Loan Agreement

dated \_October 27 2023\_\_

between

**KfW, Frankfurt am Main**

**("KfW")**

and

**Republic of Serbia**

**("Borrower")**

represented by the Government of the Republic of Serbia by and through the Ministry of Finance

for

**EUR 20,000,000.00**

**- Development of the Biomass Market in the Republic of Serbia (second component) -**

**ID: 31347**

**BMZ-No. 201968395**

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PREAMBLE

The basis for this loan agreement between KfW and the Borrower (**"Loan Agreement"**) is the Summary Record of the Negotiations on Development Cooperation between the Government of the Federal Republic of Germany and the Government of the Republic of Serbia held in Berlin on 19/20 November 2019.

KfW will refinance the Loan granted in accordance with the conditions of this Loan Agreement with interest subsidies from low-interest budget funds provided by the Federal Republic of Germany for projects that meet development-policy eligibility criteria. The terms and conditions of the Loan comply with the OECD requirements applicable on the date of signing of the Loan Agreement for recognition as Official Development Assistance (ODA).

To complement the funds provided hereunder, (i) the European Commission has made available additional funds under the Western Balkan Investment Framework (“**WBIF**”) through KfW, (ii) the Delegation of the European Union to the Republic of Serbia through KfW has made available additional funds under the Instrument of Pre-accession Assistance (“**IPA**”) in Serbia and (iii) the Federal Republic of Germany has made available additional funds for accompanying measures. Therefore, KfW and the Borrower intend to enter into (i) a separate grant agreement in an amount of up to EUR 9,000,000.00 for the partial financing of the Program (as defined below) (the “**WBIF Grant Agreement**”), (ii) a separate grant agreement in an amount of up to EUR 925,233.64 for the partial financing of the Program (the “**IPA Grant Agreement**”) and (iii) a separate grant agreement in an amount of up to EUR 2,000,000 for the partial financing of the Program (the “**Grant Agreement**”).

On this basis and under the condition that the Federal Republic of Germany extends a guarantee for the Loan, KfW will grant a Loan in accordance with the terms and conditions of this Loan Agreement.

## Loan

### *Amount.* KfW will extend to the Borrower a Loan not exceeding a total of

**EUR 20,000,000.00** (**"Loan"**)

(In words: twenty million Euro).

### *Purpose.* The Borrower shall channel the Loan in full to selected municipalities (the “**Project-Executing Agencies**” and each a “**Project-Executing Agency**”) in accordance with the conditions set forth in Article 2. The Borrower shall ensure that each Project-Executing Agency will use the Loan exclusively for financing the construction and conversion of district heating systems based on renewable energy sources and related associated measures ("**Program**"). The Borrower, in this respect represented by the Ministry of Mining and Energy, acting as the Program coordinating agency (the "**Program Coordinating Agency**”), and KfW will determine the details of the Program and the supplies and services to be financed from the Loan by a separate agreement ("**Separate Agreement**”).

### *Taxes, charges, customs duties.* Taxes and other public charges owed by the Borrower as well as customs duties will not be financed from the Loan. In addition to the foregoing, the goods and services imported into the Republic of Serbia for the Program shall be exempted from customs fees and the trade of goods, services, and equipment for the Program shall be exempted from value added tax.

## Channelling of the Loan

### *Channelling of the Loan to the Project-Executing Agencies.* The Borrower shall channel the Loan in full to the Project-Executing Agencies under separate channelling agreements (the “**Trilateral Agreements**”) and to be entered between, *inter alios*,the Borrower, represented by the Program Coordinating Agency, the relevant Project-Executing Agencies and their corresponding district heating companies. It is hereby understood that payments in connection with the Trilateral Agreements shall be made directly to the respective contractors which have been selected in accordance with the provisions set out in this Loan Agreement and in the Separate Agreement. The terms and conditions of such Trilateral Agreements shall be at least as favorable as the terms and conditions set out in Articles 5.1 hereof and provide a term of 20 years.

### *Certified translation.* Prior to the first disbursement of the Loan, the Borrower, through the Program Coordinating Agency, shall furnish to KfW a certified English translation of all Trilateral Agreements entered into prior to the first disbursement of the Loan (the “**First Disbursement Trilateral Agreements**”). Provided that the Borrower, represented by the Program Coordinating Agency, and a Project-Executing Agency has entered into a Trilateral Agreement other than the First Disbursement Trilateral Agreement, the Borrower, through the Program Coordinating Agency, shall furnish to KfW a copy of such Trilateral Agreement prior to any further disbursement of the Loan.

### *No liability of the Project-Executing Agencies.* The channelling of the Loan shall not constitute any liability of the Project-Executing Agencies to KfW for any payment obligations under this Loan Agreement.

## Disbursement

### *Requesting disbursements.* As soon as all conditions precedent to disbursement pursuant to Article ‎3.3 (*Conditions precedent to disbursement*) hereof are fulfilled, KfW will disburse the Loan in accordance with the progress of the Program and upon request of the Borrower, in this respect represented by the Program Coordinating Agency, which request is irrevocable. Disbursements will be made in accordance with the Disbursement Schedule contained in ‎Annex 1 (*Disbursement Schedule*) to this Loan Agreement. KfW will make disbursements only up to the maximum amounts determined for each disbursement period specified in ‎Annex 1. To the extent the Borrower, in this respect represented by the Program Coordinating Agency¸ requests disbursement of lower amounts within any such period the undisbursed amounts may be requested in any of the next ensuing periods. With the exception of the last disbursement, KfW is not obligated to make disbursements of less than EUR 300,000.00.

### *Deadline for requesting disbursements.* KfW has the right to refuse to make disbursements after 30 December 2029. KfW and the Borrower may agree on an extension of this deadline in writing by way of an exchange of letters.

### *Conditions precedent to disbursement.* KfW is obligated to make disbursements under this Loan Agreement only if the following conditions precedent have been fulfilled in a manner satisfactory to KfW in form and substance:

1. The Borrower will have demonstrated to the satisfaction of KfW, by presenting a legal opinion the content of which is essentially in conformity with the specimen in Annex 2 (*Form of Legal Opinion of the Ministry of Justice of the Republic of Serbia*) hereof and by presenting certified copies (each with an official translation into the language of this Loan Agreement) of all documents to which such legal opinion refers, that the Loan Agreement is legally effective and enforceable and, in particular, that
   1. the Borrower has met all requirements under its constitutional law and other applicable legal provisions for the valid assumption of all its obligations under this Loan Agreement, and
   2. KfW is exempted from all taxes on income from interest earnings and all levies, commissions and similar costs in the Republic of Serbia when granting the Loan;
2. KfW is in possession of an original of this Loan Agreement and the Separate Agreement, each signed with legally binding force;
3. the specimen signatures mentioned in Article ‎13.1 (*Representation of the Borrower*) hereof have been received by KfW;
4. the guarantee from the Federal Republic of Germany mentioned in Article ‎8 (*Guarantee from the Federal Republic of Germany*) is in force and effect without any restriction. KfW will inform the Borrower once such guarantee is in full force and effect. The form of confirmation letter to be provided by KfW is attached as Annex 3 to this Loan Agreement;
5. the Borrower has paid the Management Fee set forth in Article ‎4.2 (*Management Fee*) hereof;
6. no reason for termination has occurred, nor has an incident occurred that would become a cause for termination by notification or expiration or ascertainment or fulfilment of a condition (potential reason for termination);
7. no extraordinary circumstances have arisen that preclude or seriously jeopardise the implementation, the operation, or the purpose of the Program or the performance of the payment obligations assumed by the Borrower under this Loan Agreement; and
8. KfW has received a certified English translation of the First Disbursement Trilateral Agreements in accordance with Article 2.2 hereof prior to the first disbursement and a copy of any further Trilateral Agreements in accordance with Article 2.2 hereof prior to any further disbursements.

KfW has the right prior to any disbursement from the Loan to demand such further documents and evidence as it deems necessary at its discretion (acting reasonably in accordance with regulations and policies applicable to KfW and/or international banking practise) to ascertain the conditions precedent for disbursement specified in this section.

### *Details of the disbursement procedure.* The Borrower, in this respect represented by the Program Coordinating Agency, and KfW will determine the details of the disbursement procedure by the Separate Agreement and, in particular, the evidence that has to be furnished by the Borrower documenting that the requested Loan amounts are being used for the agreed purpose.

### *Right to cancel disbursements*. Subject to the fulfilment of its obligations under Article ‎11 (*Special obligations*) hereof the Borrower may waive the disbursement of undisbursed Loan amounts with the prior consent of KfW against payment of a Non-Utilisation Fee pursuant to and as defined in Article ‎3.6 (*Non-Utilisation Fee*) hereof.

### *Non-Utilisation Fee.* If the Borrower cancels the disbursement of a Loan amount for which an interest rate has already been determined pursuant to Article ‎3.5 (*Right to cancel disbursements*) hereof, or if such Loan amount is not disbursed at all or is not disbursed by the deadline stated in Article ‎3.2 (*Deadline for requesting disbursements*) hereof, the Borrower will promptly pay to KfW upon its request such amount as is necessary to compensate KfW for any losses, expenses or costs incurred by KfW as a result of the non-disbursement of the Loan amount (**"Non-Utilisation Fee"**), unless such non-disbursement constitutes a breach of this Loan Agreement by KfW. KfW will calculate the amount of the Non-Utilisation Fee and communicate it to the Borrower. The Non-Utilisation Fee shall be determined as if no interest subsidies had been provided by the Federal Republic of Germany for the Program.

## Fees

### *Commitment Fee.* The Borrower will pay a non-refundable commitment fee of 0.25 % per annum (**"Commitment Fee"**) on undisbursed Loan amounts.

The Commitment Fee is due for payment semi-annually in arrears on 30 June and 30 December of each year, for the first time on 30 December 2024, but no earlier than on the respective date following the day on which this Loan Agreement enters into force and effect pursuant to Article ‎15.10 (*Entry into force and effect*) hereof.

The Commitment Fee will be charged if applicable with retroactive effect for the period beginning twelve months after the signing of this Loan Agreement and lasting until the date of disbursement of the Loan in full or, if applicable, until the date of definitive termination of disbursements from the Loan.

### *Management Fee*. The Borrower will pay KfW a non-refundable one-time lump-sum management fee of 0.5 % of the Loan amount stated in Article ‎1.1 (*Amount*) hereof (**"Management Fee"**).

The Management Fee is payable on the earliest of the following two dates: (i) before the first disbursement or (ii) after six months have elapsed since the signing of this Loan Agreement by KfW or after one month has elapsed since the entry into force and effect of this Loan Agreement (whichever of the dates stated under (ii) occurs later). The Management Fee is due for payment as soon as this Loan Agreement has been signed irrespective of whether the Loan is disbursed in full or only in part or at all.

## Interest

### *Fixed Interest Rate set upon disbursement of the Loan*.

1. *Interest rate*. The Borrower will pay interest on each disbursed Loan amount at a rate (**"Fixed Interest Rate"**) determined by KfW within two **Banking Days** (as defined in Article ‎15.1 (*Banking Day*) hereof) prior to the disbursement of the respective Loan amount and which will be composed of:
   1. The swap rate determined on the basis of Reuters page **"ICAPEURO"** or, if this page does not contain the necessary details or is not accessible, on Bloomberg page **"ICAE"** (or on a following page replacing the Reuters or Bloomberg pages stated above). If both pages fail to contain the necessary data or are irretrievable, KfW will determine this rate on the basis of its effective funding costs in the euro capital market for maturities that match the respective fixed interest periods as closely as possible,
   2. plus a margin of **0.60**% per annum that takes into account the grant funds made available by the Government of the Federal Republic of Germany.

If the interest rate calculated in accordance with the foregoing falls below 0 % per annum, the Fixed Interest Rate will be 0 % per annum.

The Fixed Interest Rate thus determined will apply until the last repayment instalment has been received in accordance with the repayment schedule set out in Article ‎6.1 (*Repayment schedule*) hereof.

1. *Consolidation*. If more than one disbursement is made from the Loan KfW will consolidate the interest rates fixed for each Loan amount into a single interest rate after each disbursement. This consolidated Fixed Interest Rate will correspond to the weighted average of the individual interest rates, rounded down to 1/10,000 of one percentage point if the first omitted decimal is lower than 5 or rounded up to 1/10,000 of one percentage point if the first omitted decimal is equal to or greater than 5, and will be the basis for further calculation of interest from the date of each disbursement to the next disbursement. After full disbursement of the Loan the average interest rate thus determined will apply until the last repayment instalment has been received in accordance with the repayment schedule set out in Article ‎6.1 (*Repayment schedule*) hereof.
2. *Notification of the interest rate*. KfW will notify to the Borrower the Fixed Interest Rate set pursuant to Article ‎5.1 a) (*Interest rate*) hereof without delay after it has been fixed. KfW will notify to the Borrower the interest rate consolidated pursuant to Article ‎5.1 b) (*Consolidation*) hereof prior to the next ensuing Payment Date (as defined in Article ‎5.3 (*Payment Dates*) hereof).

### *Interest calculation.* Interest on a disbursed Loan amount will be charged from the date (exclusively) on which the respective Loan amount is disbursed from the Loan account held with KfW for the Borrower until the date (inclusively) on which the respective repayments are credited to KfW's account specified in Article ‎7.3 (*Account number, time of crediting*) hereof. Interest will be calculated in accordance with Article ‎7.1 (*Calculation*) hereof.

### *Payment Dates.* Interest will be due in arrears for payment on the dates specified below (each a **"Payment Date"**):

1. prior to the due date of the first repayment instalment, on 30 June and 30 December of each year but no earlier than on the Payment Date following the day on which this Loan Agreement enters into force and effect pursuant to Article ‎15.10 (*Entry into force and effect*) hereof;
2. on the due date of the first repayment instalment pursuant to Article ‎6.1 (*Repayment schedule*) hereof together with such instalment;
3. thereafter on the due dates of the repayment instalments pursuant to Article ‎6.1 (*Repayment schedule*) hereof.

## Repayment and prepayment

### *Repayment schedule.* The Borrower will repay the Loan as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Instalment** | **Due Date** | **Repayment Instalment** |  |
| 1 | 30 Dec 2028 | 952,000.00 | EUR |
| 2 | 30 Jun 2029 | 952,000.00 | EUR |
| 3 | 30 Dec 2029 | 952,000.00 | EUR |
| 4 | 30 Jun 2030 | 952,000.00 | EUR |
| 5 | 30 Dec 2030 | 952,000.00 | EUR |
| 6 | 30 Jun 2031 | 952,000.00 | EUR |
| 7 | 30 Dec 2031 | 952,000.00 | EUR |
| 8 | 30 Jun 2032 | 952,000.00 | EUR |
| 9 | 30 Dec 2032 | 952,000.00 | EUR |
| 10 | 30 Jun 2033 | 952,000.00 | EUR |
| 11 | 30 Dec 2033 | 952,000.00 | EUR |
| 12 | 30 Jun 2034 | 952,000.00 | EUR |
| 13 | 30 Dec 2034 | 952,000.00 | EUR |
| 14 | 30 Jun 2035 | 953,000.00 | EUR |
| 15 | 30 Dec 2035 | 953,000.00 | EUR |
| 16 | 30 Jun 2036 | 953,000.00 | EUR |
| 17 | 30 Dec 2036 | 953,000.00 | EUR |
| 18 | 30 Jun 2037 | 953,000.00 | EUR |
| 19 | 30 Dec 2037 | 953,000.00 | EUR |
| 20 | 30 Jun 2038 | 953,000.00 | EUR |
| 21 | 30 Dec 2038 | 953,000.00 | EUR |

This Repayment Schedule may be adjusted from time to time in accordance with Article ‎6.5 (*Revised payment schedule*).

### *Undisbursed Loan amounts*. Undisbursed Loan amounts will be offset against the respective last repayment instalment due pursuant to the repayment schedule set forth in Article ‎6.1 (*Repayment schedule*) hereof unless KfW at its own discretion, after prior consultation with the Borrower, chooses another offsetting alternative in individual cases.

### *Repayments in case of incomplete disbursement*. If a repayment instalment is due before the Loan has been disbursed in full, this will not affect the repayment schedule pursuant to Article ‎6.1 (*Repayment schedule*) hereof as long as the repayment instalment due under the repayment schedule is lower than the Loan amount disbursed and not yet repaid (**"Outstanding Loan Amount"**). If the repayment instalment due in accordance with Article ‎6.1 (*Repayment schedule*) hereof exceeds the Outstanding Loan Amount, such repayment instalment will be reduced to the level of the Outstanding Loan Amount and the difference will be allocated evenly to the repayment instalments still outstanding. In computing the Outstanding Loan Amount KfW reserves the right to consider disbursements from the Loan that are made within a period of 45 or fewer days before a Payment Date to determine the Outstanding Loan Amount only for the next ensuing Payment Date.

### *Prepayment*. The following will apply to prepayments:

1. *Right to prepayment*. Subject to the following paragraphs ‎6.4 b) (*Notification*) to ‎6.4 e) (*Offsetting*) hereof, the Borrower has the right to repay Loan amounts before the scheduled due date if this prepayment is at least in the amount of a repayment instalment pursuant to Article ‎6.1 (*Repayment schedule*) hereof.
2. *Notification*. Prepayment of a Loan amount pursuant to Article ‎6.4 a) (*Right to prepayment*) hereof is subject to notification of the prepayment by the Borrower to KfW no later than on the fifteenth Banking Day prior to the intended prepayment date. Such notice is irrevocable; it must specify the date and the amount of the prepayment and obligates the Borrower to pay to KfW the stated amount on the stated date.
3. *Prepayment Fee*. If the Borrower prepays a fixed interest Loan amount, the Borrower will immediately pay to KfW on demand such amount as is necessary to compensate for any losses, expenses or costs incurred by KfW as a result of such prepayment (the **"Prepayment Fee"**). KfW will determine the amount of the Prepayment Fee and communicate it to the Borrower. The Prepayment Fee shall be determined as if no interest subsidies had been provided by the Federal Republic of Germany for the Program. At the request of the Borrower KfW will provide the Borrower with an indication of the amount of the Prepayment Fee prior to the required irrevocable notification of the repayment pursuant to Article ‎6.4 b) (*Notification*) hereof.
4. *Amounts due*. Together with the prepayment pursuant to Article ‎6.4 a) (*Right to prepayment*) hereof, the Borrower will pay the following amounts:
   1. any Prepayment Fee due as a result of the prepayment pursuant to Article ‎6.4 c) (*Prepayment Fee*) hereof; and
   2. all interest accrued on the prepaid Loan amount and any other payments still outstanding under this Loan Agreement that have accrued until the date of the prepayment.
5. *Offsetting*. Article ‎6.2 (*Undisbursed Loan amounts*) hereof will apply *mutatis mutandis* to the offsetting of prepayments.

### *Revised repayment schedule.* In case of any application pursuant to Article ‎6.3 (*Repayments in case of incomplete disbursement*) or Article ‎6.4 (*Prepayment*), KfW shall send the Borrower a revised repayment schedule which shall form an integral part of this Loan Agreement and replace any repayment schedule applicable at the time of such replacement after the last disbursement under the Loan by KfW.

## Calculations and payments in general

### *Calculation*. Interest, the Commitment Fee, default interest pursuant to Article ‎7.5 (*Default interest*) hereof, lump-sum compensation payments for overdue amounts pursuant to Article ‎7.6 (*Lump-sum compensation*) hereof, Non-Utilisation Fee and Prepayment Fee will be calculated on the basis of a 360-day year with thirty-day months.

### *Due date.* If a payment to be made in connection with this Loan Agreement falls due on a date that is not a Banking Day, the Borrower must make such payment on the following Banking Day. If the following Banking Day falls within the next calendar month, such payment must be made on the last Banking Day of the current calendar month.

### *Account number, time of crediting*. The Borrower will be released from its payment obligations in connection with this Loan Agreement if and to the extent that the respective amounts have been credited to KfW at its free disposal without any deductions in euros and no later than at 10.00 a.m. in Frankfurt am Main, Federal Republic of Germany, to KfW's account in Frankfurt am Main, Federal Republic of Germany, number IBAN DE92 5002 0400 3122 3012 32, stating the due date as an additional reference ("Ref. YYYYMMDD").

### *Counterclaims of the Borrower.* The Borrower is not entitled to assert any rights of retention or set-off or comparable rights against payment obligations under this Loan Agreement unless such rights are recognised by declaratory judgment or are not being contested by KfW.

### *Default interest.* If any repayment instalments or prepayments pursuant to Article ‎6.4 (*Prepayment*) hereof are not at the disposal of KfW when due, KfW may without prior reminder charge default interest at the rate of 200 basis points above the interest rate *per annum* set out in Article 5 (*Interest*) hereof for the period beginning on the due date and ending on the date on which such payments are credited to the account of KfW specified in Article ‎7.3 (*Account number, time of crediting*) hereof. Such default interest must be paid immediately upon KfW's first demand.

### *Lump-sum compensation.* KfW may without prior reminder request lump-sum compensation on overdue amounts (with the exception of the repayment instalments and prepayments mentioned in Article ‎7.5 (*Default interest*) hereof) from the due date until the date of payment at a rate of 200 basis points above the Fixed Interest Rate *per annum* pursuant to Article 5 (*Interest*) hereof.The lump-sum compensation must be paid immediately upon KfW's first demand. The Borrower is free to demonstrate that no damages have occurred or that the damages were less than the lump-sum compensation.

### *Offsetting.* KfW has the right to offset payments received against payments due under this Loan Agreement.

### *Calculations made by KfW.* Absent manifest errors, the values calculated by KfW and calculations performed by KfW of amounts due in connection with this Loan Agreement constitute prima-facie evidence (*Anscheinsbeweis*).

## Guarantee from the Federal Republic of Germany

KfW will have payment claims under this Loan Agreement guaranteed by the Federal Republic of Germany prior to the first disbursement.

## Illegality

If, in any applicable jurisdiction, it becomes unlawful for KfW to perform any of its obligations as contemplated by this Loan Agreement or to fund or maintain the Loan, upon KfW notifying the Borrower

1. the commitment of KfW will be immediately cancelled, and
2. the Borrower shall repay the Loan in full on the date specified by KfW in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

For the avoidance of doubt, any cancellation hereunder will be subject to Article ‎3.6 (*Non-Utilisation Fee*) and any repayment of the Loan hereunder constitutes a prepayment and will be subject to the provisions set out in Article ‎6.4 c) (*Prepayment Fee*) and d) (*Amounts due*).

## Costs and public charges

### *No deductions or withholdings.* The Borrower will make all payments under this Loan Agreement without any deductions for taxes, other public charges or other costs. In the event that the Borrower is obligated by law or for other reasons to make any such deductions or withholdings on payments, the payments made by the Borrower will increase by such amount as necessary for KfW to receive in full the amounts due under this Loan Agreement after deduction of taxes and charges.

### *Costs.* The Borrower will bear all costs and expenses accruing in connection with the disbursement and repayment of the Loan, in particular remittance and transfer costs (including conversion fees), as well as all costs and expenses accruing in connection with the maintenance or enforcement of this Loan Agreement and of any other document related to this Loan Agreement as well as of all rights resulting therefrom.

### *Taxes and other charges.* The Borrower will bear all taxes and other public charges accruing outside the Federal Republic of Germany in connection with the conclusion and execution of this Loan Agreement. If KfW advances such taxes or charges, the Borrower will transfer them without delay upon request to KfW's account specified in Article ‎7.3 (*Account number, time of crediting*) hereof or to such other account as specified by KfW.

## Special obligations

### *Program implementation and special information.* The Borrower will itself, in this respect represented by the Program Coordinating Agency, and will ensure that the Project-Executing Agencies will:

1. prepare, implement, operate and maintain the Program in conformity with sound financial and technical practices, in compliance with environmental and social standards and substantially in accordance with the Program conception agreed upon between the Borrower and KfW;
2. assign the preparation and supervision of construction of the Program to independent, qualified consulting engineers or consultants, and the implementation of the Program to qualified firms;
3. at all times comply with the procurement provisions stipulated in the Separate Agreement including, the respective procurement plan;
4. ensure the full financing of the Program and furnish to KfW upon its request evidence proving that the costs not paid from this Loan are covered;
5. keep books and records or have books and records kept that unequivocally show all costs of goods and services required for the Program and clearly identify the goods and services financed from this Loan;
6. enable KfW and its agents at any time to inspect such books and records and any and all other documentation relevant to the implementation and operation of the Program, and to visit the Program and all the installations related thereto;
7. furnish to KfW any and all such information and records on the Program and its further progress as KfW may request;
8. immediately and on its own initiative,
   1. forward to KfW any queries received by the Borrower from the OECD or its members under the so-called "Agreement for Untied ODA Credits Transparency" following the award of the contracts for the supplies and services to be financed from the Loan and will coordinate the reply to any such queries with KfW, and
   2. notify KfW of any and all circumstances that preclude or seriously jeopardise the implementation, the operation or the purpose of the Program.

### *Details of Program implementation*. The Borrower, in this respect represented by the Program Coordinating Agency, and KfW will determine the details pertaining to Article ‎11.1 (*Program implementation and special information*) hereof by the Separate Agreement.

### *Compliance Undertaking.* The Borrower, in this respect represented by the Program Coordinating Agency, undertakes to comply at all times with the obligations set out in the Separate Agreement and will ensure that each Project-Executing Agency complies at all times with the corresponding obligations set out in the Separate Agreement (*Compliance Covenants*).

### *Assistance.* The Borrower will assist each Project-Executing Agency in conformity with sound engineering and financial practices in the implementation of the Program and in the performance of its obligations under the Separate Agreement and, in particular, grant each Project-Executing Agency any and all permissions necessary for the implementation of the Program in line with the laws of the Republic of Serbia*.*

### *Pari passu ranking.* The Borrower warrants and represents that its obligations under this Loan Agreement rank and will be serviced at least pari passu with all other unsecured and not subordinated payment obligations, and the Borrower will ensure to the extent permitted by law that this ranking is also assured for all future unsecured and not subordinated payment.

### *Sale of assets.* Without KfW’s prior consent, the Borrower itself will not and will ensure that the Project-Executing Agencies will not sell any Program assets in their entirety or parts thereof before repayment of the Loan in full.

## Termination of the Loan Agreement

### *Reasons for termination.* KfW may exercise the rights set out in Article ‎12.2 (*Legal consequences of the occurrence of a cause for termination*)hereof if a circumstance arises that constitutes good cause (*Wichtiger Grund*). These include, in particular, the following circumstances:

1. the Borrower fails to perform payment obligations to KfW when due;
2. obligations under this Loan Agreement or under the Separate Agreement as well as any other legally binding additional agreements to this Loan Agreement are violated;
3. this Loan Agreement or any part thereof no longer has a binding effect upon the Borrower or can no longer be enforced against the Borrower;
4. any declaration, confirmation, information, representation or warranty considered by KfW to be essential for the granting and maintaining of the Loan proves to be false, misleading or incomplete;
5. other extraordinary circumstances occur which delay or preclude the performance of obligations under this Loan Agreement;
6. the Borrower is unable to prove that the Loan amounts have been used for the stipulated purpose;
7. the Borrower discontinues its payments to creditors, is insolvent or commences negotiations with one or more of the Borrower's creditors on a moratorium, waiver of debts outstanding, deferment of payments or discontinuation of the debt service; or
8. an event has occurred based on which KfW has the right to request the repayment of the grant provided under the WBIF Grant Agreement, the IPA Grant Agreement or the Grant Agreement or to suspend disbursements thereunder.

### *Legal consequences of the occurrence of a cause for termination.* If one of the events mentioned in Article ‎12.1 (*Reasons for termination*) hereof has occurred, KfW may immediately suspend disbursements under this Loan Agreement. If this event is not resolved within a period of five days (in the case of Article ‎12.1 a) hereof) or in all other cases of Article ‎12.1 (*Reasons for termination*) hereof within a period determined by KfW which, however, shall be at least 30 days, KfW may cancel this Loan Agreement in whole or in part with the consequence that its obligations under this Loan Agreement cease and KfW may demand the immediate repayment of all or part of the Outstanding Loan Amount together with the interest accrued and the remaining amounts owed under this Loan Agreement. Articles ‎7.5 (*Default interest*) and ‎7.6 (*Lump-sum compensation*) hereof apply to accelerated amounts mutatis mutandis.

### *Compensation for damages.* If this Loan Agreement is terminated in full or in part the Borrower will pay Non-Utilisation Fee in accordance with Article ‎3.6 (*Non-Utilisation Fee*) and/or Prepayment Fee in accordance with Article ‎6.4 c) (*Prepayment Fee*)*.*

## Representation and statements

### *Representation of the Borrower.* The Minister of Finance and such persons as designated by him or her to KfW and authorised by specimen signatures authenticated by him or her will represent the Borrower in the execution of this Loan Agreement. The Minister of Mining and Energy and such persons as designated by him or her to KfW and authorised by specimen signatures authenticated by him or her will represent the Borrower in the implementation of the Program and this Loan Agreement.The powers of representation will not expire until their express revocation by the representative of the Borrower authorised at such time has been received by KfW.

### *Addresses:* Declarations or notifications in connection with this Loan Agreement must be in writing. They must be sent as originals or – with the exception of requests for disbursement - via facsimile. Any and all declarations or notifications made in connection with this Loan Agreement must be sent to the following addresses:

**For KfW:** KfW

Postfach 11 11 41

60046 Frankfurt am Main

Germany

Fax: +49 69 7431-2944

**For the Borrower:** Ministry of Finance

Kneza Milosa 20

11000 Belgrade

Republic of Serbia

Fax: +381-11-3618-961

**Program Coordinating**

**Agency:** Ministry of Mining and Energy

Kralja Milana 36

11000 Belgrade

Republic of Serbia

Fax: +381 11 3346 755

## Publication and transfer of program-related information

### *Publication of program-related information by KfW.* To comply with internationally accepted principles of utmost transparency and efficiency in the development cooperation, KfW publishes selected information (including results of environmental and social categorization and assessment as well as ex post evaluation reports) about the Program and its financing during pre-contractual negotiations, while the Program-related agreement(s) is (are) being implemented and in the post-contractual stage (hereinafter referred to as the **"Entire Period"**).

The information is published regularly on the website of KfW Development Bank ([https://www.kfw.de/microsites/Microsite/transparenz.kfw.de/#/start](https://www.kfw.de/microsites/Microsite/transparenz.kfw.de/" \l "/start)).

The publication of information (either by KfW or third parties in accordance with Article ‎14.3 (*Transfer of program related information to third parties and publication by these*) below) about the Program and its financing does not include any contractual documentation or any sensitive financial or business-related detailed information about the parties involved in the Program or its financing, such as

1. information about internal financial data;
2. business strategies;
3. internal corporate guidelines and reports;
4. personal data of natural persons;
5. KfW's internal rating of the parties’ financial position.

### *Transfer of program-related information to third parties*. KfW shares selected information about the Program and its financing during the Entire Period with the entities mentioned below, particularly to ensure transparency and efficiency:

1. subsidiaries of KfW;
2. the Federal Republic of Germany and its competent bodies, authorities, institutions, agencies or entities;
3. other implementing organisations involved in German bilateral development cooperation, particularly the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH;
4. international organisations involved in collecting statistical data and their members, especially the Organisation for Economic Cooperation and Development (OECD), the Paris Club and their respective members (including, for the avoidance of doubt, the participants and observers of the Paris Club);
5. the parties to the general conditions of the European Western Balkan Joint Fund (“**EWBJF**”);
6. the institutions administering the EWBJF and the WBIF contributors;
7. the European Union and its competent institutions; and
8. any Project-Executing Agency.

### *Transfer of program related information to third parties and publication by these*. Furthermore, the Federal Republic of Germany has requested KfW to share selected information about the Program and its financing throughout the Entire Period with the following entities, which publish the sections relevant to the purpose:

1. Federal Republic of Germany for the purposes of the International Aid Transparency Initiative (<https://www.bmz.de/en/ministry/facts-figures/project-and-organisation-data>);
2. Germany Trade & Invest (GTAI) for the purposes of market information [(http://www.gtai.de/GTAI/Navigation/DE/welcome.html](https://www.gtai.de/de/trade));
3. OECD for the purpose of reporting financial flows in the framework of development cooperation (<https://www.oecd.org/>);
4. German Institute for Development Evaluation (DEval) for the purposes of evaluating the overall German development cooperation to ensure transparency and efficiency (<https://www.deval.org/en/>);
5. the parties to the general conditions of the EWBJF;
6. the institutions administering the EWBJF and the WBIF contributors and
7. the European Union and its competent institutions.

### *Transfer of program-related information to other third parties* (*including publication by these*). KfW further reserves the right to transfer (including for the purposes of publication) information about the Program and its financing during the Entire Period to other third parties so as to safeguard legitimate interests.

The information is not transferred by KfW to other third parties if the legitimate interests of the Borrower in the information not being transferred outweigh KfW's interests in it being transferred. The legitimate interests of the Borrower particularly include the confidentiality of the sensitive information mentioned in Article ‎14.1 (*Publication of program-related information by KfW*), which is excluded from publication.

Furthermore, KfW is entitled to transfer information to third parties if this is necessary due to statutory or regulatory requirements or to assert or defend claims or other legal rights in court or administrative proceedings.

## General provisions

### *Banking Day.* **"Banking Day"** means each day (other than a Saturday or Sunday), on which commercial banks are open for general business in Frankfurt am Main, Germany; provided that for the purposes of defining any repayment date and Payment Date in relation to a Loan provided hereunder and for determining any dates for disbursement or other payments thereunder, such day must in addition be a TARGET Day.

**"TARGET Day"**means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer System (TARGET) is open for payments.

### *Place of performance.*The place of performance for all obligations under this Loan Agreement is Frankfurt am Main, Federal Republic of Germany.

### *Partial invalidity and gaps.* If any provision of this Loan Agreement is or becomes invalid, or if there is a gap in any of the provisions of this Loan Agreement, this will not affect the validity of the remaining provisions hereof. The parties to this Loan Agreement will replace any invalid provision by a legally valid one which comes as close as possible to the spirit and purpose of the invalid provision. The parties will fill any gap in the provisions with a legally valid provision which comes as close as possible to the spirit and purpose of this Loan Agreement.

### *Written form.* Any addenda and amendments to this Loan Agreement must be in writing. The parties may waive the written form requirement only in writing.

### *Assignment.* The Borrower may not assign or transfer, pledge or mortgage any claims from this Loan Agreement.

### *Applicable law.* This Loan Agreement is governed by German law.

### *Limitation period.* All claims of KfW under this Loan Agreement expire after five years from the end of the year in which such claim has arisen and in which KfW has become aware of the circumstances constituting such claim or could have become aware of them without gross negligence.

### *Waiver of immunity.* If and to the extent that the Borrower may now or in future in any jurisdiction claim immunity for itself or its assets and to the extent that a jurisdiction grants immunity to the Borrower and its assets from suit, execution, attachment or other legal process, the Borrower irrevocably agrees to waive such immunity for claims from and in connection with this Loan Agreement to the fullest extent permitted by the laws of such jurisdiction. Foregoing waiver of immunity shall not apply to property which is (i) used by diplomatic, consular, special missions and missions of international organizations or of international conferences of the Borrower's Country or (ii) of a military character and under the control of a military authority.

### *Legal disputes.*

*Arbitration*. All disputes arising out of or in connection with this Loan Agreement will be settled exclusively and finally by an arbitration tribunal. In this regard, the following will apply:

* 1. The arbitration tribunal will consist of one or three arbitrators who will be appointed and will act in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) applicable from time to time.
  2. The arbitration proceeding will be conducted in Frankfurt am Main. The language of the proceeding will be English.

### *Entry into force and effect.* This Loan Agreement will not enter into force and effect until

1. it has been ratified by the National Assembly of the Republic of Serbia; and
2. the Borrower has provided KfW with a written confirmation that the Loan Agreement has been duly ratified and published according to applicable law.

### Should the Loan Agreement not have entered into force and effect within twelve months following the date the last party has signed this Loan Agreement, KfW may, as of the day following the end of the twelve months period until the date of entry into force, unilaterally withdraw from this Loan Agreement and thus terminate its provisional ineffectiveness by sending a written notification to the Borrower. In this event the Borrower will pay a non-utilisation fee in accordance with Article 3.6 (*Non-Utilisation Fee*).

### *Information concerning Article 15.10.* KfW will send the Borrower a letter in form and substance similar to the letter set out in Annex 4 to the Loan Agreement.

Done in 4 (four) originals in the English language.

|  |  |  |
| --- | --- | --- |
| Frankfurt am Main,  this 27 day of \_\_October\_\_\_2023 |  | Belgrade,  this 27 day of \_\_October\_\_\_2023 |
| **KfW** |  | **For the Republic of Serbia** |
|  |  |  |
|  |  |  |
| Signature |  | Signature |
|  |  |  |
| Arne Gooss |  | Siniša Mali |
| Name: |  | Name: |
| (in clear script) |  | (in clear script) |
| Head of Municipal & Infrastructure Division |  | Deputy Prime Minister and |
| Title: Southeast Europe & Turkey |  | Title: Minister of Finance |
| (in clear script) |  | (in clear script) |
|  |  |  |
| Second signature KfW |  |  |
|  |  |  |
|  |  |  |
| Signature |  |  |
|  |  |  |
| HARTMANN |  |  |
| Name: |  |  |
| (in clear script) |  |  |
| DIRECTOR AT KfW |  |  |
| Title:  (in clear script) |  |  |

# Disbursement schedule

**Fastest possible Disbursement Schedule**

Until the end of each disbursement period (**"Effective Date of End of Period"** in accordance with the list below) the Borrower may request disbursements only up to a level that does not exceed the cumulative sum of disbursements specified in the following table.

|  |  |  |  |
| --- | --- | --- | --- |
| **Period** | **Effective Date of Beginn of Period (incl.)** | **Effective Date of End of Period (excl.)** | **Maximum amount that may be disbursed up to the end of the period (cumulative)**  (all figures in EURO ) |
| 1 | 30.06.2024 | 30.12.2024 | 200,000.00 |
| 2 | 30.12.2024 | 30.06.2025 | 2,500,000.00 |
| 3 | 30.06.2025 | 30.12.2025 | 4,800,000.00 |
| 4 | 30.12.2025 | 30.06.2026 | 7,300,000.00 |
| 5 | 30.06.2026 | 30.12.2026 | 9,800,000.00 |
| 6 | 30.12.2026 | 30.06.2027 | 12,300,000.00 |
| 7 | 30.06.2027 | 30.12.2027 | 14,800,000.00 |
| 8 | 30.12.2027 | 30.06.2028 | 16,800,000.00 |
| 9 | 30.06.2028 | 30.12.2028 | 18,800,000.00 |
| 10 | 30.12.2028 | End of disbursement period | 20,000,000.00 |

# Form of Legal Opinion of the Ministry of Justice of the Republic of Serbia

***Note:*** *Please amend "Republic of COUNTRY"/"COUNTRY" appropriately.*

*[Letterhead of Legal Adviser]*

KfW

Department [     ] (date)

Attn: [                    ]

Palmengartenstrasse 5 - 9

Postfach 11 11 41

60325 Frankfurt am Main/Germany

Federal Republic of Germany

**Loan Agreement for the Program: Development of the Biomass Market in the Republic of Serbia (second component) (BMZ-No. 201968395, Loan ID: 31347) dated                 and made between KfW and [                    ] ("Borrower") for an amount not exceeding in aggregate EUR    .000.000,--.**

Dear Sirs,

I am [Minister of Justice of] [legal adviser to] [head of the legal department of the                 *(please specify ministry or other authority)* of] the Republic of *Serbia*. I have acted in that capacity in connection with a loan agreement, dated       (the "Loan Agreement"), and made between the Borrower and yourselves with respect to a loan to be granted by yourselves to the Borrower in an amount not exceeding in aggregate EUR    .000.000,--.

1. Documents examined

I have examined:

1.1 an authentic signed original of the Loan Agreement;

1.2 the constitutional documents of the Borrower, in particular:

(a) the Constitution of the Republic of *Serbia*, dated           , duly published in           , No      , page      , as amended;

(b) Law(s) No       dated           , duly published in           , No      , page      , as amended *[please insert here, if existing, laws (e.g. budget laws) concerning the borrowing of money by the Republic of Serbia]*;

(c)                      *[please refer here to other documents, e.g. decrees or resolutions by governmental or administrative bodies of Serbia relating to the conclusion of loan agreements by Serbia in general or with regard to the conclusion of the Loan Agreement]*

and such other laws, regulations, certificates, records, registrations and documents as I have deemed necessary or desirable to examine. In addition, I have made such investigations as I have deemed necessary or desirable for the purpose of giving this opinion.

2. Opinion

For the purposes of Article       of the Loan Agreement, I am of the opinion that under the laws of the Republic of *Serbia* at the date hereof:

2.1 According to Article       of the Constitution / Article       of the law on                 *[please specify as appropriate]* the Borrower is entitled to enter into the Loan Agreement and has taken all necessary action to authorise the execution, delivery and performance of the Loan Agreement, in particular by virtue of:

(a) Law(s) No(s)            dated            of the parliament of the Republic of *Serbia*, ratifying the Loan Agreement / approving the execution, delivery and performance of the Loan Agreement by the Borrower /                      *[please insert as appropriate]*;

(b) Resolution(s) No(s)            dated            of the Cabinet of Ministers / of the state loan committee /                           *[please insert governmental or administrative bodies of Serbia as appropriate]*;

(c)                 [please refer to other resolutions, decisions etc.].

2.2 Ms./Mr.                      (and Ms./Mr.                     ) is (are) duly authorised by                      *[e.g. by law due to her / his position (as Minister of           / as           ), by government resolution                , by power of attorney of                 dated           , etc.]* to sign solely / jointly the Loan Agreement on behalf of the Borrower. The Loan Agreement as signed by Ms./Mr.                    (and Ms./Mr.                     ) has been duly executed on behalf of the Borrower and constitutes legally binding obligations of the Borrower enforceable against it at law in accordance with its terms.

*[****Alternative 1*** *for Section 2.3, to be used if in addition to the documents specified in Section 2.1 and 2.2 certain official authorisations etc. must be obtained under the laws of the Republic of Serbia:]*

2.3 For the execution and performance of the Loan Agreement by the Borrower (including without limitation the obtaining and transfer to KfW of all amounts due thereunder in the currencies specified therein), the following official approvals, authorisations, licenses, registrations and / or consents have been obtained and are in full force and effect:

(a) Approval of the                      [Central Bank / National Bank /                     ], dated           , No           ;

(b) Consent of the                      [Minister / Ministry of                 ], dated           , No           ; and

(c)                      *[please list any other official authorisations, licenses and / or consents]*.

No other official authorisations, consents, licenses, registrations and / or approvals of any governmental authority or agency (including the Central / National Bank of the Republic of *Serbia*) or court are required or advisable in connection with the execution and performance of the Loan Agreement by the Borrower (including without limitation the obtaining and transfer to KfW of all amounts due thereunder in the currencies specified therein) and the validity and enforceability of the Borrower’s obligations under the Loan Agreement.

*[****Alternative 2*** *for Section 2.3, to be used only if in addition to the documents specified in Section 2.1 and 2.2* ***no*** *official authorisations etc. must be obtained under the laws of the Republic of Serbia:]*

2.3 No official authorisations, consents, licenses, registrations and / or approvals of any governmental authority or agency (including the Central / National Bank of the Republic of *Serbia*) or court are required or advisable in connection with the execution and performance of the Loan Agreement by the Borrower (including without limitation the obtaining and transfer to KfW of all amounts due thereunder in the currencies specified therein) and the validity and enforceability of the Borrower's obligations under the Loan Agreement.

2.4 No stamp tax or similar tax or duty has to be paid in connection with the validity or enforceability of the Loan Agreement.

2.5 The choice of German law to govern the Loan Agreement and the submission to arbitration in accordance with Article       of the Loan Agreement are valid and binding. Arbitration awards against the Borrower will be recognised and enforceable in the Republic of *Serbia* according to the following rules:                      *[please insert applicable treaty (if any), e.g. the 1958 New York Convention, and / or the basic principles regarding recognition and enforcement of arbitration awards in Serbia]*.

2.6 The courts of the Republic of *Serbia* are at liberty to give judgment de-nominated in the currency or currencies specified in the Loan Agreement.

2.7 The borrowing by the Borrower under the Loan Agreement and the execution and performance by the Borrower of the Loan Agreement constitute private and commercial acts and not governmental or public acts. Neither the Borrower nor any of its property (with the exception of property to which the waiver of immunity does not apply in accordance with Article [ ] of the Loan Agreement) has any right of immunity from arbitration, suit, execution, attachment or other legal process.

2.8 Pursuant to the                                 *[please specify treaty or applicable laws and regulations]* / the Borrower will not be required to make any deduction or withholding from any payment the Borrower has to make under the Loan Agreement and should any such deduction or withholding be subsequently imposed, the provisions of Article       of the Loan Agreement shall operate so as to require the Borrower to indemnify KfW accordingly.

2.9 KfW is not and will not be deemed to be resident, domiciled, carrying on business or be subject to taxation in the Republic of *Serbia* by reason only of the execution, performance or enforcement of the Loan Agreement. It is not necessary or advisable that KfW be licensed, qualified or otherwise entitled to carry on business or that KfW appoints agents or representatives in the Republic of *Serbia*.

Consequently, the obligations of the Borrower under the Loan Agreement constitute direct and unconditional, legal, valid and binding obligations of the Borrower which are enforceable against the Borrower in accordance with their respective terms.

This legal opinion is limited to the laws of the Republic of *Serbia*.

                    ,           

(Place) (Date)

*[Signature]*

Name:

Enclosures:

**Note: Please attach certified photocopies of the documents and legal provisions referred to above (with respect to lengthy laws or the Constitution of the Republic of *Serbia*, a copy of the relevant provisions would be sufficient) and also provide KfW with an official English or German translation of each of the above documents unless such document is issued in English or German as an official language or unless KfW has indicated that another language is satisfactory.**

# Confirmation letter from KfW regarding the German Government Guarantee

**Financial Cooperation between the Republic of Serbia and the Federal Republic of Germany**

Program: Development of the Biomass Market in the Republic of Serbia (second component)

Guarantee of the Federal Republic of Germany for the Loan

Dear Sirs,

We herewith confirm that we have received the Guarantee of the Federal Republic of Germany for the Loan as stipulated in the Loan Agreement dated \_\_\_\_\_\_\_\_\_\_\_ for the Program Development of the Biomass Market in the Republic of Serbia (second component).

Yours sincerely,

KfW

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Information concerning Article 15.10

[*Insert address MoF*]

Financial Cooperation between the Republic of Serbia and the Federal Republic of Germany

Loan Agreement (No XXXXX) amounting to EUR 20 million between KfW and the Republic of Serbia for the Program “Development of the Biomass Market in the Republic of Serbia (second component)” (BMZ-No. 201968395), signed on \_\_\_\_\_\_ 2023 (the “Loan Agreement”)

Dear Madam or Sir,

Reference is made to the Loan Agreement and your request to receive a confirmation from KfW regarding the entry into force of the Loan Agreement.

We herewith would like to confirm receipt of your confirmation on ratification dated \_\_\_\_\_\_\_\_\_\_\_\_ in accordance with Article 15.10 b) of the Loan Agreement.

To our positive knowledge, the requirements for the entry into force of the Loan Agreement as set out in Article 15.10 of the Loan Agreement have been fulfilled**[[1]](#footnote-2)** on\_\_\_\_\_\_\_\_\_\_\_\_.

Therefore, the payment of the management fee is due and payable on [*insert date*].

The confirmation is given on the date of its signing and the statements above shall not constitute a legal opinion nor legal advice in relation to German law or any other applicable law and do not limit or replace the fulfillment of the disbursement requirements as further specified in the Loan Agreement.

Yours sincerely,

KfW

1. Please note that this language assumes that the notice of ratification send to us will be the same as for previous transactions. [↑](#footnote-ref-2)