated, deferred or extended, which shall cease to constitute Existing Senior Facility Liabilities for all purposes under this Agreement.

2.10 Representations of Subordinated Creditor

The Subordinated Creditor represents and warrants to the Investor and the Security Agent that:

- (a) it is a state enterprise, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations, including (without limitation) pursuant to the Act No. 374/2014 Coll. on state claims, as amended and Act No. 111/1990 Coll., on state enterprise, as amended;
- (c) all necessary approvals and consents (including state consents) have been obtained for its entry into and performance by it of this Agreement;
- (d) the entry into and performance by it of this Agreement does not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
 - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets; and
- (e) it is not bankrupt or insolvent under any law applicable to it, it is not unable and has not admitted inability to pay its debts as they fall due, it has not suspended making payments on any of its debts or, by reason of actual or anticipated financial difficulties, it has not commenced negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

2.11 Representations of Company

The Company represents and warrants to the other Parties that:

- (a) it is a company, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;

- (b) all necessary approvals and consents have been obtained for its entry into and performance by it of this Agreement;
- (c) to the best of its knowledge and belief (having made due and careful enquiry), there are no liabilities of the Company owed to any State Entity (other than the Subordinated Creditor) which, if owed to the Subordinated Creditor, would constitute Subordinated Liabilities;
- (d) the entry into and performance by it of this Agreement does not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
 - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets; and
- (e) it is not bankrupt or insolvent under any law applicable to it, it is not unable and has not admitted inability to pay its debts as they fall due, it has not suspended making payments on any of its debts or, by reason of actual or anticipated financial difficulties, it has not commenced negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness (except, for the avoidance of any doubt, the Company's negotiations with the creditors of the Company's financial indebtedness in relation to amendments to the terms of such financial indebtedness including, without limitation, with respect to the extension of final maturity dates thereunder, which are pending on the date of this Agreement).

2.12 Representations of Investor

The Investor represents and warrants to the other Parties that:

- (a) it is a company, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) all necessary approvals and consents have been obtained for its entry into and performance by it of this Agreement;
- (c) the entry into and performance by it of this Agreement does not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
 - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets; and
- (d) it is not bankrupt or insolvent under any law applicable to it, it is not unable and has not admitted inability to pay its debts as they fall due, it has not suspended making payments on any of its debts or, by reason of actual or anticipated financial difficulties, it has not commenced negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

3. INTEREST

- (a) Interest (including, for the avoidance of doubt, any PIK Interest) shall accrue on the principal amount of the Subordinated Liabilities at the same rate and on the same terms at which interest accrues on the SPH Facility from the date on which the relevant amount of the Subordinated Liabilities is awarded by a final (*právoplatný*) and enforceable (*vykonateľný*) judgment of the relevant Slovak court or arbitral tribunal of competent jurisdiction which is immediately enforceable (and for so long as it remains immediately enforceable) up to the date of actual payment of the relevant amount of the Subordinated Liabilities. Any interest accruing under this Clause 3 (whether payable in cash or as PIK Interest) shall be payable by the Company to the Subordinated Creditor on the same terms as the interest accruing on the SPH Facility is payable in accordance with the ICA and the SPH Facility Agreement. For the avoidance of doubt, to the extent a final judgment which is no longer appealable, including by extraordinary appeal or constitutional complaint, determines that all or a portion of the Subordinated Liabilities were not due, no interest shall be due on all or such portion of the Subordinated Liabilities under this Clause 3 and the Subordinated Creditor shall reimburse all or the applicable portion of any interest paid by the Company hereunder prior to such final judgement (whether such interest had been paid in cash or as PIK Interest, and provided, for the avoidance of doubt, that also any cash interest paid with respect to capitalized PIK Interest determined not to be due shall be so reimbursed).
- (b) The Subordinated Creditor and the Company agree that no interest (whether statutory, default or otherwise) shall accrue and be paid by the Company to the Subordinated Creditor with respect to the Subordinated Liabilities other than in accordance with the foregoing paragraph (a).

4. INVESTOR LIABILITIES

4.1 Pari-Passu Payments

Without prejudice to Clause 2 (*Subordination of Liabilities*) and Clause 3 (*Interest*), unless the Investor and the Subordinated Creditor agree otherwise, the Company shall:

- (a) make any Payment, however made (including by way of set-off (other than the Permitted Set-off)), in respect of the Subordinated Liabilities and in respect of the SPH Facility, only in such a way that, on the date on which any such Payment is made, the aggregate Payments made in respect of the Subordinated Liabilities and the aggregate Payments made in respect of the SPH Facility bear the same proportion as (x) the principal amount of the Subordinated Liabilities resulting from final and enforceable judgments bears to (y) the sum of (i) the principal amount of the SPH Facility; and (ii) the aggregate principal amount of all Company VEG Claims determined by final and enforceable judgments; and
- (b) not enter into any Liabilities Acquisitions in respect of Subordinated Liabilities,

4.2 Due Pursuit and no Distributions

The Investor shall, to the extent it is entitled to do so (including under the ICA), duly demand payment of any amount due under the SPH Facility and pursue its claims thereunder.

So long as the Investor is, at the same time, a creditor under the SPH Facility and the controlling shareholder of the Company, the Investor shall exert its reasonable endeavours to exercise its rights as shareholder of the Company to procure that:

- (a) all liabilities of the Company in respect of any amounts due under the SPH Facility are fully and finally discharged within one (1) year of the Existing Senior Discharge Date (including, for the avoidance of doubt, procuring that the Company seeks adequate third party financing to refinance liabilities of the Company towards the Investor and Subordinated Creditor); and
- (b) the Company does not make any payment or other distribution in respect of or on account of the Investor's, the Subordinated Creditor's or any State Entity's equity interests in the Company before all Subordinated Liabilities are fully and finally discharged.

4.3 No Enforcement

Without prejudice to Clause 2 (*Subordination of Liabilities*) (which shall apply until the Existing Senior Discharge Date) and subject to Clause 2.7 (*Permitted Enforcement*):

- (a) the Subordinated Creditor and the Investor hereby undertake not to commence or maintain any Enforcement Action with respect to the Subordinated Liabilities and the liabilities under the SPH Facility respectively, at any time so long as the Company complies with the provisions of this Clause 4, unless the prior consent of the Investor or the Subordinated Creditor, respectively, is obtained; and
- (b) in case the Company makes any Payment, however made (including by way of set-off (other than the Permitted Set-off)), in respect of the principal amount of the SPH Facility at any time when there are no Subordinated Liabilities resulting from final and enforceable judgments (and therefore no corresponding Payment is made towards satisfaction of the Subordinated Liabilities pursuant to Clause 4.1) and after the date on which such Payment of the principal amount of the SPH Facility has been made any Subordinated Liabilities are awarded by final and enforceable judgments (the "**Relevant Subordinated Liabilities**"), then the Subordinated Creditor may commence or maintain any Enforcement Action with respect to such part of such Subordinated Liabilities which would have corresponded to the proportion indicated in Clause 4.1(a) above had such judgement been entered prior to the date of Payment of the principal amount of the SPH Facility. For the avoidance of doubt, with respect to the remaining part of the Relevant Subordinated Liabilities, the first paragraph of this clause 4.3 shall apply.

Clause 5 (*Turnover of Non-Permitted Recoveries*) shall apply mutatis mutandis with respect to any payment or other distribution received by the Subordinated Creditor or the Investor in respect of any of the Subordinated Liabilities and the SPH Facility respectively after the Existing Senior Discharge Date which is not allowed under this Agreement. In such a case the Subordinated Creditor or the Investor shall make to the other party such payments ensuring that the Subordinated Creditor and the Investor are in the same position as if they had been had such payment or other distribution received by the Subordinated Creditor or the Investor in respect of any of the Subordinated Liabilities or the SPH Facility been made in compliance with this Agreement.

4.4 Assignments by Investor

The Investor undertakes that it shall not, without the consent of the Subordinated Creditor (a) assign any of its rights; or (b) transfer any of its rights and obligations in respect of the SPH Facility unless, substantially simultaneously with such assignment or transfer, such assignee or transferee (the “Replacement Investor”) (i) has become the controlling shareholder of the Company and (ii) has acceded to this Agreement and has assumed all of the rights and obligations of the Investor hereunder. Each of the Parties agrees to provide all necessary consents and cooperation to allow the Replacement Investor to accede to this Agreement and to release the Investor from its obligations hereunder.

4.5 Termination

The provisions of this Clause 4 shall continue in effect until the date on which the liabilities under the SPH Facility have been discharged in full and SPH is under no further obligation to provide financial accommodation to the Company thereunder.

4.6 Benefit

The provisions of this Clause 4 are for the benefit of , and are intended to be enforceable only by, the Investor and the Subordinated Creditor, as applicable.

5. TURNOVER OF NON-PERMITTED RECOVERIES

5.1 Non-permitted payment

If, before the Existing Senior Discharge Date:

- (a) the Subordinated Creditor receives a payment or distribution in respect of any of the Subordinated Liabilities from the Company or any other source, other than as allowed under this Agreement (for the avoidance of doubt, any payment as a result of exercising the right of Subordinated Creditor for remuneration for assignment and the right for indemnity in connection with the assignment of Subordinated Liabilities allowed under this Agreement does not constitute a non-permitted payment); or
- (b) the Subordinated Creditor receives the proceeds of any enforcement of any Security or any guarantee or other assurance against financial loss for any Subordinated Liabilities, other than as a result of exercising the right for remuneration for assignment and the right for indemnity in connection with the assignment of Subordinated Liabilities allowed under this Agreement,

the Subordinated Creditor must hold the amount received by it (up to a maximum of an amount equal to the Existing Senior Facility Liabilities) on trust for the Secured Parties and immediately pay that amount (up to that maximum) to the Security Agent for application in accordance with the ICA.

5.2 Non-permitted discharge

If, for any reason, any of the Subordinated Liabilities is discharged in any manner other than as allowed under this Agreement, the Subordinated Creditor must immediately pay an amount equal to the amount discharged to the Security Agent for application in accordance with the ICA.

6. PROTECTION OF SUBORDINATION AND PRIORITY

6.1 Continuing subordination

The subordination and priority provisions in this Agreement constitute continuing subordination and priority arrangements and will benefit the ultimate balance of all of the Existing Senior Facility Liabilities, regardless of any intermediate payment or discharge in whole or in part.

6.2 Waiver of defences

The obligations of the Parties under this Agreement and the ranking of their claims under this Agreement will not be affected by any act, omission or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Agreement including (without limitation and whether or not known to it or any Secured Party):

- (a) any time, waiver or consent granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement with any creditor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amendment of any Existing Senior Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Existing Senior Finance Document or other document or security, subject to Clause 2.9;
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Existing Senior Finance Document or any other document or security;
- (h) any intermediate payment of any of the Existing Senior Facilities Liabilities; or
- (i) any insolvency or similar proceedings.

6.3 Subrogation by Subordinated Creditor

If any Existing Senior Facility Liabilities are paid out of any proceeds received in respect of or on account of the Subordinated Liabilities in accordance with this Agreement, the Subordinated Creditor will to that extent be subrogated to the Existing Senior Facility Liabilities so paid (and all securities and guarantees for that Existing Senior Facility Liabilities), provided that, until the Existing Senior Discharge Date, any such rights to which

it is subrogated shall be postponed and subordinated to any other Existing Senior Facility Liabilities on the same terms as the Subordinated Liabilities pursuant to this Agreement.

7. RIGHTS OF SECURITY AGENT

7.1 Information by Subordinated Creditor and Investor

The Subordinated Creditor must on request by the Security Agent notify it of details of the amount of the Subordinated Liabilities. The Investor must on request by the Security Agent or the Subordinated Creditor notify it of details of the outstanding amount of the SPH Facility.

7.2 Liability of the Security Agent

The Security Agent will not be liable to the Subordinated Creditor or the Investor for the manner of exercise of or for any non-exercise of its powers under this Agreement and all Parties acknowledge that the Security Agent has no obligation to collect or preserve the Subordinated Liabilities or the liabilities under the SPH Facility.

7.3 Indemnity to Security Agent

The Company shall indemnify the Security Agent for any cost, loss or liability incurred in connection with this Agreement in accordance with Clause 22.1 (*Company's indemnity to Security Agent*) of the ICA, mutatis mutandis.

7.4 Non-derogation

Nothing contained in this Agreement in any manner affects the rights or remedies of any Secured Party under the Existing Senior Finance Documents.

8. NOTICES

Notices and other documents to be served under this Agreement shall be addressed as follows:

(a) To the Company:

Slovenské elektrárne, a.s.

Address: Mlynské nivy 47, 821 09 Bratislava, Slovak Republic

Attention: Finance and Insurance Manager

Tel. No.: +421 2 5866 3313

Fax No.: +421 2 5866 3471

E-mail: treasury@seas.sk

(b) To the Subordinated Creditor:

VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK

Address: P.O.BOX 45, Karloveská 2, 842 04 Bratislava, Slovak Republic

Attention: Ing. Daniel Kvocera, generálny riaditeľ štátneho podniku

Tel. No.: +421 906 311 111
Fax No.: +421 906 311 011
E-mail: daniel.kvocera@vvb.sk

(c) To the Security Agent:

GLAS TRUST CORPORATION LIMITED

Address: 45 Ludgate Hill, London EC4M 7JU, United Kingdom

Attention: Transaction Management Group (Edison)

Tel. No.: +44 (0)20 3597 2940
Fax No.: +44 (0)20 3070 0113
E-mail: tmg@glas.agency

(d) To the Investor:

Slovak Power Holding B.V.

Address: Herengracht 471, 1017 BS Amsterdam, the Netherlands

Attention: Ms. Irina Dushina, Copy: Mr. Avogadro Di Vigliano Rodolfo and Mr. Jan Stříteský

Tel. No.: + 31 20 521 7877
Fax No.: + 31 20 521 7899
E-mail: irina.dushina@enel.com,
copy: rodolfo.avogadrodivigliano@enel.com, stritesky@epholding.cz

Any notice, instruction, notification or other document to be served under this Agreement shall be in writing and in English or, if in any other language, accompanied by a translation into English. Any document to be served under this Agreement may be delivered personally or by courier or sent by registered mail to the Party to be served at its address set out in this Clause 8 (*Notices*) or at such other address as the Party may have notified to the other Party in accordance with this Clause 8 (*Notices*). Any notices, instructions or any other instruments shall be deemed delivered as of the moment of their receipt or hand-over at the specified address (in the case of the notice delivered in person, by courier or by registered mail), or, if not accepted by the recipient, ten (10) days after a certified letter is sent by courier or registered mail.

9. MISCELLANEOUS

9.1 Validity

Subject to Clause 9.2 (*Enforceability*) below, this Agreement is fully valid and binding upon the Parties as of the date hereof in accordance with its terms.

9.2 Enforceability

The rights and obligations of a Party hereunder shall not be effective and enforceable against the other Parties unless all of the following events have occurred:

- (a) the execution of the SPH Facility Agreement;
- (b) the conditions precedent for the initial drawdown of the facility, as may be contemplated in the SPH Facility Agreement, other than any condition precedent relating to the subordination of the Subordinated Liabilities under the terms of this Agreement (including the delivery of a copy of this Agreement), being fulfilled to the full satisfaction of the lender or waived in writing, in whole or in part, by the lender under the SPH Facility Agreement; and
- (c) the execution of the Agreement on Postponement of Enforcement.

(the “**Conditions Precedent**”),

at which moment all said rights and obligations of the Parties hereunder shall enter into full force and effect. The benefit of the Conditions Precedent is for, and any of the Conditions Precedent may accordingly only be waived in the whole or in part by, the Subordinated Creditor, acting based on a prior request of the Ministry. Unless otherwise agreed by the Parties, this Agreement shall immediately terminate without liability of any of the Parties in the event that the Conditions Precedent are not fulfilled or waived by the Subordinated Creditor, acting based on a prior request of the Ministry, on or before the date falling 60 calendar days after the date of this Agreement. Upon satisfaction of the Conditions Precedent (i) the Company shall promptly notify in writing the Subordinated Creditor that the Conditions Precedent have been satisfied and (ii) upon such Company’s notice having been received, the Subordinated Creditor shall promptly notify in writing the Investor and the Security Agent that the Conditions Precedent have been satisfied.

9.3 Governing Law

This Agreement and any non-contractual obligations arising in relation to this Agreement or the relationship or position of the Parties established under this Agreement shall be governed by and interpreted and construed in accordance with the laws of England & Wales.

9.4 Dispute Resolution

Any disputes arising out of, related to or in connection with this Agreement shall be finally settled by three arbitrators acting in accordance with the rules of the Vienna International Arbitral Centre (the “**Rules**”). The seat of the arbitration shall be Vienna. The language of the arbitration shall be English. Arbitration tribunal shall consist of three arbitrators. The claiming party shall nominate one arbitrator in its statement of claim and the responding party shall nominate one arbitrator in its answer to the statement of claim. Within 30 days from their confirmation, the party-nominated arbitrators shall nominate a third arbitrator who shall act as President of the Arbitral Tribunal. If such nomination is not made within this time period, that arbitrator shall be appointed pursuant to the Rules.

9.5 Assignments and transfers

No Party may:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of this Agreement or the Subordinated Liabilities except as permitted by Clause 9.6 (*Change of the Subordinated Creditor*) and Clause 9.7 (*Subordinated Creditor Accession Undertaking*) or, (x) in the case of the Security Agent only, Clause 9.8 (*The Security Agent*) and (y) in the case of the Investor only, Clause 4.4 (*Assignments by Investor*).

9.6 Change to or addition of Subordinated Creditor

The Subordinated Creditor may at any time and in its sole discretion:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of the Subordinated Liabilities to a State Entity if that State Entity has acceded to this Agreement as a Subordinated Creditor, pursuant to Clause 9.7 (*Subordinated Creditor Accession Undertaking*) and provided further that such State Entity will be allowed (pursuant to applicable laws or otherwise) to perform all obligations of the Subordinated Creditor pursuant to this Agreement. Any assignment or transfer of the Subordinated Liabilities other than in accordance with the preceding sentence shall be null and void. In the event, as a consequence of any assignment or transfer in accordance with this Clause, any rights in respect of the Subordinated Liabilities are held by more than one person, any and all such persons shall be deemed to be a Subordinated Creditor for all purposes under this Agreement.

9.7 Subordinated Creditor Accession Undertaking

With effect from the date of delivery to the Security Agent of a Subordinated Creditor Accession Undertaking duly executed by the relevant acceding party and the Company and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Subordinated Creditor Accession Undertaking:

- (a) the Party ceasing entirely to be a Subordinated Creditor shall be discharged from further obligations towards the Security Agent and the Company under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and
- (b) as from that date, the replacement Subordinated Creditor shall assume the same obligations and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Subordinated Creditor Accession Undertaking.

9.8 The Security Agent

- (a) The Security Agent may assign or otherwise dispose of all or any of its rights under this Agreement in accordance with the ICA.
- (b) References to the Security Agent in this Agreement include any successor Security Agent appointed under the ICA.

9.9 Waiver of Immunity

To the extent that the Company or the Subordinated Creditor may be entitled in any jurisdiction to claim for themselves or their revenues, assets or properties immunity in respect of their obligations under this Agreement from any suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process or to the extent that in any

jurisdiction such immunity (whether or not claimed) may be attributed to them or their revenues, assets or properties, the Company and the Subordinated Creditor irrevocably agree not to claim and irrevocably waive such immunity to the fullest extent permitted by the laws of such jurisdiction. Such waiver of immunities by the Subordinated Creditor constitutes only a limited and specific waiver by the Subordinated Creditor for the purposes of this Agreement and under no circumstances shall it be construed as a general waiver by the Subordinated Creditor or the Slovak Republic or a waiver with respect to proceedings unrelated to the Agreement. Further, this waiver shall not apply to (i) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences; (ii) property of a military character or used or intended for use in the performance of military functions; (iii) property of the central bank or other monetary authority of the State; (iv) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale; (v) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale; (vi) mineral resources, underground waters, natural resources and water streams of the Slovak Republic; and (vii) with respect to the assets of the Slovak Republic necessary for the proper functioning of the Slovak Republic as a sovereign power.

9.10 Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the respective Party, of any right, power, or privilege under this Agreement shall be construed as its waiver or a waiver of any other right, power, or privilege of such respective Party, nor shall any partial exercise of any such right, power, or privilege prevent its further exercise or the exercise of any other right, power, or privilege of such respective Party under this Agreement.

9.11 Severability

If any provision of the Agreement is or becomes illegal, invalid, or unenforceable in any jurisdiction, neither the legality, validity, nor enforceability of the remaining provisions hereof nor the legality, validity, or enforceability of such provision in any other jurisdiction shall be affected or impaired thereby. The Parties undertake to replace such illegal, invalid or unenforceable provision by incorporation in form of an amendment to this Agreement of a provision which (i) best achieves the commercial effect that the Parties hereto intended thereby, and (ii) shall be legal, valid and enforceable under the applicable law.

9.12 Exclusion of Article 408a of the Commercial Code

For avoidance of any doubt, the Parties hereby agree that this Agreement does not constitute subordination under Article 408a of the Commercial Code.

9.13 Amendments

This Agreement may only be amended by means of written amendments signed by all the Parties.

9.14 Counterparts and Language

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement. This Agreement has been executed in English language which shall be the governing language despite translation of the same into Slovak language.

9.15 Mandatory publication

- (a) The Subordinated Creditor shall ensure that this Agreement is published in the Central Registry of Contracts (Centrálny register zmlúv) in accordance with Section 5a of the Slovak Act No. 211/2000 Coll. on free access to information, as amended, within five days after the date of this Agreement.
- (b) The Subordinated Creditor shall deliver to the Security Agent written evidence of publication of this Agreement in accordance with paragraph (a) above within ten days after the date of this Agreement.

This Agreement has been delivered as a deed on the date stated at the beginning of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGES]

AS WITNESS hereof, the signatures of the duly authorized representatives of the parties hereto are set forth below effective as of the day and year first before written.

Executed as a Deed by:

Slovenské elektrárne, a.s. as Company

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK as Subordinated Creditor

By: _____

Name: Daniel Kvocera

Title: Director General

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

GLAS TRUST CORPORATION LIMITED as Security Agent

Signed as a deed by Anthony Stanford as attorney
for **GLAS TRUST CORPORATION LIMITED**
under a power of attorney dated 30 July 2018

Anthony Stanford as attorney for GLAS
TRUST CORPORATION LIMITED

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

SLOVAK POWER HOLDING B.V., as Investor

By: _____

Name:

Title: Managing Director A

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

By: _____

Name:

Title: Managing Director B

In the presence of:

Witness

Signature: _____

Name: _____

Address: _____

SCHEDULE 1
AGREEMENT ON POSTPONEMENT OF ENFORCEMENT

*[THIS PAGE TO BE REPLACED BY FULL AGREEMENT ON POSTPONEMENT OF
ENFORCEMENT IN PDF COPY]*

SCHEDULE 2
FORM OF SUBORDINATED CREDITOR ACCESSION UNDERTAKING

To: *[Glas Trust Corporation Limited]* for itself and each of the other parties to the Subordination Agreement referred to below.

From: *[Acceding Subordinated Creditor]*

THIS UNDERTAKING is made on *[date]* by *[insert full name of new Subordinated Creditor]* (the **Acceding Subordinated Creditor**) in relation to the subordination agreement (the **Subordination Agreement**) dated *[●]* between, among others, Slovenské elektrárne, a.s. as the Company, VODOHOSPODÁRSKA VÝSTAVBA, ŠTÁTNY PODNIK as the Subordinated Creditor, Slovak Power Holding B.V. as the Investor and Glas Trust Corporation Limited as the Security Agent (each as defined in the Subordination Agreement). Terms defined in the Subordination Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding Subordinated Creditor being accepted as a Subordinated Creditor for the purposes of the Subordination Agreement, the Acceding Subordinated Creditor confirms that:

1. as from *[date]*, it intends to be party to the Subordinated Agreement as a Subordinated Creditor and undertakes to perform all the obligations expressed in the Subordination Agreement to be assumed by a Subordinated Creditor and agrees that it shall be bound by all the provisions of the Subordination Agreement, as if it had been an original party to the Subordination Agreement;
2. the particulars provided below in respect of the Subordinated Liabilities owed to the Acceding Subordinated Creditor are true and accurate as at the date that it delivered this Undertaking to the Security Agent; and
3. the Acceding Subordinated Creditor confirms that its notice details are: *[INSERT DETAILS]*.

As at the date of this Undertaking, the Subordinated Liabilities of the Acceding Subordinated Creditors are the following:

*[List Subordinated Liabilities in the same form as Schedule *[●]* (Pending Claims of the Subordinated Creditor)]*

This Undertaking and any non-contractual obligations arising out of or in connection with it are governed by and interpreted and construed in accordance with the laws of England & Wales.

THIS UNDERTAKING has been entered into on the date stated above and is executed as a deed by the Acceding Subordinated Creditor and is delivered on the date stated above.

[EXECUTED as a DEED]

The Acceding Subordinated Creditor

[Insert full name of Acceding Subordinated Creditor]

By:

Accepted by the Security Agent	Countersignature of the Company
for and on behalf of	for and on behalf of
[Glas Trust Corporation Limited]	Slovenské elektrárne, a.s.
Date:	Date:

SCHEDULE 3
EXISTING SENIOR FACILITIES AGREEMENTS

No.	Facility Agreement	Signing Date	Outstanding principal amount (including the undrawn amounts) (in millions of EUR)	Borrower
1	Credit Agreement	24.11.2010	277,8	Slovenské elektrárne, a.s.
2	Facility Agreement	1.7.2014	100,2	Slovenské elektrárne, a.s.
3	New credit agreements to be entered into in connection with the Extension (as defined in the Intercreditor Agreement) of the facility agreements listed under point 1 and 2 above		in aggregate up to 182,8	Slovenské elektrárne, a.s.
3	Finance Contract	2.9.2013	60,0	Slovenské elektrárne, a.s.
4	Loan Facility Agreement	29.1.2014	100,0	Slovenské elektrárne, a.s.
5	Facilities Agreement	10.7.2015	500,0	Slovenské elektrárne, a.s.
6	Bilateral Loan Facility Agreement	7.3.2016	150,0	Slovenské elektrárne, a.s.
7	Facility Agreement	14.6.2017	90,0	Slovenské elektrárne, a.s.
8	Facility Agreement	11.10.2006	150,0	Slovenské elektrárne, a.s.
9	Facility Agreement	30.6.2011	165,0	Slovenské elektrárne, a.s.
10	Credit Facility Agreement	28.11.2014	200,0	Slovenské elektrárne, a.s.
11	Facility Agreement	22.12.2014	100,0	Slovenské elektrárne, a.s.
12	Facility Agreement	28.11.2014	170,0	Slovenské elektrárne, a.s.
13	Facility Agreement	3.12.2014	65,0	Slovenské elektrárne, a.s.
14	Credit Facility Agreement	12.2.2015	120,0	Slovenské elektrárne, a.s.
15	Credit Facility Agreement	17.12.2015	100,0	Slovenské elektrárne, a.s.
16	Credit Facility Agreement	12.4.2016	50,0	Slovenské elektrárne, a.s.
17	Zmluva o úvere č. 2/2018/ÚZ	2.3.2018	70,0	Slovenské elektrárne, a.s.
18	Facility A Agreement	30.5.2014	300,0	Slovenské elektrárne, a.s.
19	Facility B Agreement	30.5.2014	170,0	Slovenské elektrárne, a.s.
20	Facility C Agreement	30.5.2014	400,0	Slovenské elektrárne, a.s.

SCHEDULE 4
PENDING CLAIMS OF THE SUBORDINATED CREDITOR

	Relevant Court	File No.
1	District Court Bratislava II	22Cb/162/2008
2	District Court Bratislava II	22Cb/163/2008
3	District Court Bratislava II	22Cb/120/2009
4	District Court Bratislava II	22Cb/162/2008
5	District Court Bratislava II	24Cb/87/2013
6	District Court Bratislava II	25Cb/176/2014
7	District Court Bratislava II	23Cb 140/2014
8	District Court Bratislava II	24Cb 176/2014
9	District Court Bratislava II	24Cb 167/2015
10	District Court Bratislava II	25Cb 253/2015
11	District Court Bratislava II	42Cb/309/2015
12	District Court Bratislava II	23Cb/162/2008
13	District Court Bratislava II	23Cb/163/2008
14	District Court Bratislava IV	12Cb/161/2014
15	District Court Bratislava IV	10Cb/299/2014

PRÍLOHA č. 3
VZNESENÉ NÁROKY PODRIADENÉHO VERITEĽA

	príslušný súd	spis. zn.
1	Okresný súd Bratislava II	22Cb/162/2008
2	Okresný súd Bratislava II	22Cb/163/2008
3	Okresný súd Bratislava II	22Cb/120/2009
4	Okresný súd Bratislava II	22Cb/162/2008
5	Okresný súd Bratislava II	24Cb/87/2013
6	Okresný súd Bratislava II	25Cb/176/2014
7	Okresný súd Bratislava II	23Cb 140/2014
8	Okresný súd Bratislava II	24Cb 176/2014
9	Okresný súd Bratislava II	24Cb 167/2015
10	Okresný súd Bratislava II	25Cb 253/2015
11	Okresný súd Bratislava II	42Cb/309/2015
12	Okresný súd Bratislava II	23Cb/162/2008
13	Okresný súd Bratislava II	23Cb/163/2008
14	Okresný súd Bratislava IV	12Cb/161/2014
15	Okresný súd Bratislava IV	10Cb/299/2014