

## ΠΡΕΣΒΕΙΑ ΤΗΣ ΕΛΛΑΔΟΣ

### ΤΙΡΑΝΑ

#### ΓΡΑΦΕΙΟ ΟΙΚΟΝΟΜΙΚΩΝ ΚΑΙ ΕΜΠΟΡΙΚΩΝ ΥΠΟΘΕΣΕΩΝ

#### **ΘΕΜΑ: «Υβριδική» δημοπρασία για φωτοβολταϊκό έργο ισχύος 300MW.**

Η Αναπληρώτρια Πρωθυπουργός και Υπουργός Υποδομών και Ενέργειας της Αλβανίας κα Belinda Balluku ανακοίνωσε στις 15 τρχ. μ., το άνοιγμα δημοπρασίας που αφορά σε φωτοβολταϊκό έργο παραγωγής ενέργειας ισχύος 300 MW.

Στην εν θέματι δημοπρασία, το κράτος είναι αυτό που θα αγοράζει την παραγόμενη ενέργεια, ενώ οι υποβάλλοντες την προσφορά είναι αυτοί που θα πρέπει να καθορίσουν την έκταση γης, την παραγωγή, καθώς και την τεχνολογία που πρόκειται να χρησιμοποιηθεί.

Δεν παρέλειψε, επίσης, να αναφερθεί στο φωτοβολταϊκό πάρκο Karavasta, ισχύος 140 MW, καθώς και τον υδροηλεκτρικό σταθμό του καταρράκτη του ποταμού Drin, που συνιστούν έργα με τα οποία, εν τοις πράγμασι, εξισορροπούνται ηλιακή, αιολική και υδροηλεκτρική ενέργεια, ανάλογα με τις επικρατούσες καιρικές συνθήκες στη χώρα, συμβάλλοντας, έτσι στην εκπλήρωση της φιλοδοξίας της Αλβανίας να μετατραπεί σε καθαρό εξαγωγέα ενέργειας έως το 2030.

Παράλληλα, σύμφωνα με δηλώσεις της ίδιας, πρόκειται για μία «υβριδική» δημοπρασία, υπό την έννοια ότι η χώρα δύναται να αγοράσει την ενέργεια που παράγεται για ένα καθορισμένο χρονικό διάστημα, εν προκειμένω 15 έτη.

Τέλος, επισημαίνεται ότι η προθεσμία για υποβολή των προσφορών (τεχνικών και οικονομικών) λήγει στις 17 Μαΐου τρχ. έτους, η τιμή πώλησης ενέργειας δεν θα πρέπει να ξεπερνάει τα 59,97 ευρώ ανά MWh, ενώ η ελάχιστη και η μέγιστη προσφερόμενη παραγωγή είναι τα 10 MWh και τα 100MWh αντιστοίχως. Ο νικητής θα ανακοινωθεί στις 10 Ιουλίου 2024.

Για περισσότερες πληροφορίες δείτε στην ιστοσελίδα : <https://www.infrastruktura.gov.al/ankandet-fotovoltaike>

Συνημμένα θα βρείτε και τα σχετικά έντυπα.

Παρακαλούμε όπως προωθήσετε σχετική ενημέρωση στα μέλη σας.

Ο Προϊστάμενος

Μάριος Μπελιμπασάκης  
Σύμβουλος ΟΕΥ Α'  
Πρεσβεία της Ελλάδας στα Τίρανα  
Γραφείο Οικονομικών&Εμπορικών Υποθέσεων

**DATED**

[     ]

**(1) [SUPPORT COUNTERPARTY]**

**- and -**

**(2) [SPV ENTITY]**

## **SUPPORT AGREEMENT**

relating to  
the design, financing, construction, operation,  
and maintenance of Solar PV Facility [with a  
minimum installed capacity 10 MW and  
Supported Capacity up 100 MW] to be located  
at [a site chosen by a Selected Bidder within the  
Republic of Albania]

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**THIS AGREEMENT** is made on [ ]

**BETWEEN:**

- (1) **[SUPPORT COUNTERPARTY ENTITY]**, a company incorporated in [ ] with registered no [◆ ] and having its registered office at [ ],
- (2) **[SPV ENTITY]**, a company incorporated in [ ] with registered no. [ ] and having its registered office at [ ] ("**Seller**");

(the Support CounterpartySupport Counterparty and the Seller each a "**Party**", together the "**Parties**").

**BACKGROUND:**

- A In accordance with the Decision [#] of the Albanian Council of Ministers, as amended ("**Decision 349**"), the Contracting Authority invited bidders to submit their respective bids for the design, financing, construction, operation and maintenance of an Solar PV Faciliti(es) to be located at a site chosen by a Selected Bidder, with a minimum installed capacity 10 MW and for which it has required to get support measures under this Agreement for an installed capacity up to 100 MW (inclusive) ("**Project**"), (the part of the installed capacity receiving support referred as"**Supported Capacity**").
- B [ ] ("**[Consortium][Bidder]**"), affiliated to the Seller, was selected as the preferred bidder and concluded the Project Development Agreement.
- C The Seller intends to construct and operate the Facility on the Site to implement the Project in accordance with the [Consortium][Bidder]'s obligations under the Project Development Agreement.
- D Once constructed, the Seller intends to maintain, repair and operate the Facility for the purpose of carrying out its business at the Site and to secure the supply of electricity to the Metering Point over the Term.
- E The Parties have entered into this Agreement to document the terms of this arrangement in accordance with the Competition Procedure Documents and the Project Development Agreement. In Trading Period 1, this Support Agreement will apply as a physically settled PPA until the completion of a Positive Market Readiness Assessment in accordance with the terms set forth hereunder. In Trading Period II, this Support Agreement will apply as a financially settled CfD in accordance with the terms set forth.

**IT IS AGREED:**

**1. DEFINITIONS**

1.1 The following words and expressions shall have the meaning ascribed to them below:

"**Affiliate**" means, in respect of a Party, a company, corporation or other legal entity which is:

- (a) directly or indirectly under control of that Party (for the purposes of this definition, a "**Parent Company**");

- (b) directly or indirectly under control of a Parent Company; or
- (c) directly or indirectly under common control with a Parent Company;

*provided that "control" shall require the possibility of exercising decisive influence on an undertaking, a company, corporation or other legal entity on the basis of shareholding or voting rights, contracts, equivalent constitutional documents of that Party, or any other means, either separately or in combination, and having regard to the considerations of fact and law involved.*

**"Agreement"** or **"Power Purchase Agreement"** means this agreement and all its schedules, which shall be deemed to form an integral part thereof, as amended and/or restated from time to time;

**"Albanian Grid Code"** means the document for the operation of the national Grid System operated by OST;

**"ALPEX Rules"** means the rules adopted by any Competent Authority on the operation and functioning of the ALPEX in accordance with the Applicable Laws, including without limitation the general rules, trading procedures and settlement and clearing rules as adopted and amended from time to time by the ALPEX operator and/or ERE.

**"ALL"** means Albanian Lek;

**"Annual Financial Statements"** means the audited financial statements of a Party as at [ ◆ ] and for its most recent financial year ended, comprising its balance sheet, profit and loss account, cash flow statement and statement of total recognised gains and losses, and the directors' and auditors' reports on and notes to them;

**"Applicable Laws"** means, with respect to any Party, any internationally binding obligation, constitutional provision, Law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorisation, guideline, Governmental Approval, consent or requirement of any Competent Authority having jurisdiction over such Party or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Competent Authority;

**"Available Generation"** means the (1) actual energy generated (in MWh) during a Season for Solar PV facility (s) as registered by the [ ◆ ], as well as (2) the expected generation (in MWh) calculated by the applicable Reference Measurement during each Deemed Available Period;

**"Availability Guarantee"** has the meaning given to it in clause 5.2;

**"Balancing"** means all actions and processes, on all timelines, set by OST to ensure, in a continuous way the maintenance of system frequency within a predefined stability range as set out in Applicable Laws, and that this is complied with and all other actions, requirements and responsibilities in respect of the Metered Output and the Facility under Applicable Laws and the Albanian Grid Code;

**"Balancing Group"** means a group of two or more balance responsible parties where one of the participants is selected to consolidate forecasts, submit and financially settle group imbalances with OST, in accordance with Applicable Laws, in particular the Provisional Balancing Rules;

**"Balancing Group Agreement"** has the meaning given to it in clause 7.8;

**"Bank Guarantee"** means an on-demand bank guarantee, similar to the form of the specimen bank guarantee attached as schedule 2, from a Credit Support Provider with at least one Official Credit Rating equivalent to or higher than the Required Bank Rating;

**"Billing Statement"** has the meaning given to it in clause 16.1;

**"Business Day"** means any day other than Saturday, Sunday or any other day banks are required to be closed for business by the governing law of:

- (a) the place of business of the Party required to make such payment; and
- (b) the location in which the Site is located;

**"Capacity"** means the gross nominal (nameplate) capacity of Solar PV equipment installed and commissioned at the Facility equalling [insert installed capacity as per the relevant Project] to be located at [a site chosen by a Selected Bidder within the Republic of Albania].

**"Capital Markets Law"** means Law No. 62/2020, On Capital Markets in the Republic of Albania as may be amended from time to time, and as complemented by any other secondary implementation legislation.

**"Change in Law"** means:

- (a) the coming into effect of any Law (including any Law regulating Tax) that is not in effect at the Effective Date;
- (b) the modification, repeal or replacement of any Law (including any Law regulating Tax) after the Effective Date, and
- (c) a change after the Effective Date in the interpretation or application by any Competent Authority of any Law (including any Law regulating Tax),

but shall exclude any of the above matters to the extent they constitute:

- (a) remedies or sanctions lawfully exercised by a Competent Authority as a result of any breach of any Law (including any Law regulating Tax) by the Seller; or
- (b) direct implementation or adoption of Energy Community's acquis;

**"Commercial Operation Date"** means initially 00:00 hours local time on the immediately succeeding date after the date on which the Commissioning has occurred, or if mutually agreed by the Parties in writing, the first (1st) day of the month immediately following the month in which the Commissioning has occurred and as may be changed in accordance herewith;

**"Commercial Operation Longstop Date"** means [twenty four (24)] months from the Conditions Longstop Date or such other later date agreed by the Parties in writing;

**"Commercial Operation Target Date"** means [twenty four (24)] months from the Effective Date or such other later date agreed by the Parties in writing;

**"Commissioning"** means, in respect of the Facility, the process of commissioning and testing the Facility set forth in clause 6.8 of the Project Development Agreement;

**"Commissioning Commencement Date"** means date notified by the Developer to the Contracting Authority in accordance with clause 6.3(a) of the Project Development Agreement;

**"Commissioning Period"** means the period commencing on the Commissioning Commencement Date until the Commercial Operation Date;

**"Competent Authority"** means any international, national, local or other authority, ministry, inspectorate, department, court, arbitral tribunal, administrative agency or commission or any other governmental, municipal, administrative or regulatory body (in each case to the extent each of the foregoing has jurisdiction over either or both of the Parties, this Agreement and/or the subject matter of this Agreement);

**"Conditions Longstop Date"** means [six (6)] months from the Effective Date or such other later date agreed by the Parties in writing;

**"Connection Agreement"** means an agreement between the Seller and OST for connection of the Facility to the Grid System or the agreement between the independent operator of the Transmission Line and OST;

**"Contracting Authority"** means the Ministry of Infrastructure and Energy of the Republic of Albania, acting upon the Decision of Council of Ministers no. 349, dated 12 June 2018, and represented by its Secretary General or its successor;

**"Credit Support"** means:

- (a) a Bank Guarantee; and
- (b) such other security in respect of this Agreement as may be agreed in writing between the Parties from time to time;

**"Credit Support Amount"** means an amount at least equal to the Seller Loss;

**"Credit Support Provider"** means the person providing the Credit Support (or such replacement provider as may be agreed pursuant to clause 21);

**"Compensation Unavailability Event"** has the meaning given to it in clause 5.2;

**"CfD"** or **"Contract for Differences"** means the financially settled contract for differences between the Seller and the Support Counterparty, which will apply for the Trading Period II after completion of a Positive Market Readiness Assessment as per pre-set terms, for the payment of a symmetric sliding premium against the reference market price in accordance with terms set in Section (C) of this Agreement.

**"Contract Quantity"** means in Trading Period II the quantity of electricity expressed in MWh and relevant GoOs as determined below and further specified in Schedule:

- (a) Metered Output during each settlement period; or
- (b) Fixed amounts of electricity output in accordance with a delivery schedule for each settlement period as specified in Schedule 5 or as nominated in respect of the



anticipated Metered Output in each settlement period 5 in accordance with the Applicable Marker Rules; or

- (c) Electricity output generated by the Facility and nominated or settled on the Albanian Power Exchange in accordance with the ALPEX Rules.

[*DRAFTING NOTE*: The Seller is given the right to elect one of the above options for determining the Contract Quantity for the purpose of calculating the Financial Settlement Amount during Trading Period II.]

**"Day-Ahead GCT"** has the meaning given to it in clause 7.3(a);

**"Decision 349"** has the meaning given to it in Recital A;

**"Delay Damages"** means the higher of:

- (a) the demonstrable losses, costs and damages incurred by the Support Counterparty as the consequence of the Seller not being able to operate the Facility at the Capacity; or
- (b) daily liquidated damages of EUR [ ] ([ ]) per MW of Capacity not Commissioned by the Commercial Operations Target Date or for output not sold and/or delivered to Support Counterparty,

provided that in no circumstance shall such exceed [five percent (5%)] of the Total Project Cost);

**"Deemed Available Periods"** means the following periods that shall be disregarded in the calculation of Unavailable Production and will thus be deemed as available generation for the purpose of calculating the Energetic Availability:

- (a) pause, stop, shutdown of Facility caused by Force Majeure;
- (b) pause, stop, shutdown of a Facility caused by a Change in Law provided the Agreement has been amended;
- (c) failure of the Support CounterpartySupport Counterparty to comply with its obligations under this Agreement in a manner that prevents or adversely affects the performance or operation of the Facility;
- (d) pause, stop or shutdown of a Facility being caused by a defect or failure in the transformer, the internal grid;
- (e) any scheduled maintenance of the Facility electrical infrastructure equipment (including, without limitation, high voltage equipment, grid transformers, foundations, cables, SCADA systems) that causes unavailability;
- (f) disconnection, pause, stop or de-rating of Facility by:
  - (i) the Grid Operator due to circumstances for which the Seller or Service Provider is not responsible; or

any Competent Authority due to circumstances for which Seller or Service Provider is not responsible; or curtailment by the Grid Operator.

**"Delivery Point"** means the measurement point at the TSO network at which the Supported Output is delivered and transferred to the Support Counterparty, as defined in this Agreement, the Balancing Group Agreement and arrangements with the TSO and the Support Counterparty; or in case of the Facility being part of the Balancing Group of another party in accordance with 6.13 to 6.14, the measurement point at the TSO network at which the Supported Output is delivered and transferred to the Support Counterparty, as defined in the Balancing Group Agreement between the Seller and that party and arrangements with the TSO and the Support Counterparty;

**"Depreciated Equity Amount"** means the Equity Amount reduced on a straight line basis from the Commercial Operation Date through the end of the 15th anniversary of that date;

**"Developer"** has the meaning given to it in clause 2.4 of the Project Development Agreement;

**"Developer Conditions"** has the meaning given to it in clause 2.12 of the Project Development Agreement;

**"Differential Payment"** has the meaning given to it in clause 11.1.

**"Direct Agreement"** means a direct agreement between the Support Counterparty, the Seller and a Financing Institutions which shall include, *inter alia*:

- (a) a right for the Financing Institutions to step-in within a specified period to ensure that the obligations of the Seller are complied with so as to prevent any circumstances arising under which the Support Counterparty could seek to terminate this Agreement and/or the right for the Financing Institutions to procure an assignment or other transfer of the Seller's rights and obligations under this Agreement in certain specified circumstances;
- (b) an acknowledgment by the Support Counterparty of any charge or other security (in respect of this Agreement) granted by the Seller to the Financing Institutions; and
- (c) an obligation on the Support Counterparty not to take any action to wind-up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Seller without giving a prescribed period of notice to the Financing Institutions,

on terms acceptable to the Seller acting reasonably, and the Financing Institutions;

**"Disputed Market Readiness Assessment"** has the meaning given to it in clause 6.1(a)(iv).

**"EBIT"** means earnings before interest and tax;

**"EBIT to Interest"** means the ratio of EBIT to the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions) in any fiscal year;

**"Effective Date"** means the date defined in clause 2 of this Agreement;

**"Electricity Payment"** has the meaning given to it in clause 16.1(a);

**"Electricity Price"** means EUR [ ] ([ ]) per MWh;

**"Energetic Availability"** means the energetic availability for the Facility during a relevant Season calculated as follows:  $\text{Energetic Availability}_s [\%] = 1 - ((\text{Unavailable Generations}) / (\text{Available Generations} + \text{Unavailable Generation}_s)) * 100\%$ , where (s)= the Facility is as defined below;

**"Energetic Availability Liquidated Damages"** has the meaning given to it in clause 5.3;

**"ERE"** means the energy regulatory authority as determined in accordance with the Power Sector Law and other relevant Applicable Laws.

**"EUR"** means the lawful currency of the member states of the European Union that have adopted and retained a common single currency through monetary union in accordance with European Union treaty law, as amended from time to time;

**"Event of Default"** means a Seller Default or an Support Counterparty Default (as the context requires);

**"Equity"** means any capital paid by or on behalf of the shareholders of the Seller or their Affiliates to the Seller for shares and the principal amount outstanding under any loans to the Seller by the shareholders of the Seller or their Affiliates in connection to the Supported Capacity, which by their terms are *bona fide* arm's length commercial terms and subordinated to any indebtedness for borrowed money incurred by the Seller under any finance document;

**"Equity Amount"** means the amount of Equity actually paid by the Seller as at as at Commercial Operation Date;

**"Expert"** means the expert appointed in accordance with clause 28.4;

**"Extended Conditions Longstop Date"** has the meaning given to it in clause 3.5;

**"Facility"** means the electricity generating solar PV equipment and related infrastructure, including the transmission line and described in more detail in schedule (but excluding the assets of OST situated (or to be situated) and the Transmission Line at the Site);

**"Facility Boundary Metering Point"** means the metering point designated in the Connection Agreement where the Seller may operate the Metering Device to demonstrate the Metered Output from the Facility fed into the Transmission Line;

**"Final Nominated Output"** has the meaning given to it in clause 7.5;

**"Financing Institutions"** means any legal entity providing debt financing or refinancing to the Seller for the design, procurement, construction, operation and maintenance of the Facility and for the exercise of its rights under the Project Development Agreement and this Agreement, as well as their permitted successors and assignees, including any agent or trustee for such person or persons and including a shareholder or affiliate of a shareholder;

**"Force Majeure Event"** means any act or event that:

- (a) prevents the affected Party from performing its obligations in accordance with the Agreement;

- (b) is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party; and
- (c) the affected Party is unable to overcome such act or event with the exercise of all reasonable care and skill (including the expenditure of reasonable sums),

subject to the foregoing conditions having been fulfilled, "**Force Majeure Event**" shall include, without limitation, the following acts or events:

- (i) the failure of communications or computer systems of OST or of a Party which prevents the affected Party from performing its obligations of delivery or acceptance;
- (ii) OST's suspension of delivery or acceptance or its disregard of the affected Party's obligations with regard to Scheduling;
- (iii) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes;
- (iv) explosions or fires arising from lightning [outside the parameters of the Facility's lightning protection system] or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance;
- (v) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion;
- (vi) strikes or labour disputes (except strikes or labour disputes caused solely by employees of either Party or as a result of such Party's failure to comply with a collective bargaining agreement);
- (vii) partial or total interruption of the operation of the Facility or part of the Facility during the validity of the decision on a state of emergency for the territory of the Republic of Albania, or local self-government unit where the Facility is located; and
- (viii) failure or inability to achieve positive results from the in-depth environmental impact assessment as required by the Applicable Laws and/or requirements set forth in Appendix 21 of the Competitive Procurement Documents, which is not the result of the Developer's non-fulfilment of all legal requirements in connection therewith and which is not attributable to illegal conduct or conduct in bad faith by either Party,

*provided that* a Force Majeure Event shall not include:

- (A) the unavailability of labour, equipment, materials, utilities or other resources (except where the unavailability is due to Force Majeure Event);
- (B) economic or financial hardship or lack of funds or inability to satisfy the obligation to pay money when due or inability to obtain financing;
- (C) lack of materials required to develop, construct or maintain the Facility (except where the material lacking is due to Force Majeure Event);

- (D) strike, slow down or labour disruptions that affects the employees of the Parties, their Affiliates, or either of their respective agents or contractors caused solely by employees of either Party or as a result of such Party's failure to comply with a collective bargaining agreement or applicable labour law; or
- (E) changes in the conditions in the relevant wholesale electricity market or, if any, in the relevant Generation Attributes market;

**"Funds from Operations"** means the ratio of funds from operations of the Facility to Total Debt in any fiscal year;

**"Generation Attributes"** means all rights and benefits associated with the issuance of guarantees of origin and any cost or Tax exemptions, reimbursement rights, commercialised value or other rights of the Supported Output in accordance with Applicable Laws;

**"Good Industry Practice"** means that degree of skill and care which would reasonably and ordinarily be expected of a contractor experienced in the same type of undertaking (designing, engineering, installing, constructing, completing, commissioning, testing, operating and maintenance) in relation to projects of a similar size, scope, scale, nature and complexity as the Facility;

**"Governmental Approval"** means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorisation issued by or on behalf of any applicable Competent Authority;

**"Grid Connection Metering Point"** means the point designated in accordance with the Connection Agreement at which electricity flows and will be metered between the electrical infrastructure operated by the Seller at the Facility and the Grid System operated by OST;

**"Grid System"** means the electrical transmission systems owned and operated by OST for the delivery of electricity beyond the Metering Point;

**"Independent Appointer"** means the Energy Community Secretariat's Dispute Resolution and Negotiation Centre, acting in accordance with the Procedural Act 2018/5/EnC of Energy Community Secretariat;

**"Ineffective"** means, in respect of the Generation Attribute, that any of the following events or circumstances occurs:

- (a) the Generation Attribute has been, or is alleged to have been, appropriated from their rightful owner by unlawful means, irrespective of whether a *bona fide* acquisition would be possible;
- (b) the Generation Attribute has already been cancelled for compliance purposes or is not eligible for compliance purposes under the applicable system;
- (c) the Generation Attribute has been suspended or withdrawn by the Competent Authority, the Issuing Body or other relevant body;
- (d) the Certificate is not attributable to the Metered Output of the Facility,

and **"Ineffectiveness"** or other cognate expressions shall be construed accordingly;

**"Inside Information"** means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products as defined as and in accordance with the REMIT requirements.

**"Insolvency Event"** means, in respect of a Party, that that Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (ii) is not withdrawn, dismissed, discharged, stayed or restrained in each case within [thirty (30)] days of the institution or presentation of that proceeding or petition;
- (e) has a resolution for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within thirty (30) days of that event; or
- (h) causes or is subject to any event with respect to it, which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (g) (inclusive);

**"Insurance"** has the meaning given to it in clause 22;

**"Invoice"** has the meaning given to it in clause 16.2;

**"Invoice Date"** has the meaning given to it in clause 16.2;

**"Issuing Authority"** means the relevant Competent Authority responsible for issue of a Generation Attribute;

**“Intra-Day Market”** has the meaning given to it in the Market Rules and ALPEX Rules.

**“Independent Forecast”** has the meaning given to it 7.17(b).

**"Joint Declaration"** has the meaning given to it in clause 6.1(a)(iii).

**"Law"** means (including in respect of Tax):

- (a) any law (including the common law), statute, statutory instrument, regulation, instruction, direction, rule or requirement (in each case) of any Competent Authority (but, for the avoidance of doubt, only to the extent having force of law);
- (b) any condition or other requirement of any electricity licence or other required authorisation, licence, consent, permit or approval of any Competent Authority (or of any exemption from the requirement to have the same);

**"Last Resort Support Counterparty"** means the entity designated in accordance with the Applicable Laws to provide route-to-market services to renewable energy generators at a discounted fee compared to the market references prices in Trading Period II.

**"Licensed Supplier"** means a public operator charged with the public service obligation for the purchase of electricity from a generation capacity from renewable sources of sun and wind;

**"Liquidity Assessment of the Intra-Day Market"** means the sufficient liquidity of the intra-day market determined by ERE in accordance with Good Industry Practice following an in-depth assessment which must on and demonstrate, without limitation fulfilment of at least the following criteria:

- (a) ability to nominate volumes at least one hour ahead of delivery;
- (b) availability of an operational trading platform, offering auction-based or continuous trading;
- (c) availability of intra-day products that can be traded in a consistent manner with the imbalance settlement period in the relevant bidding zone;
- (d) churn rate as the ratio of overall traded volume and consumption, assessed also with and without potential volumes that would come from renewable energy producers with the right incentives;
- (e) bid-ask spread benchmarked against intra-day markets with similar size and level of development;
- (f) number of market participants active in intraday market, in particular participation of the incumbent companies;
- (g) market coupling of the Albanian intra-day market with intra-day markets of other countries,
- (h) any other criteria ERE deems relevant for determining the liquidity of the intra-day market.

**"Market Readiness Assessment"** means:

- (a) the establishment of an electricity exchange and provision of clearing prices by the operator of the electricity exchange which are sufficiently frequent and sound to serve as floating Reference Prices against the Electricity Price (as a fixed (strike) price) to enable the financial settlement by reference to the difference between the floating price and the fixed price;
- (b) the readiness of the day-ahead market to deliver a sound reference price is determined by a Competent Authority based on an in-depth assessment of the day-ahead market, which assessment is conducted not earlier than [ten (10)] months after the establishment of the organised electricity market and is based on a number of key indicators, including but not limited to: (1) availability of a clearing day-ahead price(s) by the ALPEX to enable the financial settlement by reference to the difference between the floating price and the fixed price, over a period of at least 9 (nine) consecutive calendar months; (2) traded volumes on the day-ahead market relative to physical market size (i.e. churn factor) which are to be assessed against assessments of wholesale electricity markets conducted by EU national regulatory authorities in at least one (1) or two (2) European Union countries and determined to be within a comparable margin of churn factors; (3) the bid spreads on the organised electricity market which are to be assessed against assessments of wholesale electricity markets conducted by EU regulators and determined to be within a comparable margin as bid spreads in at least one (1) or two (2) markets in the European Union (3) number and market share of main electricity generation companies on the Albanian market; the availability of independent offtakers, aggregators and traders; and (8) market coupling with interconnected countries; (separately referred as **"Market Readiness Assessment Criteria"** or **"Criteria"**);
- (c) the (i) establishment of the Renewable Energy Operator to act as Support Counterparty in accordance with the Applicable Laws, as well as (ii) the requirement that corporate and financing arrangements for the Support Counterparty, in particular a functional mechanism for setting and collecting the renewable energy obligation in accordance with the Applicable Laws or (iii) that otherwise ensures a financial viability equivalent to the Performance Assurance Requirements of the Support Counterparty Support Counterparty [be effective for a period of at least 3-months prior to the CfD application].

**"Market Disruption Event"** means any of the following events:

- (a) the failure of the Albanian Power Exchange to announce or publish information necessary for determining the Relevant Reference Price;
- (b) the temporary or permanent objective unavailability of the Reference Price;
- (c) the temporary or permanent closing of the Albanian Power Exchange;
- (d) the discontinuance or suspension of, or the imposition of a material limitation on, trading in any relevant futures contract or commodity offered by the Albanian Power Exchange for the relevant Reference Price;
- (e) a material change in the details of the composition of or specifications for the relevant Reference Price (i) which are entered into or incorporated in any relevant futures contract or offered by the Albanian Power Exchange, or (ii) which are used by any other relevant institution for determining the Reference Price in compiling the price information necessary for determining such floating price;



- (f) a material change in the method of calculation used for the relevant Reference Price to determine the price information necessary for determining such floating price;
- (g) the relevant Reference Price no longer being reflective of the actual wholesale market price for electricity the relevant bidding area;
- (h) a material reduction in the liquidity of the day-ahead market in the Albanian Power Exchange;
- (i) the Albanian Power Exchange source relevant for the Reference Price ceasing to be available to the Parties on commercially reasonable terms; and/or
- (j) any of the circumstances described in sub-clauses (a) to (i) above being threatened to occur.

**"Metered Output"** means the amount of electricity generated by the Supported Capacity per each metered hour and fed into the Grid System as demonstrated by [a separate Metering Device] installed at the separate Metering Point for that Supported Capacity in accordance with the Applicable Laws and the Connection Agreement;

**"Metering Device"** means the metering equipment certified by the applicable Competent Authority and installed at the Facility to measure the electricity generated by the Supported Capacity and delivered to the Metering Point at the location specified in more detail in schedule ; [For the sake of clarity, a separate Metering Device must be installed for the Supported Capacity. Where a Project includes an existing or additional part of the installed capacity which exceeds the Supported Capacity, a separate Metering Device must be installed for that other part.]

**"Metering Point"** means the Facility Boundary Metering Point;

**"MW"** means megawatts;

**"MWh"** means megawatt hours;

**"MWp"** means megawatt peak;

**"Negative Price Differential "** has the meaning given to it in clause 16.1(c).

**"Negative Price Period"** means a period during which the Market Reference Price (i.e. day-ahead market Price) is less than EUR 0.00/MWh.

**"No-Fault Termination Event"** has the meaning given to it in clause 17.3;

**"Nominated Output"** means all Supported Output which is nominated or deemed nominated by the Seller for the sale and delivery to the Support Counterparty in accordance with clauses 7 and 8;

**"Non-Accepted Variance"** has the meaning given to it in 17.2(i).

**"Official Credit Rating"** means (in respect of long-term, unsecured, unsubordinated debt) a credit rating with:

- (a) Standard and Poor's;

- (b) Moody's; or
- (c) any industry recognised alternative or successor rating agency to either of the above (as agreed by the Parties such agreement not to be unreasonably withheld or delayed);

**"Supervisory Financial Authority"** means the regulatory authority of the financial markets in the Republic of Albania pursuant to the Capital Markets Law.

**"Support Counterparty Condition"** has the meaning given to it in clause 3.2;

**"Support Counterparty Default"** has the meaning given to it in clause 17.1;

**"Support Counterparty Loss"** means the loss suffered by the Support Counterparty upon termination of this Agreement for Seller Default covering:

- (a) in the case of termination in accordance with clause 17.2(a) or clause 17.2(b), the Support's Counterparty's internal and external costs associated with engaging with the Seller in accordance with this Agreement in anticipation of Seller Conditions being met; or
- (b) in case of termination in accordance with clauses 17.2(c) to 17.2(h)17.2(h),
  - (i) for Trading Period I, costs associated with entering into replacement transactions for non-delivered electricity (together with costs or expenses incurred in respect of the same) subject always to the requirement that such costs must be subject to reasonable evidence and documentation;
  - (ii) for Trading Period II, loss incurred due to non-payment of the Differential Payments that the Support Counterparty would have reasonably expected the Seller to pay under this Agreement for the entire Trading Period II (together with costs or expenses incurred in respect of the same), subject always to the requirement that such losses must be determined based on reasonable forecasts and projections of market reference price and subject to reasonable evidence and documentation.

**"Operational Period"** means the period commencing at 00:00 hours on the first day immediately following the Commercial Operation Date and ending on expiry of the Term or earlier termination of this Agreement in accordance with its terms;

**"OSHEE"** means [*Operatori i Shpërndarjes së Energjisë Elektrike sh.a.*], a company organised and existing under the laws of [ ], including its universal successors and permitted assignees;

**"OST"** means [*Operatori i Sistemit të Transmetimit sh.a.*], a company organised and existing under the laws of [ ], being the owner and operator of the Grid System, including its universal successors and permitted assignees;

**"Outage"** means a continuous period of at least [two (2)] hours in which the Capacity of the Facility is reduced by ten per cent (10%) or more;

**"Planned Outage Schedule"** has the meaning given to it in clause 7.18 and as is further detailed in in the Albanian Grid Code;

**"Performance Assurance Financial Requirements"** means the ratios for EBIT to Interest, Funds from Operations, Total Debt to Total Capitalisation, and Tangible Net Worth;

**"Project"** has the meaning given at Recital A;<sup>1</sup>

**"Project Development Agreement"** means the agreement for the development of the Project, executed between the Ministry of Infrastructure and Energy of the Republic of Albania, the [Consortium][Bidder] and, upon its establishment, the Seller;

**"Balancing Rules"** means balancing rules on the electricity balancing mechanism approved by ERE decision [insert updated reference];

**"Price Differential"** has the meaning given to it in clause 11.1.

**"Provisional Nominated Output"** has the meaning given to it in clause 7.4 read in combination with clause 7.6;

**"Positive Price Differential "** has the meaning given to it in clause 16.1(b).

**"PPA" or "Power Purchase Agreement"** means the power purchase agreement between the Seller and the Support Counterparty, which will apply during Trading Period I, as relevant, until a Market Readiness Assessment is completed), for the sale of the energy produced by the Facility in accordance with terms set out in Section (B).

**"Positive Market Readiness Assessment"** means the decision taken by the ERE establishing that the Market Readiness criteria following the Market Readiness Assessment has been met and which decision, is confirmed by a Joint Declaration of the Parties pursuant to clause 6.1(a)(iii) or any Parties` dispute on such decision is resolved in accordance with the terms of clause 6.1(a)(iv) of this Agreement.

**"Rate of Return"** means means an amount equal to the Depreciated Equity Amount compounded [ ] (%) for a period from the Commercial Operations Longstop Date until the earlier of: i) Termination Date or (ii) [ ] years from the Commercial Operations Longstop Date;<sup>2</sup>

**"Reference Measurement"** means [ ];<sup>3</sup>

**"Reference Price"** means hourly day-ahead price for the relevant settlement period as determined and published by the Albanian Power Exchange or, in event of unavailability of the Albanian Power Exchange, a Replacement Index;

**"Replacement Index"** means the replacement reference price determined in accordance with terms set forth in clause 13.1.

**"Relevant Output"** means up to and including (but not in excess of)[ ] of the Metered Output in each metered settlement period;

- (a) in case of the Facility being part of the Balancing Group of the Support Counterparty pursuant to clause 7.8(a) and/or in the case of the Support

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<sup>1</sup> [In case of a Project consisting of more than one (1) Selected Site by the same Developer, termination for specific events, force majeure, penalties for commissioning lower capacities or delays in commissioning will apply separately for each Site.]

<sup>2</sup> To be determined based on figures included by the Preferred Bidder in the Pre-Feasibility study submitted as part of its RFP Submission.

<sup>3</sup> To be determined based on figures included by the Preferred Bidder in the Pre-Feasibility study submitted as part of its RFP Submission.

Counterparty procuring that a third party operates a Balancing Group pursuant to clause 7.8(b), the Supported Output A;

- (b) in case of the Seller choosing the Balancing Group of another party in accordance with clauses 7.13 to 7.14, the Supported Output B;

**"Required Bank Rating"** means:

- (a) in respect of a rating with Standard and Poor's, a rating of at least A- or its equivalent;
- (b) in respect of a rating with Moody's, a rating of at least A3 or its equivalent; or
- (c) in respect of a rating with any industry recognised alternative or successor rating agency to either of the above, the relevant equivalent (as agreed by the Parties, such agreement not to be unreasonably withheld or delayed);

**"REMIT"** means the implementing Applicable Laws adopted by Competent Authorities transposing the Regulation (EU) No 1227/2011 of the European Parliament and the Council of 25 October 2011 on wholesale energy market integrity and transparency and/or any other relating implementing EU acquis.

**"Renewable Energy Operator"** means the counterparty in the contracted for differences designated in accordance with the Law No. 7/2017 on 'Renewable Energy', as amended;

**"Revocation Event"** means the occurrence of an event where:

- (a) a Generation Attribute had previously been issued, received or accrued, and is subsequently revoked or declared to conflict with Applicable Laws by a Competent Authority or is otherwise rescinded;
- (b) any transfer of a Generation Attribute is invalid or unenforceable because the Generation Attribute which was the subject of the purported transfer was subject to a charge, lien, encumbrance or other third party claim;
- (c) the relevant Issuing Authority, other Competent Authority or OST refuses to issue or make available the Generation Attribute (or allow it to be received or accrued or registered) where either Party reasonably believes that the Facility, the electricity generated by the Facility, or either Party (as the case may be) is eligible for the Generation Attribute (or would have been eligible had each Party complied with its obligations under this Agreement); or
- (d) the relevant Competent Authority (including the Issuing Authority) or OST requests the holder of the benefit not to redeem, cancel, or make use of the Generation Attribute as a result the holder has not redeemed the Generation Attribute by the date by which the Generation Attribute must reasonably have been redeemed;

**"Season"** means a six (6) month period ending on 31 March or 30 September of each year;

**"Seasonal Target"** has the meaning given to it in clause 5.2;

**"[SPV ENTITY]"**, a company incorporated in [Albania ] with registered no. [ ] and having its registered office at [ ];

**"Schedule"** means those actions necessary for a Party to effect its respective delivery or acceptance obligations, which may include nominating, scheduling, notifying, requesting and confirming with the other Party, their respective designated agents and authorised representatives, and OST, as applicable, the Nominated Output, the Metering Point and any other relevant terms of this Agreement in accordance with all applicable rules of OST and other customary industry practices and procedures, and **"Scheduled"** and other cognate expressions shall be construed accordingly;

**"Seller Conditions"** has the meaning given to it in clause 3.1;

**"Seller Default"** has the meaning given to it in clause 17.2;

**"Seller Loss 1"** means:

- (a) an amount equivalent to:
  - (i) all applicable debt and interest repayments (including any pre-payment charges, breakage charges, penalties, hedging charges) owed by the Seller to the Financing Institutions (whether in relation to senior debt or junior debt, whether secured or unsecured) for the financing of the Capacity; plus
  - (ii) an amount equal to the Rate of Return *per annum* and the Depreciated Equity Amount [compounded for a period equal to the lesser: of (i) 18 months or (ii) the remainder of the original term of this Agreement, minus
  - (iii) any insurance proceeds prior to the date of termination of this Agreement by the Seller and not spent on restoration of the Facility; minus
  - (iv) the aggregate amount of cash held by or on behalf of the Seller as of the date of termination of this Agreement, including cash on hand and the credit balance of any such deposit, money market, reserve or securities accounts;
- (b) which becomes payable on the condition that the Facility is not otherwise operated by the Seller on the free market.

**"Seller Loss 2"** means the loss suffered by the Seller upon termination of this Agreement for Support Counterparty Default, and continuance of the operation of the Facility on the free market, covering:

- (a) for Trading Period I, the Seller's internal and external costs associated with engaging with a replacement Support Counterparty for the Supported Capacity, including costs associated with a debt refinancing with the Financing Institutions, provided that such costs are actual, demonstrable, directly linked with engaging with such a replacement Support Counterparty for the Supported Capacity, and subject to reasonable evidence and documentation; or
- (b) for Trading Period II, the Seller's internal and external costs associated with engaging with a private or another counterparty for a replacement financially settled agreement to substitute the support CfD element for the Supported Capacity, including costs associated with a debt refinancing with the Financing Institutions, provided that such costs are actual, demonstrable, directly linked with engaging with such a replacement counterparty for the Supported Capacity, and subject to reasonable evidence and documentation;

**"Service Provider"** means a service provider which has a track record experience of (i) servicing the type of solar PV engines used in the Facility; (ii) servicing at least [100MW depending on the selected Project(s) in the RFP] of installed capacity; and which has the necessary creditworthiness to pay the availability guarantee under the Service and Availability Agreement;

**"Service and Availability Agreement"** means the service and availability agreement between the Seller and Service Provider in respect of service, operation or maintenance of the Facility;

**"Site"** means the land selected by the Seller and situated at [ ] and described and delimited further in [Schedule ] upon which the Facility shall be located;

**"Supply Period"** means the period commencing on the Commissioning Commencement Date and ending on expiry of the Term or earlier termination of this Agreement in accordance with its terms;

**"Supported Output"** means the electricity generated by the Supported Capacity delivered either as Supported Output A or Supported Output B.

**"Supported Output A"** has the meaning given to it in clause 8.2(a)(i)(A);

**"Supported Output B"** has the meaning given to it in clause 8.2(a)(i)(B);

**"Support Agreement" or "Agreement"** means this agreement containing terms for a physically settlement Power Purchase Agreement for the Trading Period I and terms for a financially settlement CfD for the Trading Period II.

**"Support Counterparty"** means the counterparty designated in accordance with the applicable Laws and the Support Agreement to act as offtaker in the physically settled Power Purchase Agreement for Trading Period I, or as CfD counterparty in the financially settled Contract for Differences for Trading Period II, and to which general provisions apply for the entire Term of this Support Agreement, in combination with either the PPA terms relevant for Trading Period I or CfD terms relevant for Trading Period II.

**"Tangible Net Worth"** means the sum of all paid up shareholder cash contributions to the share capital account or any other capital account of the Support Counterparty or any other entity designated in replacement of the Support Counterparty ascribed for such purposes of the Support Counterparty and any accumulated earnings less any accumulated retained losses and intangible assets (including, but not limited to, goodwill);

**"Tax"** means any tax, levy, impost, duty, royalty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any or the same) including income tax and corporation tax;

**"Term"** means the period starting on the Effective Date and ending [fifteen (15)] years after the Commercial Operation Date;

**"Total Capitalisation"** means in respect of the relevant period the sum of Total Debt and all paid up shareholder cash contributions to the share capital account or any other capital account of the Support Counterparty or any other entity designated in replacement of the Support Counterparty ascribed for such purposes of the Support Counterparty;

**"Total Debt"** means in respect of the relevant period the sum of financial indebtedness for borrowed money (which includes debts payable to Affiliates companies as well as debt

instruments to the Financing Institutions) of the Support Counterparty or any other entity designated in replacement of the Support Counterparty;

**"Total Debt to Total Capitalisation"** means the ratio of Total Debt to Total Capitalisation in any fiscal year;

**"Total Project Cost"** means EUR [ ] ([ ]); <sup>4</sup>

**"Trading Period I"** has meaning given to it in clause 6.1(a).

**"Trading Period II"** has meaning given to it in clause 6.1(a).

**"Transferee Counterparty"** has the meaning given to it in clause 6.2;

**"Transmission Line"** has the meaning given to it in the RFP documents.

**"Unavailable Generation"** means expected generation (in MWh) calculated by the applicable Reference Measurement during each Unavailable Period for (s) during a Season;

**"Unavailable Period"** means any period, other than a Deemed Available Period, during which the solar facilities are not operated or are de-rated. For the avoidance of doubt, any scheduled maintenance performed on a Facility shall be deemed an Unavailable Period;

**"Unscheduled Outage"** has the meaning given to it in clause 7.21 and as set forth under the Albanian Grid Code;

**"Wilful Misconduct"** means a deliberate act or omission that deviates from a reasonable course of action or from any provision of the agreement that is done or omitted to be done with knowledge of or conscious indifference or intent to the harmful, avoidable and reasonably foreseeable consequences; and

**"Within-Day Renomination GCT"** has the meaning given to it in clause 7.3(b).

1.2 In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and *vice versa*;
- (b) a reference to a gender shall not exclude other genders;
- (c) words importing persons shall include natural persons, bodies corporate, unincorporated associations and partnerships (whether or not any of them have separate legal personality);
- (d) reference to any legislative provision shall be deemed to include any statutory instrument, by-law, regulation, rule, subordinate or delegated legislation or order and rules and regulations which are made under it and any subsequent re-enactment or amendment of the same;
- (e) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";

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<sup>4</sup> To be determined based on figures included by the Preferred Bidder in the Pre-Feasibility study submitted as part of its RFP Submission.

- (f) references to "writing" include typing, printing, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- (g) section and schedule headings, contents and front sheet are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (h) unless otherwise provided, references to clauses and schedules are references to the clauses and schedules of this Agreement, and references in any schedule to paragraphs, parts and annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the schedule or the part of the schedule in which the references appear;
- (i) references to this Agreement are references to this Agreement as amended or varied from time to time; and
- (j) reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated from time to time.

1.3 The schedules and any annexes and appendices thereto form part of this Agreement.

## **(A) - GENERAL TERMS**

### **2. COMMENCEMENT AND TERM**

The Agreement shall come into force on the date which is the Effective Date of the Project Development Agreement and shall continue until expiry of the Term, unless terminated earlier pursuant to the terms of this Agreement.

### **3. CONDITIONS**

3.1 The Seller shall:

- (a) execute the Project Development Agreement with the Contracting Authority;
- (b) meet the Developer Conditions as set forth under clause 2.12 of the Project Development Agreement as soon as reasonably practicable after the Effective Date and, in any event, no later than the Conditions Longstop Date,

(together, the "**Seller Conditions**").

3.2 The Support Counterparty shall provide Credit Support in favour of the Seller in accordance with the requirements of clause 21 ("**Support Counterparty Condition**").

3.3 The Parties shall each meet their respective conditions as set forth above as soon as reasonably practicable after the Effective Date and, in any event, no later than the Conditions Longstop Date.



3.4 On the date on which Seller becomes aware that one or more of the Seller Conditions have been satisfied, it shall notify the Support Counterparty in writing and provide to the Support Counterparty evidence demonstrating such satisfaction as the Support Counterparty reasonably requires.

3.5 The Parties agree and acknowledge that the Conditions Longstop Date shall only be varied in the following circumstances:

(a) where the Developer and the Contracting Authority mutually agree in writing upon another date to be the Conditions Longstop Date in accordance with the Project Development Agreement; or

(b) where the Seller is prevented from fulfilling one or more Developer Conditions on or before the Conditions Longstop Date in events or circumstances falling under clause 2.15 of the Project Development Agreement,

in which case the relevant date shall be as agreed in writing by the Developer and the Contracting Authority or as postponed for a period of time commensurate with the delay to achieving the affected Developer Conditions caused by such events or circumstances falling under the scope and in accordance with clause 2.15 of the Project Development Agreement ("**Extended Conditions Longstop Date**"). In such circumstances references in this Agreement to the Conditions Longstop Date shall be read as references to the Extended Conditions Longstop Date. On the date on which Developer becomes aware of the Extended Conditions Longstop Date, it shall notify the Support Counterparty in writing and provide to the Support Counterparty evidence as the Support Counterparty reasonably requires.

3.6 Any dispute or disagreement as to the length of time by which the relevant Condition Longstop Date ought to be extended under clause 3.5 shall be dealt with in accordance with clause 28.

#### **4. CONSTRUCTION AND COMMISSIONING**

4.1 The Seller shall notify the Support Counterparty in writing of:

(a) its best estimate of the date on which it anticipates the Commissioning Commencement Date as soon as reasonably practical following satisfaction of the Seller Conditions;

(b) its best estimate of the date on which it anticipates occurrence of the Commercial Operation Date as soon as reasonably practical; and

(c) the occurrence of the Commercial Operation Date, without delay upon such occurrence.

4.2 The Seller shall notify the Support Counterparty in writing where it becomes aware that the Commercial Operation Date will not be achieved before or on the Commercial Operation Target Date, such notice to include a revised Commercial Operation Target Date.

#### **5. OPERATION, AVAILABILITY GUARANTEE**

5.1 The Seller shall operate and maintain the Facility in accordance with Applicable Law, Relevant Codes and Rules, and Good Industry Practice with a view to maximising the availability of the Facility and Metered Output. Subject to the Seller's obligations to comply with all Applicable Law, Relevant Codes and Rules, and Good Industry Practice, the Seller shall meet with the REO at least once every six (6) months to discuss relevant commercial and operational matters regarding the Facility.

- 5.2 If, in any full Season during the Supply Period, the Supported Output of the Facility is less than [ ] ("**Energetic Availability Target**") and the monthly Supported Output was less than [ ] of the estimated Facility output for that relevant Season based on the monthly profile set in Schedule 5 of this Agreement ("**Seasonal Target**") (both Targets referred as "**Availability Guarantee**") a compensation unavailability event shall be deemed to have occurred ("**Compensation Unavailability Event**"). The Seller shall conclude a Service and Availability Agreement by [ ]. Parties shall determine the Energetic Availability Target and the Seasonal Target, as well as complete Schedule 3 in accordance with the Service and Availability Agreement.
- 5.3 Subject to clause 5.2 if a Compensation Unavailability Event has occurred, the Seller shall pay to the Support Counterparty liquidated damages of [ ] for each MWh of the undelivered Relevant Output, subject to limitations in clause 5.2 ("**Energetic Availability Liquidated Damages**"), as soon as reasonably practicable after the end of each Season. Upon occurrence of a Compensation Unavailability Event, the Seller shall provide written notice of such to the Support Counterparty. Parties shall complete Schedule 4 in accordance with the Service and Availability Agreement.
- 5.4 The Energetic Availability Liquidated Damages:
- (a) in respect of any year, shall be up to a maximum cap per year in accordance with the formula in Schedule 4;  
  
shall not be payable in respect of Supported Output not delivered in any Season in excess of the Seasonal Target; and
  - (b) shall be the Support Counterparty's sole remedy for the occurrence of a Compensation Unavailability Event, to the exclusion of any other remedies in contract, at law or otherwise.

## 6. MARKET RESTRUCTURING AND READINESS ASSESSMENT

- 6.1 The Parties acknowledge and agree the Albanian power market is in the process of an on-going market restructuring and that as a consequence of this restructuring:
- (a) a Positive Market Readiness is to be conducted by ERE and is a condition precedent to the application of the Contract for Differences Terms in accordance with this Agreement. Starting from the Execution Date until the 20<sup>th</sup> Business Day (inclusive) after the execution of a Joint Declaration accepting a Positive Market Readiness Assessment, ("**Trading Period I**") the PPA Terms shall apply. On the 21<sup>th</sup> Business Day following the execution of a Joint Declaration accepting the Positive Market Readiness Assessment until the end of the Term ("**Trading Period II**"), the CfD terms shall apply. Parties shall determine the start of Trading Period II and switching from the application of the PPA Terms to the application of the CfD Terms in accordance with the process set forth under this clause and the Joint Declaration.
    - (i) The ERE shall conduct a Market Readiness Assessment based on at least the pre-determined Criteria in this Agreement, the Applicable Laws and in accordance with Good Industry Practice.
    - (ii) The Support Counterparty shall serve a notice to the Seller notifying of the start of the Market Readiness Assessment proceedings by the ERE and employ best efforts to ensure that the Seller is invited to submit its views on the Market Readiness Assessment, in a written form and in a hearing before the ERE.

- (iii) The Support Counterparty shall serve a notice to the Seller notifying a positive decision taken by the ERE establishing that the Market Readiness Criteria following the Market Readiness Assessment has been met, within five (5) Business Days from acquiring knowledge of such decision. Parties shall, in good faith, discuss and agree on whether results of the Market Readiness Assessment are acceptable to each of them and in line with Good Industry Practice and the Applicable Laws. To this purpose, Parties shall file a written report evidencing their position on the Market Readiness Assessment. In case of agreement on the positive ERE's decision on the Market Readiness Assessment, Parties shall execute a joint declaration accepting the results ("**Joint Declaration**") (such positive decision taken by ERE in this context and confirmed by Joint Declaration referred as "**Positive Market Readiness Assessment**").
  - (iv) Any dispute between the Parties in connection to the standards and results of the Market Readiness Assessment ("**Disputed Market Readiness Assessment**") shall be resolved by Expert Determination and by further application of clause 21. In case of a dispute against ERE, Parties shall seek, in good faith, to agree on a joint position and, where possible, challenge the ERE's decision before the competent authorities and international institutions in accordance with the Applicable Laws.
  - (v) For the avoidance of any doubt, as long as and until a Disputed Market Readiness Assessment exists and has not been resolved in accordance with this Agreement, the Trading Period I shall be deemed to continue and the Support Agreement shall apply as a Power Purchase Agreement.
  - (vi) [Within 20 (twenty) Business Days following the execution of a Joint Declaration], Parties shall take all steps and measures to switch from the Trading Period I to Trading Period II and, therefore, from the application of the PPA Terms to the application of the CfD Terms.
- (b) Support Counterparty may assign a Transferee Counterparty in accordance with this clause and Applicable Laws.

6.2 A Support Counterparty may transfer this Agreement without the consent of the Seller to a Licensed Supplier, or another entity designated by a Competent Authority to act as a counterparty to this Agreement ("**Transferee Counterparty**"). The Support Counterparty shall notify the Seller of the date and time on which the transfer of this Agreement to the Transferee Counterparty shall take effect. From such date and time, (a) subject to clauses 5.3 and 5.8 as applicable, the Counterparty shall be released from its obligations under this Agreement, and (b) the Transferee Counterparty shall assume all obligations of the Support Counterparty under this Agreement (with all references to "**Support Counterparty**" in this Agreement being interpreted as references to "**Transferee Counterparty**").

6.3 In case of the transfer pursuant to clause 6.2 above :

- (a) the transferring Support Counterparty shall perform all of its obligations under this Agreement until the Transferee Counterparty accedes to this Agreement as the Support Counterparty;
- (b) the transferring Support Counterparty and the Transferee Counterparty shall remain jointly and severally liable to the Seller for all Support Counterparty obligations that have arisen prior to the transfer;

- (c) in event and as long as the Transferee Counterparty fails to fulfil the same Performance Assurance Financial Requirements as the transferring Support Counterparty or has the Official Credit Rating lower than the Official Credit Rating of the transferring Counterparty at the time of the transfer, the transferring Counterparty and the Transferee Offtakes shall remain jointly and severally liable to the Seller in respect of all Support Counterparty obligations under this Agreement, unless the Seller agrees otherwise in writing.
- 6.4 Any dispute between the Parties in connection with the Official Credit Rating or the Performance Assurance Financial Requirements of the Transferee Counterparty shall be resolved by application of clause 28.
- 6.5 Subject to clauses 6.2 and 6.3 the Support Counterparty may enter into an agreement with one or more Licensed Suppliers under which a Licensed Supplier shall have the right, without consent of the Seller, to perform some or all of the Support Counterparty's obligations under this Agreement for a part of or the entire Trading Period I.
- 6.6 Notwithstanding the agreement between the Support Counterparty and a Licensed Supplier as per this clause the relevant Support Counterparty shall remain solely liable to the Seller in respect of all:
  - (a) the Support Counterparty`s obligations under the PPA terms; and
  - (b) the obligations performed or to be performed by a Licensed Supplier (including any breach of such obligations) on the Support Counterparty 's behalf under this Agreement as if the Support Counterparty had performed or had to perform such obligations itself.
- 6.7 The Support Counterparty may appoint or replace the Licensed Supplier at any time, provided that:
  - (a) the Licensed Supplier is financially (which in case of transfer in accordance with clause 6.2 shall mean fulfilment of the Official Credit Rating or the Performance Assurance Financial Requirements) and technically capable of performing the role of the Licensed Supplier;
  - (b) the Support Counterparty provides the Seller with prior written notice of the appointment or replacement of a Licensed Supplier as soon as practicably possible;
  - (c) if required by the OST or Applicable Laws, the Licensed Supplier becomes the registrant in respect of the Metering Point.

## **(B)- TRADING PERIOD I – PPA TERMS**

### **7. FORECASTS, NOMINATIONS, OUTAGES, BALANCING**

- 7.1 In Trading Period I, the Seller shall ensure that all forecasts and nominations made pursuant to this clause 7 are prepared in accordance with Good Industry Practice, and the Applicable Laws. Subject to the provisions of the Applicable Laws, the following clauses of this clause 7 shall apply.

- 7.2 Not less than [fifteen (15)] Business Days prior to the start of the Operational Period and to each subsequent anniversary thereof, the Seller shall provide to the Support Counterparty a non-binding estimate of the anticipated Metered Output in the forthcoming year. The Seller shall use its best efforts to ensure that each such forecast is as accurate as possible. Where the Seller revises any forecast to reflect a change in the Seller's expected Metered Output, the Seller shall provide the Support Counterparty with such revised forecast as soon as reasonably practical.
- 7.3 Subject to Applicable Laws (including the Balancing Rules), the Parties acknowledge and agree that the current deadlines for providing:
- (a) nominations made in accordance with clause 7.4 to OST is from 10:37 hours up to 14:00 hours on D-1 ("**Day-Ahead GCT**"); and
  - (b) renominations made in accordance with clause 7.5 to OST is from 18:00 hours on D-1 up to 23:00 hours on D, sixty (60) minutes before delivery for each respective settlement period on D ("**Within-Day Renomination GCT**").
- 7.4 No later than sixty (60) minutes prior to the Day-Ahead GCT, the Seller shall provide in accordance with Good Industry Practice to the Support Counterparty a nomination of its forecast Relevant Output for each settlement period on D ("**Provisional Nominated Output**").
- 7.5 No later than sixty (60) minutes prior to a relevant Within-Day Renomination GCT, if the Seller anticipates a material variation between the Provisional Nominated Output and the actual output of the Facility, the Seller shall provide to the Support Counterparty a renomination of its reforecast Relevant Output for the relevant settlement period or any number of such periods on D ("**Final Nominated Output**").
- 7.6 Notwithstanding clause 7.5, where the Seller:
- (a) does not exercise its right in accordance with clause 7.5; or
  - (b) exercises its right in accordance with clause 7.5, however does so after the Within-Day Renomination GCT,
- the Provisional Nominated Output shall be deemed to be the Final Nominated Output for the respective settlement period on D.
- All times noted in Clauses 7.3 to 7.6 have been set in line with the current market and balancing rules. If this timeline is adapted, the relevant times and settlement periods will be adapted accordingly, preserving the general principle of the aforementioned clauses.
- 7.7 The Balancing Group Responsible Party shall make or cause to be made to OST the nominations and/or renominations for Supported Output on the basis of the nominations and/or renominations provided by the Seller in accordance with clauses 7.3 to 7.6, provided that the Support Counterparty may vary these in accordance with Good Industry Practice.
- 7.8 In Trading Period I, the Support Counterparty shall:
- (a) operate a Balancing Group to which the Seller shall accede; or
  - (b) procure that a third party operates a Balancing Group meeting requirements of clause 7.9, to which the Seller shall accede,

(each a "**Balancing Group Responsible Party**"). The Balancing Group Responsible Party shall settle any imbalance between the Relevant Output and the Final Nominated Output. The Balancing Group Responsible Party shall not be entitled to charge the Seller retroactively for any imbalance for the relevant month, except for imbalance caused by grossly negligent or wilful misconduct in relation to the provision of nominations and/or renominations.

- 7.9 The Balancing Group Responsible Party and the Seller shall agree on a balancing services agreement in accordance with Good Industry Practice, determining amongst others, charges and fees the Balancing Group Responsible Party may charge on the Seller for reasonable costs for providing Balancing services in accordance with clause 7.8 ("**Balancing Services Charge**"). The Balancing Services Charge shall be subject to a maximum cap of [5 EUR / MWh] until a Positive Liquidity Assessment of the Intra-Day Market. Parties shall employ best efforts to conclude the Balancing Service Agreement not later than the same Execution Date as this Agreement.
- 7.10 If the Support Counterparty exercises its right in accordance with clause 7.8(b), the third party Balancing Group Responsible Party shall pass on such costs to the Seller on a transparent and open-book basis up to an amount equal to the Balancing Services Charge Cap.
- 7.11 In procuring a third party to operate a Balancing Group in accordance with clause 7.8(b), the Support Counterparty shall at all times use reasonable efforts to procure Balancing services in a cost-efficient manner.
- 7.12 During the Trading Period I, where the Support Counterparty cannot procure Balancing services from a third party Balancing Group Responsible Party for a cost equal to or less than the Balancing Services Charge Cap, the Parties agree to tender out Balancing services. The Parties shall agree on any conditions for such tender deemed necessary, and shall jointly agree on the selection of a third party based on the most competitive bid. The agreed price shall replace the Balancing Services Period for the such period, subject to the Balancing Services Charge Cap.
- 7.13 Without prejudice to clauses 7.3 to 7.12, the Support Counterparty shall have the right to instruct the Seller to reduce in part or in full the output of the Facility for a specific period of time, including but not limited to the case of Grid System constraints, periods of negative market prices, or Force Majeure Events. Upon request by the Support Counterparty, the Seller shall as soon as reasonably practicable provide the Support Counterparty with remote access to the Metering Device and other equipment in the Facility as may be deemed necessary by the Support Counterparty acting in order to make own forecasts in relation to the Facility.
- 7.14 The Seller has the right to accede a Balancing Group operated by another party in accordance with the Applicable Laws, upon a written request delivered to the Support Counterparty no later than sixty (60) Business Days prior to the requested exit date of the Seller from the Support Counterparty's Balancing Group. Such written notice shall be accompanied by a balancing group agreement with the other third party and necessary arrangements (if any) with the Support Counterparty and the OST, in accordance with the Applicable Laws, to ensure delivery obligations in accordance with clauses 7.2(a)(ii) and 7.2(b). The Support Counterparty shall notify the Seller a written approval of the exit from its Balancing Group within thirty (30) Business Days of receipt of the Seller's written request.
- 7.15 The seller may request to re-accede the Support Counterparty's Balancing Group, upon written notice delivered to the Support Counterparty not less than 180 (one hundred and eighty) Business Days prior to the requested date for accession into the Support Counterparty's Balancing Group.

- 7.16 Starting from the date of approval by the Support Counterparty of such exit and until a new request to accede the Support Counterparty's Balancing Group is approved, the Seller shall be deemed to have exited the Balancing Group of the Support Counterparty and clauses 7.8 to 7.12 shall not apply during such period.
- 7.17 In case of the Facility being party to a Balancing Group operated by a third party selected by the Seller in accordance with clauses 7.13 to 7.14, the following provisions shall apply on forecast accuracy.
- (a) Within one (1) month after the end of each calendar half-year of the Trading Period I, the Seller shall provide to the Support Counterparty the following data recorded by the Seller and related to the accuracy of the Final Nominated Outputs for the relevant settlement periods in respect of the previous calendar half-year of the Trading Period I:
    - (A) the actual Metered Output as measured at the Metering Point for each settlement period, and
    - (B) the corresponding Final Nominated Output(s) for each settlement period.
  - (b) Within one (1) month after the end of each calendar half-year of the Trading Period I, and in respect of such previous calendar half-year of the Trading Period I, the Seller shall provide to the Support Counterparty forecast(s) for the same settlement periods for the expected output of the Facility from an independent industry expert meeting the criteria set out in Clause (c) ("**Independent Forecast**"). The Independent Forecast shall follow the principles for preparing a forecast pursuant to clauses 7.4, 7.5, and 7.6, whereas both the Independent Forecast provided by the independent industry expert and the Final Nominated Output provided by the Seller shall reflect curtailments in the same way in accordance with the Grid Connection Agreement (but only to the extent these apply to instructed curtailments).
  - (c) The criteria for selection of each independent industry expert are that the individual is:
    - (i) available and willing to act upon the terms of this clause 7.17, within twenty (20) Business Days of appointment;
    - (ii) an independent natural person with a proven performance record applicable to day ahead forecasting;
    - (iii) sufficiently fluent in English to make the Independent Day Ahead Forecast and deliver it in the English language; and
    - (iv) may be selected from a group of experts regularly engaged by the Seller, provided that such engagement does not create any conflict of interest to act as a provider of the Independent Day Ahead Forecast.
  - (d) If in respect of any calendar year the variance between the Final Nominated Output and the Independent Forecasts are higher than [■] percentage points but lower than the Non-Accepted Variance the Seller shall pay the Support Counterparty as compensation and as sole remedy in full and final satisfaction of Support Counterparty [■] EUR / MWh] for such variance.
- 7.18 Not less than [fifteen (15)] Business Days prior to the start of the Operational Period and to each subsequent anniversary thereof, the Seller shall provide to the Support Counterparty a

schedule setting out each of the proposed Outages in the forthcoming year, including details as to the amount by which the Capacity of the Facility will be reduced and the nominated timing and dates of such Outages ("**Planned Outage Schedule**").

- 7.19 The Planned Outage Schedule will contain in respect of each Outage:
- (a) brief details of the reason for the Outage;
  - (b) the expected date of commencement and expected duration of the Outage;
  - (c) any partial or reduced running during the Outage and any expected reduction in generated electricity (that is below the normal level) following the end of the Outage and the duration of such reduction; and
  - (d) amendments to any previously notified Outages regarding the above.
- 7.20 The Seller may amend the Planned Outage Schedule for any year, either prior to or during such year, *provided that* it does so as far in advance of the planned Outage contained within the Planned Outage Schedule that is to be revised by such amendment as is reasonably possible and gives the Support Counterparty and if required under Applicable Laws any other market participants at the same time as much advance notice of such amendment as is reasonably possible and takes into account any reasonable representations made by the Support Counterparty (*provided that* the Parties agree that any decision as to when to schedule a Planned Outage shall ultimately be a decision for the Seller alone).
- 7.21 The Seller shall use its reasonable endeavours to minimise the number and duration of any Outages not included on the Planned Outage Schedule ("**Unscheduled Outage**") that occur during the Operational Period. The Seller shall, as soon as reasonably practicable following the occurrence of an Unscheduled Outage during the Operational Period, notify the Support Counterparty and if required under Applicable Laws at the same time any other market participants of such Unscheduled Outage and use all reasonable efforts to remedy the Unscheduled Outage in accordance with Good Industry Practice. On notifying the Support Counterparty of an Unscheduled Outage, the Seller shall also inform the Support Counterparty of its best estimate as to the likely duration of the Unscheduled Outage.

## **8. SALE AND PURCHASE OF ELECTRICITY AND TRANSFER OF GENERATION ATTRIBUTES**

- 8.1 During the Commissioning Period, the Support Counterparty may by notice to the Seller elect to purchase and accept any Relevant Output generated by the Facility at the Electricity Price. If the Support Counterparty does not elect to purchase the Relevant Output during the Commissioning Period, the Seller may offer the Relevant Output on the free electricity market in accordance with the electricity market rules and the Applicable Laws. This may include without limitation the right of the Seller to participate in tenders for the sale of electricity to cover Grid System losses in accordance with Applicable Laws.
- 8.2 During the Trading Period I:
- (a) the Seller shall:
    - (i) operate the Facility in accordance with Good Industry Practice so as to maximise the Relevant Output from the Facility; and



- (A) in case of the Facility being party to a Balancing Group operated by the Support Counterparty or a selected third party by the Support Counterparty in accordance respectively with clauses 7.8(a) or clauses 7.8(b) and clauses 7.9 to 7.13, sell, schedule and deliver, at the Metering Point, the Metered Output in each metered settlement period ("**Supported Output A**");
      - (B) in case of the Facility being party to a Balancing Group operated by a third party selected by the Seller in accordance with clauses 7.13 to 7.14 sell, schedule and procure that the OST delivers at the Delivery Point, up to and including (but not in excess of) the Final Nominated Output in respect of the anticipated Metered Output in each settlement period ("**Supported Output B**");
    - (ii) sell, schedule and procure that the OST delivers at the Delivery Point, up to and including (but not in excess of) the Supported Output in each settlement period;
  - (b) the Support Counterparty shall:
    - (A) in case of the Facility being party to a Balancing Group operated by the Support Counterparty or a third party selected by the Support Counterparty in accordance with clauses 7.8 to 7.13, accept, at the Metering Point or Delivery Point as applicable the Supported Output A and pay for each MWh of the delivered quantity at the Electricity Price.;
    - (B) in case of the Facility being party to a Balancing Group operated by a third party selected by the Seller in accordance with clauses 7.14 to 7.19, accept at the Delivery Point the Supported Output B and pay for each MWh of the delivered quantity at the Electricity Price.
- 8.3 Property and all rights to title in, and risk of loss with respect to, the Supported Output shall pass to the Support Counterparty upon delivery at the Delivery Point. Subject to clause 7.21 and the Connection Agreement,
- (a) the Seller shall be responsible for any costs or charges imposed on or associated with Scheduling, transmission and delivery of the Supported Output up to the Metering Point; and
  - (b) the Support Counterparty shall be responsible for any costs or charges imposed on or associated with acceptance and transmission of, the Supported Output at and from the Delivery Point. Subject to clause 8, the Seller agrees to transfer or make available to the Support Counterparty all the Generation Attributes accruing during or otherwise associated with the Supported Output during the Trading Period I.
- 8.4 The Seller undertakes that the Supported Output and the Generation Attributes delivered, transferred or made available to the Support Counterparty in accordance with this Agreement are sold free from all charges, liens, other encumbrances and third party claims. In the event of breach of this obligation by the Seller, without prejudice to any defences available to the Seller under this Agreement or Applicable Laws and the rights of the Support Counterparty under this Agreement or Applicable Laws, the Support Counterparty may determine its direct, actual, reasonable and demonstrable loss associated therewith and to notify the Seller thereof. The notice shall include the details of calculation of such loss and any relevant supporting

documentation. The Seller shall, within [five (5)] Business Days of receipt of such notice (accompanied by a valid Invoice) from the Support Counterparty, compensate the Support Counterparty for the Seller's loss so notified.

8.5 If the Generation Attribute is or becomes Ineffective or ceases to be valid, the following shall apply:

- (a) where the Generation Attribute is or becomes Ineffective or ceases to be valid as a result of any act or omission by the Support Counterparty, the Support Counterparty shall not have recourse against the Seller in respect thereof;
- (b) the Generation Attribute is or becomes Ineffective or ceases to be valid as a result of any act or omission by the Seller, the Seller shall either:
  - (i) replace such Generation Attribute within [twenty (20)] Business Days; or
  - (ii) pay to the Support Counterparty an amount equal the Support Counterparty's direct, actual, reasonable and demonstrable loss caused by the Seller's failure to deliver the effective Generation Attribute.

8.6 The Support Counterparty acknowledges that the Metered Output and some of the Generation Attributes may vary depending on prevailing weather conditions at or near the Facility and that nothing in this Agreement is intended to create any liability for the Seller to the Support Counterparty as a result of the Facility failing to generate the Nominated Output.

## **9. METERING AND DATA**

9.1 Subject to clause 9.2, readings of the Metering Device shall be conclusive as to the amount of output delivered to the Metering Point and OST, in accordance with the Connection Agreement, shall be responsible for taking measurements of the output delivered to the Metering Point in accordance with Good Industry Practice. Each Party shall have the right to attend any reading of any Metering Device. [For the sake of clarity, a separate Metering Device must be installed for the Supported Capacity. Where a Project includes an existing or additional part of the installed capacity which exceeds the Supported Capacity, a separate Metering Device must be installed for that other part.]

9.2 Subject to clause 9.1, if the Metering Device is out of service, is discovered to be inaccurate pursuant to clause 9.4, or is agreed to be registering the Metered Output inaccurately, the Seller shall determine the Metered Output in a commercially reasonable manner in accordance with Good Industry Practice, by reference to the volume delivered during periods of similar solar conditions when the Metering Device was registering the Metered Output accurately.

9.3 Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of OST or other certified testing authority to verify the accuracy of the measurements and recordings of the Metering Device. The Seller shall provide prior written notice to the Support Counterparty reasonably in advance of the date upon which any such test is to occur.

9.4 Subject to the provision of the Connection Agreement and the Albanian Grid Code, the Parties acknowledge and agree that the following steps shall be taken to resolve any disputes regarding

the accuracy of the Metering Device or the determination of the Metered Output in accordance with clause 9.2:

- (a) if either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing, stating in reasonable detail the basis for such dispute;
- (b) the non-disputing Party shall, within [ten (10)] Business Days of receiving such notice from the disputing Party, advise the disputing Party in writing as to its position concerning the accuracy of such Metering Device and state reasons for taking such position;
- (c) if the Parties are unable to agree to the accuracy or condition of the Metering Device or the determination made by the Seller, either Party may request additional testing of the Metering Device by OST or other testing authority authorised or certified by it;
- (d) if the Metering Device is found to be within accuracy thresholds imposed by Applicable Laws, any previous recordings of the Metering Device shall be considered valid and the Party requesting the meter testing under clause 9.4(c) shall bear the cost of inspection and testing of the Metering Device as described in clause 9.4(c); and
- (e) if the Metering Device is found to be outside accuracy thresholds imposed by Applicable Laws or if such Metering Device is for any reason out of service or fails to register, then:
  - (i) the Seller shall promptly cause any Metering Device found to be inaccurate to be replaced by OST, or repaired or adjusted by it to correct such inaccuracy;
  - (ii) the Parties shall estimate the correct amounts of output delivered to the Metering Point during the periods affected by such inaccuracy, service outage or failure to register in accordance with clause 9.2; and
  - (iii) the Seller shall bear the cost of inspection and testing of the Metering Device as carried out in accordance with clause 9.4(c).

9.5 If as a result of any adjustment pursuant to clause 9.4 the Billing Statement for any period is decreased, the resulting amounts shall be included in the next Billing Statement issued under clause **Error! Reference source not found.** by way of set-off or deduction of such amounts against the Support Counterparty's payment obligations under the Agreement.

9.6 If, as a result of any adjustment pursuant to clause 9.4, the Billing Statement for any period is increased, the resulting amounts shall be included in the next Billing Statement issued under clause **Error! Reference source not found.** as an additional cost item.

## (C)- TRADING PERIOD II – CFD TERMS

### 10. CONDITIONS

- 10.1 The Seller shall secure all authorisations, approvals and collateral requirements as required to be registered as a participant in the Albanian Power Exchange in accordance with the Applicable Laws.
- 10.2 The Seller shall secure that it has made all relevant notifications and obtained all approvals by the Financial Supervisory Authority, including without limitation an ancillary activity services exemption or authorisation, as required by the Capital Markets Law or any other Applicable Laws.
- 10.3 The Support Counterparty shall re-issue a Credit Support reflecting the amount required for CfD payments, in favour of the Seller in accordance with the requirements of clause 21 and Schedule 2.
- 10.4 The Parties shall each meet their respective conditions as set forth above as soon as reasonably practicable and, in any event, no later than 20 (twenty) Business Days after the execution of the Joint Declaration in connection to the Market Readiness Assessment.
- 10.5 On the date on which a Party becomes aware that one or more of the above conditions have been satisfied, it shall notify the other Party in writing and provide evidence demonstrating such satisfaction as the other Party reasonably requires.

### 11. FINANCIAL SETTLEMENT

- 11.1 During the Trading Period II,
- (a) if the Electricity Price is higher than the Reference Price, the Support Counterparty shall pay to the Seller for each settlement period the product of:
- (i) an amount equal to the financial difference between the Electricity Price and Reference Price (positive "**Price Differential**"), calculated for the relevant settlement period, and
  - (ii) the Contract Quantity for the relevant settlement period.
- (b) if the Electricity Price is lower than the Reference Price, the Seller shall pay to the Support Counterparty for each settlement period the product of:
- (i) an amount equal to the financial difference between the Reference Price and the Electricity Price (negative "**Price Differential**"), calculated for the relevant settlement period, and
  - (ii) the Contract Quantity for that relevant settlement period.
- (referred each as "**Differential Payment**" or "**CfD Differential Payment**").
- 11.2 The Price Differential shall be calculated by the Seller for the relevant settlement period and promptly notified to the Support Counterparty by written notice not later than 3 (three) Business Days from such calculation.

## 12. NEGATIVE PRICING

- 12.1 Upon a Negative Price Period, the Support Counterparty shall require the Seller not to generate in accordance with the Applicable Laws. If the Seller's generation is partly or totally curtailed due to Negative Price Period(s) as per this clause for an aggregated amount of settlement periods higher than [■], the Seller is entitled to a compensation by the Support Counterparty for an amount equal to: [the product of: (i) Electricity Price and (ii) the Final Nominated Output for the curtailed volumes]. If compensation as per this clause applies, the Support Counterparty may require the Seller to comply with forecast accuracy requirements as per 7.17 *mutandis mutandis*.
- 12.2 Any Curtailment during a Negative Price Period will be included in excused hours for the purposes of the Availability Guarantee, and excused production for the purposes of the Performance Guarantee.]

## 13. MARKET DISRUPTION

- 13.1 If at any time, either Party reasonably believes that a Market Disruption Event has occurred, that Party shall promptly notify the other Party and the Parties shall promptly meet and endeavour to agree upon an appropriate amendment to or replacement of the applicable Reference Price necessary to ensure that the amended or replacement index reflects, as closely as possible, the methodology, basis of calculation and liquidity of such Reference Price (a "**Replacement Index**").
- 13.2 Any Replacement Index must satisfy the following criteria:
- (a) in case of electricity, it must publish price information for the bidding area to which the Facility belongs and have due regard to the extent to which the physical location of the Facility and constraints on the delivery of electricity into the market thereby imposed may have on the price for the sale of electricity delivered in that bidding area;
  - (b) in case of GoO, if applicable, it must publish price information for the same generation type as the Facility, and if such information is not available, the same country as the Facility;
  - (c) the underlying data used to compile or prepare such index: (i) must be subject to reasonable procedures to ensure its accuracy and completeness; (ii) must be retained by the administrator of such index for a minimum period of two (2) years following its publication such that it is capable of audit; and (iii) consist only of verifiable transaction data and exclude data which is the product of subjective judgement; (d) the methodology used by the administrator to prepare such an index is appropriately documented; (e) it must reflect a sufficient volume of trades from a sufficient number and diverse range of market participants; and (f) it must be available to the Buyer on commercially reasonable terms.
- 13.3 If at the expiry of three (3) months following the date of notice under this clause 11.1., no agreement has been reached in relation to the necessary amendments to the Reference Price or the Replacement Index, either Party shall be entitled to refer the matter for Expert Determination in accordance with clause 28.

## **14. DELIVERY AND ACCEPTANCE OF GENERATION ATTRIBUTES**

- 14.1 The Seller shall schedule, sell and deliver, or cause to be delivered, and the Support Counterparty shall accept or cause to be accepted, the Generation Attributes for the Contract Quantity free from all charges, liens, other encumbrances and third party claims and for no consideration.
- 14.2 Parties acknowledge that the Albanian authorities are in the process of setting up a registry for guarantees of origin (GoOs). Where relevant, the Seller and the Support Counterparty shall take all steps and action to ensure that the delivery and acceptance of Contract Quantity of Generation Attributes is performed either through electronic transfer or transfer by cancellation in accordance with the Albanian GoO Registry rules and other relevant Applicable Laws.
- 14.3 In the event of breach of this obligation by the Seller, without prejudice to any defences available to the Seller under this Agreement or Applicable Laws and the rights of the Support Counterparty under this Agreement or Applicable Laws, the Support Counterparty may determine its direct, actual, reasonable and demonstrable loss associated therewith and to notify the Seller thereof. The notice shall include the details of calculation of such loss and any relevant supporting documentation. The Seller shall, within [five (5)] Business Days of receipt of such notice (accompanied by a valid Invoice) from the Support Counterparty, compensate the Support Counterparty for the Seller's loss so notified.
- 14.4 If the Generation Attribute is or becomes Ineffective or ceases to be valid, the following shall apply:
- (a) where the Generation Attribute is or becomes Ineffective or ceases to be valid as a result of any act or omission by the Support Counterparty, the Support Counterparty shall not have recourse against the Seller in respect thereof;
  - (b) the Generation Attribute is or becomes Ineffective or ceases to be valid as a result of any act or omission by the Seller, the Seller shall either:
    - (i) replace such Generation Attribute within [twenty (20)] Business Days; or
    - (ii) pay to the Support Counterparty an amount equal the Support Counterparty's direct, actual, reasonable and demonstrable loss caused by the Seller's failure to deliver the effective Generation Attribute.
- 14.5 The Support Counterparty acknowledges that the Contract Quantity and some of the Generation Attributes may vary depending on prevailing weather conditions at or near the Facility and that nothing in this Agreement is intended to create any liability for the Seller to the Support Counterparty as a result of the Facility failing to generate the nominated output.

## **15. ROUTE-TO-MARKET ARRANGEMENTS**

- 15.1 In Trading Period II, the Seller shall be offered the option of entering into a route-to-market services agreement with a Last Resort Support Counterparty in accordance with the Applicable Laws, and which provides services for routing the Contract Quantity on the market for a discounted price equal to [eighty (70-80)%] of the Reference Price for the relevant settlement periods.

- 15.2 In Trading Period II, the Seller shall be offered the option of entering into or maintaining the balancing services agreement with a Balancing Responsible Group Party, which may either be the former Support Counterparty or a third party designated by it or the Last Resort Support Counterparty taking the role of a Balancing Group Responsible Party, acting in accordance with clauses 7.8 to 7.16 which shall apply *mutandis mutandis* to the Trading Period II.

## **(D)- GENERAL TERMS**

### **16. PRICE AND PAYMENT**

- 16.1 In respect of each month in the Supply Period, the Seller shall prepare and issue to the Support Counterparty within [ten (10)] Business Days of each month a monthly statement ("**Billing Statement**") setting out:
- (a) In Trading Period I, the sum of Relevant Output for the relevant month multiplied by the Electricity Price ("**Electricity Payment**") due from the Support Counterparty to the Seller;
  - (b) In Trading Period II, the product of the Price Differential and the Contract Quantity calculated in accordance with 11.1(a) for the relevant month ("**Positive Differential Payment**") due from the Support Counterparty to the Seller;
  - (c) In Trading Period II, the product of the Price Differential and the Contract Quantity calculated in accordance with 11.1(b) for the relevant month ("**Negative Differential Payment**") due from the Seller to the Support Counterparty;
  - (d) any payment due from the Seller to the Support Counterparty as a consequence of the transfer of Generation Attributes in accordance with clause 8;
  - (e) any payment to be made in accordance with clause 9.6;
  - (f) the Balancing Services Charge from the Seller to the Support Counterparty, if applicable;
  - (g) Energetic Availability Liquidated Damages from the Seller to the Support Counterparty;
  - (h) any other amounts accruing to either Party under any other provision of this Agreement; and
  - (i) any aggregate of the amounts payable by the Support Counterparty to Seller less any amounts payable by the Seller to the Support Counterparty as set out under clauses (a) (i)(inclusive).
- 16.2 The Seller shall provide the Support Counterparty with an invoice in respect of each Billing Statement (each an "**Invoice**") not later than [ten (10)] Business Days after the issue of the

relevant Billing Statement (each, an "**Invoice Date**"), commencing on the first Invoice Date to occur after the commencement of the Supply Period.

- 16.3 All payments and invoices submitted under this Agreement must be made in EUR and valid VAT invoices.
- 16.4 All sums payable under this Agreement are exclusive of VAT or any other applicable Tax or duty payable upon such sums, which shall be added if appropriate at the rate prevailing at the relevant Tax point.
- 16.5 The Support Counterparty shall pay all undisputed amounts contained in an Invoice within [thirty (30)] days after the date of the applicable Invoice Date. Any disputed amount subsequently agreed or determined to be due and payable shall be paid within [thirty (30)] days of such agreement or determination.
- 16.6 Save where otherwise specified in this Agreement, all amounts outstanding under the Agreement shall become due and payable on the date [thirty (30)] days following receipt of a notice of payment.
- 16.7 The Support Counterparty shall make all payments due from the Support Counterparty under the Agreement by electronic funds transfer in immediately available funds to the account designated by the Seller in writing from time to time.
- 16.8 If the Support Counterparty reasonably disputes in *good faith* any amounts contained in any Invoice, then the Support Counterparty may withhold such disputed amounts contained in such Invoice, and such disputed amounts shall not be deemed in default under the Agreement by reason of such non-payment, *provided that* where an amount is not disputed within [ten (10)] Business Days of the applicable Invoice Date, the Support Counterparty may not dispute such amounts and shall be deemed to have accepted the contents of the Invoice (save in cases of manifest error).
- 16.9 Neither of the Parties shall suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed under an Invoice, while such a payment dispute exists.
- 16.10 Save as expressly provided in this Agreement, neither Party shall be entitled to set-off any amount due to the other Party under this Agreement against any sum owed by the receiving Party to the paying Party, whether under this Agreement or otherwise.

## **17. TERMINATION**

- 17.1 The Seller may terminate this Agreement immediately by written notice to the Support Counterparty if any one or more of the following has occurred or is continuing:
- (a) the Support Counterparty has not met the Support Counterparty Condition by the Condition Longstop Date or Extended Condition Longstop Date (the latter only if applicable);
  - (b) the Support Counterparty has failed to pay any undisputed amount due and payable under this Agreement which exceeds the Credit Support Amount within [thirty (30)] days of receiving notice requiring payment of such overdue amount from the Seller;



- (c) the Support Counterparty is involved in Wilful Misconduct, or commits a material breach of any of its obligations under this Agreement, which material breach is incapable of remedy;
- (d) without prejudice to clauses 17.1(a) and 17.1(c), the Support Counterparty is in material breach of any undertaking under clause 25, or is otherwise in breach of any of its material obligations under this Agreement, which breach is capable of remedy (disregarding time of performance) and which the Support Counterparty has failed to remedy within [sixty (60)] Business Days of having been required in writing by the Seller to remedy such breach;
- (e) the Support Counterparty has failed to provide or to maintain any necessary Credit Support, or any Credit Support provided ceases to be in full force and effect pursuant to clause 21;
- (f) the Support Counterparty suffers an Insolvency Event or takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any Insolvency Event;
- (g) the Support Counterparty transferred this Agreement to another entity in accordance with clauses 6.2 **Error! Reference source not found.** and 6.3, but such entity does not fulfil the Official Credit Rating and the Performance Assurance Financial Requirements or otherwise is in breach of clause 6.3.
- (h) the Support Counterparty assigned any of its rights to a Licensed Supplier or designated a Licensed Supplier to perform any of the Seller's obligations hereunder in accordance with clauses 6.5 and 6.6, but such Licensed Supplier, in the reasonable opinion of the Seller, is not of sufficient creditworthiness to be able to perform such right(s) and/or obligation(s);
- (i) the Project Development Agreement is terminated in accordance with Clause 11.4(b) of the Project Development Agreement; or
- (j) the Support Counterparty is not complying with material terms of an arbitration award rendered pursuant to clause 28,

(each an "**Support Counterparty Default**").

17.2 Subject to the provisions of the Direct Agreement, the Support Counterparty may terminate this Agreement immediately by written notice to the Seller if any one or more of the following has occurred or is continuing:

- (a) subject to approval by the Contracting Authority, the Seller has not met the Developer Conditions or has not achieved Commissioning by the Commercial Operations Longstop Date as required under the Project Development Agreement;
- (b) the Seller has failed to pay any undisputed amount due and payable under this Agreement within [thirty (30)] Business Days of receiving notice requiring payment of such overdue amount from the Support Counterparty;
- (c) the Seller is involved in Wilful Misconduct or commits a material breach of any of its obligations under this Agreement, which material breach is incapable of remedy;
- (d) without prejudice to clauses 17.2(a) and 17.2(c), the Seller is in material breach of an undertaking, warranty or representation under clause 25, or is otherwise in material

breach of any of its obligations under this Agreement, which material breach is capable of remedy (disregarding time of performance) and which the Seller has failed to remedy within [sixty (60)] Business Days of having been required in writing by the Support Counterparty to remedy the relevant material breach;

- (e) the Seller suffers an Insolvency Event or takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any Insolvency Event;
- (f) the Project Development Agreement is terminated in accordance with Clause 11.4(a) of the Project Development Agreement; or
- (g) the Seller is not complying with the material terms of an arbitration award rendered pursuant to clause 28; or
- (h) If, in two (2) consecutive [six (6)] month periods on a rolling basis, the following occurs:
  - (i) the aggregate Energetic Availability of the Facility is below seventy per cent (70%); and
  - (ii) the Metered Output at the Delivery Point is below [ ] per cent ([ ]%) of the estimated Facility output for that [twelve (12)] months period based on the Seasonal Target profile set out in Schedule 5 of this Agreement,
- (i) If, in case of the Facility being party to a Balancing Group operated by a third party selected by the Seller in accordance with clauses 7.13 to 7.14, in respect of any calendar year the aggregated variance between the Final Nominated Outputs and the Independent Forecasts are higher than [ ] per cent ([ ]%) (the “**Non-Accepted Variance**”).

(each a "**Seller Default**").

- 17.3 A Party may terminate this Agreement immediately by written notice to the other Party if it is entitled to do so for an extended event of Force Majeure (as determined under clause 20.3) or if the Project Development Agreement is terminated for Material Adverse Governmental Action ("**No-Fault Termination Event**").
- 17.4 All amounts outstanding under the Agreement but not yet due and payable at the time of receipt of a notice of termination shall become due and payable within [ten (10)] Business Days of receipt of a notice of termination. During the period (if any) between written notice of termination being given and termination occurring, the delivery obligations of the Seller under the Agreement and the Support Counterparty's payment obligations in respect of such delivery shall be unaffected.
- 17.5 Termination of this Agreement by either Party shall not affect any of the rights, remedies or obligations of either Party that have accrued prior to such termination or any of the provisions of this Agreement that are expressly or by implication intended to survive termination, including without limitation any indemnities given under this Agreement to the extent the same relate to a liability accrued prior to termination of the Agreement, this clause 17 and each of clauses 8, **1Error! Reference source not found.**, 19, 26, 27, 28 and 29.
- 17.6 The rights of the Support Counterparty to terminate this Agreement shall be subject to the deferral and other rights in favour of the Financing Institutions set out in the Direct Agreement as may apply in respect of the Facility.

17.7 The Support Counterparty's shall notify the Financing Institutions in writing should it reasonably anticipate taking action pursuant to this clause 17 by providing such details as may be required pursuant to the terms of the Direct Agreement.

## **18. COMPENSATION ON TERMINATION**

18.1 Where this Agreement is terminated by the Seller for a Support Counterparty's Default in accordance with clause 17.1, then:

- (a) as soon as reasonably practicable after termination the Seller shall calculate the Seller Loss 1 or 2, as relevant, that it has suffered as a result of such termination, and shall send the Support Counterparty an invoice for the amount so calculated;
- (b) the Support Counterparty shall pay to the Seller an amount equal to such Seller Loss 1 or 2, as relevant, within [sixty (60)] Business Days of receiving the invoice;
- (c) any late payment shall bear interest in accordance with Applicable Laws (save in respect of sums which are the subject of a *bona fide* dispute, in which case the undisputed amount shall be paid, and any adjustment payment following resolution under clause 28 in respect of the disputed amount only shall bear interest); and
- (d) the right to receive such payment (if any) shall (without prejudice to clause 19.1) be the Seller's exclusive remedy for losses caused to it by such termination.

18.2 Where this Agreement is terminated by the Support Counterparty for a Seller Default in accordance with clause 17.2:

- (a) as soon as reasonably practicable after termination, the Support Counterparty shall calculate the Support Counterparty Loss it has suffered as a result of such termination, and shall send the Seller an invoice for the amount so calculated;
- (b) the Seller shall pay to the Support Counterparty: an amount equal to the Support Counterparty Loss within [twenty (20)] Business Days of receiving the invoice;
- (c) any late payment shall bear interest in accordance with Applicable Laws (save in respect of sums which are the subject of a *bona fide* dispute, in which case the undisputed amount shall be paid, and any adjustment payment following resolution under clause 28 in respect of the disputed amount only shall bear interest); and
- (d) the right to receive such payment (if any) shall (without prejudice to clause 19.1) be the Support Counterparty's exclusive remedy for losses caused to it by such termination.

18.3 In the event that the Seller Loss or the Support Counterparty Loss shall be contested or disputed, clause 28 shall apply.

18.4 Each Party shall bear its own losses in the event that this Agreement is terminated for a No-Fault Termination Event.

## **19. LIABILITY**

19.1 Nothing in this Agreement shall exclude or limit either Party's liability for death or personal injury caused by that Party's negligence, for Wilful Misconduct, or for fraudulent misrepresentation.

- 19.2 Subject to clause 19.1, neither Party, nor any of its officers, employees or agents, shall in any circumstances whatsoever (except to the extent specifically provided otherwise in this Agreement) be liable to the other Party for:
- (a) any losses arising as a result of any third party bringing a claim in respect of any nature whatsoever; or
  - (b) any loss of goodwill or reputation; or
  - (c) any indirect or consequential losses.
- 19.3 Subject to clauses 19.1, 19.2, and 5.3 of this Agreement, neither Party's liability under or in connection with this Agreement shall in any circumstances exceed [ ] for each incident or series of related incidents, *provided that*:
- (a) this clause 19.3 shall not limit either Party's obligation or liability on compensation for termination under clauses 17 and 18 or on other liquidated damages under clauses 4 and 5 or under any other provision of this Agreement which expressly determines amounts for liquidated damages;
  - (b) this clause 19.3 shall not limit either Party's ability to sue for debts owed under this Agreement (including for the avoidance of doubt, debts owed under clause 8.8 any interest that accrues on such debts which do not count towards the financial limit set out in this clause).

## **20. FORCE MAJEURE**

- 20.1 If a Party is fully or partly prevented due to Force Majeure Event from performing its obligations hereunder and such Party complies with the requirements of clause 20.2, no breach or default on the part of the affected Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations for the period of time and to the extent that such Force Majeure Event prevents its performance. Save as provided in clause 20.3, a Force Majeure Event shall not entitle either Party to terminate this Agreement.
- 20.2 The Party affected by the Force Majeure Event shall only have the benefit of relief under clause 20.1 if:
- (a) it gives written notice to the other Party, as soon as reasonably possible after the occurrence of the Force Majeure Event, demonstrating that the Force Majeure Event in question has reasonably prevented or delayed the affected Party's fulfilment of its obligations and stating the anticipated extent and likely duration of the Force Majeure Event in question;
  - (b) it takes all reasonable steps to minimise the impact of and remedy the effects of the Force Majeure Event as soon as reasonably possible; and
  - (c) it provides to the other Party a report, at least every month, in relation to the steps it is taking in accordance with clause 20.2(b) and an update of the anticipated extent and likely duration of the Force Majeure Event.
- 20.3 Subject to clause 20.6, either Party may immediately terminate this Agreement at any time by written notice to the other Party if a Force Majeure Event prevents the affected Party from fulfilling its obligations under this Agreement for a consecutive period exceeding [twelve (12)] months. Such termination shall be effected in accordance with clause 17.3.

- 20.4 Subject to clause 20.3 and 20.5, the Term shall be extended on a day-for-day basis where any Party suspends their obligations under this Agreement due to a Force Majeure Event under this clause 20.
- 20.5 The Term shall not be extended in case the Seller receives from the Contracting Authority an amount equal to the Availability Payment in accordance with clause 17 of the Project Development Agreement.
- 20.6 Where the Seller is the Party affected by the Force Majeure Event and the relevant Force Majeure Event reduces the Capacity of the Facility, the Support Counterparty may only terminate this Agreement if the Seller, in accordance with Good Industry Practice, fails to reinstate the Facility over the continuous [twelve (12)] months period immediately following the occurrence of the Force Majeure Event.
- 20.7 No obligation to pay damages pursuant to this Agreement will accrue to the affected Party with respect to those Nominated Quantities and Generation Attributes not delivered or accepted due to the occurrence of Force Majeure Event or those CfD Price Differentials not made due to the occurrence of a Force Majeure Event.

## **21. CREDIT SUPPORT**

- 21.1 The Support Counterparty or the Transferee Counterparty shall ensure, from the Conditions Longstop Date (or, as it may be, the Extended Conditions Longstop Date) until the end of the Term, that valid Credit Support is maintained in favour of the Seller in an amount not less than the Credit Support Amount.
- 21.2 The Parties understand that:
- (a) the form of a Bank Guarantee will ultimately depend on the form requested by the issuing bank, as agreed to by the Seller;
  - (b) the duration of a Bank Guarantee is usually up to [two (2)] years of the date of its issuance and, consequently, the Support Counterparty undertakes, on a rolling basis until the date specified in clause 21.3 and no later than [ten (10)] Business Days of the date of expiry of the then existing Bank Guarantee, to obtain a replacement Bank Guarantee.
- 21.3 Where either:
- (a) an Insolvency Event occurs in respect of the Support Counterparty;
  - (b) any Credit Support is provided in the form of a Bank Guarantee and the Credit Support Provider of the Bank Guarantee ceases to hold at least one Official Credit Rating equivalent to or higher than the Required Bank Rating; or
  - (c) Credit Support is provided in a form agreed between the Parties other than a Bank Guarantee and any on-going conditions or assumptions agreed between the Parties in respect of such Credit Support are breached or are no longer applicable,

the Support Counterparty shall notify the Seller of such change in circumstances promptly and shall within [fifteen (15)] Business Days of such circumstances have in place a new or replacement Credit Support, as applicable, and provide the same to the Seller.

- 21.4 The Support Counterparty shall be entitled to exchange any issued Credit Support for other Credit Support. The Support Counterparty shall ensure that a replacement Credit Support is in place no later than [twenty (20)] Business Days prior to the expiry of any then current Credit Support (to have effect on or before such expiry). Following the later of:
- (a) receipt of the replacement Credit Support; and
  - (b) its effective date, the Seller shall promptly return to the Support Counterparty the original replaced Credit Support.
- 21.5 The Seller shall be entitled to make a claim under any issued Credit Support where the Support Counterparty has:
- (a) failed to make a payment which is due and payable under this Agreement and upon notice given by the Seller, the Support Counterparty has not paid the outstanding amount within 10 (ten) Business Days; or
  - (b) failed to procure replacement Credit Support from expiry of the existing Credit Support on or before the date [five (5)] Business Days prior to its expiry.
- 21.6 Any amount paid to the Seller under any issued Credit Support shall be in settlement of the Support Counterparty's obligation to pay that amount under this Agreement (and deemed to be a payment by the Support Counterparty for the purposes of this Agreement) or, where a claim is made in respect of clause 21.4(b), by way of security for the Support Counterparty's obligations under this Agreement until valid replacement Credit Support is provided by the Support Counterparty.
- 21.7 The Seller shall as soon as possible reimburse the Credit Support Provider for any amount paid to the Seller under issued Credit Support as a result of the Seller making a wrongful claim under any issued Credit Support.
- 21.8 Where the Support Counterparty is no longer obliged to maintain any Credit Support under clause 21.1, the Seller shall (where requested by the Support Counterparty) as soon as reasonably practicable return to the Support Counterparty or any Credit Support Provider any issued Credit Support that it then holds.

## **22. INSURANCE**

- 22.1 The Seller shall, acting in accordance with Good Industry Practice, maintain in force (or procure that there are maintained in force) with a reputable insurer for the duration of this Agreement such insurance policies as would be considered appropriate and adequate in accordance with Good Industry Practice, having regard to the Seller's obligations under this Agreement and the finance agreements with the Financing Institutions. The Seller shall, upon reasonable notice, promptly produce to the Support Counterparty evidence (by way of cover notes) of such insurance.
- 22.2 The Seller shall, where damage is caused to the Facility as a consequence of a matter required to be insured under clause 22.1, as soon as reasonably practicable notify the Support Counterparty of such damage and such remedial action as the Seller proposes to take.

## **23. SUBCONTRACTING AND ASSIGNMENT**

- 23.1 Without prejudice to clause 6, neither Party may subcontract any or all of its obligations under this Agreement without the prior written consent of the other Party, *provided that* in this case

of consent the subcontracting Party shall at all times remain responsible for the performance of their obligations notwithstanding any such subcontracting.

- 23.2 Without prejudice to clause 6, neither Party may assign and transfer all or any of its rights and obligations under this Agreement to a third party without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed, provided it shall be reasonable for a Party to withhold its consent to a transfer of obligations by the other Party where it reasonably believes the proposed transferee has insufficient financial standing or technical knowledge to fulfil the transferor's obligations under this Agreement.
- 23.3 The Seller may assign its rights under this Agreement by way of security to or in favour of any Financing Institution in connection with the financing or refinancing of its obligations hereunder or its business activities without the consent of the Support Counterparty. The Seller shall notify the Support Counterparty of any such assignment as soon as reasonably practicable.
- 23.4 The Support Counterparty shall, where reasonably requested by the Seller or the Financing Institutions, enter into a Direct Agreement (or replacement Direct Agreement, as applicable) with the Seller and any Financing Institution within [thirty (30)] Business Days of receipt of written notice from the Seller or the Financing Institutions requesting that the Support Counterparty delivers an executed Direct Agreement in accordance with this Agreement.

## **24. CHANGE IN LAW**

24.1 If either Party considers that there has been a Change in Law which:

- (a) renders it impossible or unlawful to give effect to this Agreement;
- (b) renders any material matter required to be ascertained under this Agreement impossible to ascertain;
- (c) causes the provisions of this Agreement to become inconsistent with Applicable Laws (including where any word or expression defined in this Agreement is defined by reference to its meaning in any Applicable Laws);
- (d) introduces, replaces, modifies or extinguishes Generation Attribute or otherwise the Revocation Event has occurred as a consequence of a Change in Law; or
- (e) (without prejudice to clauses 24.1(a) to 24.1(d) inclusive above) severely and adversely affects the benefit of this Agreement to either or both of the Parties,

then that Party may serve a notice on the other Party requesting that the Parties shall meet to discuss such circumstances and shall, in good faith, seek to agree the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the Effective Date. If an event may be determined as both an Ineffectiveness and a Change in Law, it shall only constitute a Change in Law.

24.2 If the Parties are unable to agree pursuant to clause 24.1, then either Party may refer the issue to the Energy Community Secretariat's Dispute Resolution and Negotiation Centre for determination of the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the Effective Date. Where a matter has not been settled within [sixty (60)] Business Days (or such other

time as the Parties may agree) of its referral to mediation by the Energy Community Secretariat's Dispute Resolution and Negotiation Centre, either Party may initiate international arbitration in accordance with clause 28.5.

- 24.3 For the avoidance of doubt, it is neither Party's intention that fluctuations in wholesale electricity market prices in themselves (as opposed to fluctuations caused by Changes in Law) should give rise to any amendments pursuant to this clause 24.
- 24.4 Where an agreement or determination under clause 24.1 or 24.2 occurs after the Change in Law, such agreement or determination should take into account any reconciliation required in order to put the Parties in the position in which they would have been if the agreement or determination had occurred immediately prior to the relevant Change in Law.
- 24.5 Without prejudice to the other provisions of this clause 24, the Parties agree that:
- (a) neither Party shall be liable to the other Party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law (and such circumstance shall constitute a Force Majeure Event);
  - (b) subject to clause 24.5(a) the occurrence of a Change in Law will not of itself constitute a Force Majeure Event or otherwise entitle either Party to suspend or terminate its obligations under this Agreement;

each of them shall use its reasonable endeavours to minimise and mitigate the consequences of Changes in Law on the performance of its obligations under this Agreement.

- 24.6 If the Parties mutually determine, the Energy Community Secretariat's Dispute Resolution and Negotiation Centre (in accordance with clause 24.2) or an arbitration award (rendered pursuant to clause 28) determines that no adjustments to this Agreement can be reasonably made for the purpose of addressing the impact of Change in Law on the performance of obligations under this Agreement, the matter shall be resolved by application of the provisions of clause 17 of the Project Development Agreement.

## **25. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

- 25.1 Each Party undertakes that (for the duration of this Agreement) it will:
- (a) have, maintain and comply with the requirements of all authorisations and consents their Party is responsible for procuring and maintaining;
  - (b) comply with all Applicable Laws (including, without limitation, the Albanian Grid Code, REMIT, Capital Markets Law where relevant), and not by its acts or omissions knowingly or recklessly cause the other Party to breach any Applicable Laws or this Agreement; and
  - (c) provide the other Party with all documents, data, certificates or other information relating to the subject matter of this Agreement as the other Party may reasonably request (including any of the same that the other Party may have been requested to provide to a Competent Authority), and shall provide any Competent Authority with all documents, data, certificates or other information relating to the subject matter of this Agreement which such Competent Authority may request from time to time.



- 25.2 The Seller represents and warrants to the Support Counterparty that, as at the Effective Date (which representations and warranties are deemed to be repeated by each Party on commencement of the Supply Period):
- (a) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
  - (b) it has the power:
    - (i) to execute this Agreement and any other documentation relating to this Agreement to which it is a party (including any Direct Agreement);
    - (ii) to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver; and
    - (iii) to perform its obligations under this Agreement and has taken all necessary action to authorise that execution, delivery and performance;
  - (c) the execution, delivery and performance referred to in clause 25.2(b)(iii) do not violate or conflict with any Applicable Laws, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
  - (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally;
  - (e) no Event of Default (or event which with notice and/or lapse of time would constitute an Event of Default) has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under this Agreement;
  - (f) no litigation, arbitration or administrative suit or proceeding before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in such Party's financial condition or its ability to perform its obligations under this Agreement, or that is likely to affect the legality, validity or enforceability against it of this Agreement; and
  - (g) it is not relying upon any representations of the other Party other than those expressly set out in this Agreement.
  - (h) Unless agreed otherwise upon the terms of a separate REMIT reporting delegation agreement, to the extent required in accordance with Applicable Laws, each Party shall comply with any and all:
    - (i) obligations arising in respect of that Party under REMIT, related statutory requirements with respect to this Support Agreement in relation to the disclosure of Inside Information; and
    - (ii) where it becomes applicable under the Applicable Laws, trade reporting requirements arising in respect of that Party under REMIT with respect to this

Support Agreement, including, as necessary, the relevant disclosure of trade information to the ERE;

- (iii) and, for the avoidance of doubt, nothing in this Support Agreement shall transfer the responsibility for complying with such obligations or requirements from one Party to the other.
- (i) If, at any time, the Support Counterparty determines that the Seller might have provided the Buyer with Inside Information (prior to the publication of such Inside Information pursuant to REMIT), the Buyer shall, subject to its obligations arising under and in respect of REMIT, notify the Seller accordingly.
- (j) The Seller shall be relieved from liability under, and deemed not to be in breach of any Clause of this Support Agreement to the extent that the performance of such obligations will, or would be reasonably likely to, result in a breach of REMIT.
- (k) Notwithstanding (j), the Seller shall use its reasonable endeavours to ensure that, where such a breach will, or would be reasonably likely to, occur due only to the timing of any information to be provided to the Support Counterparty, such information shall subsequently be provided to the Support Counterparty in accordance with the relevant provisions of this Support Agreement at the next earliest time that would avoid any such breach or potential breach of REMIT.
- (l) The providing Party shall indemnify the other Party in respect of (i) all direct liabilities and direct costs (including reasonable administration costs), losses or expenses incurred by the other Party, and (ii) any fines imposed by ERE or any Competent Authority which the other Party incurs in the event that the providing Party provides Inside Information to the other Party which would result in the providing Party being in breach of REMIT or would limit the other Party in exercising a right, performing an obligation or undertaking a measure to not place that Party in breach of REMIT.

## 26. NOTICES

26.1 Any notice or other communication to be given by either Party to the other in relation to this Agreement must be in writing, and shall be deemed duly served if delivered personally, by prepaid registered post, by facsimile transmission, or by email to the addressee at the address or (as the case may be) the facsimile number or email address set out below (or such other address or facsimile number subsequently notified in accordance with this clause 26); *provided that*, where no postal address, email address and/or facsimile number is given in respect of particular notices, no such notices may validly be served by such method of communication.

26.2 For the purposes of clause 26, the initial notice details of the parties are as follows:

- (a) For the Seller:
  - (i) Address: [       ]
  - (ii) Fax: [       ]
  - (iii) Email: [       ]
- (b) For the Support Counterparty

(i) Address: [ ]

(ii) Fax: [ ]

(iii) Email: [ ]

26.3 Subject to clause 26.4, any notice shall be deemed to have been received:

- (a) in the case of delivery by hand, on delivery;
- (b) in the case of prepaid registered post, on the second day following the date of posting;
- (c) in the case of facsimile, on acknowledgement of the addressee's facsimile machine; *provided that* a copy is also sent by first class pre-paid post within [one (1)] Business Day; and
- (d) in the case of email, on delivery to the recipient's server and provided no error message is received by the sender.

26.4 Any notice deemed to be received on a day that is not a Business Day, or after 17:00 hours local time at the recipient's location on a Business Day, shall be deemed to have been received at 09:00 hours local time at the recipient's location on the next following Business Day.

## **27. CONFIDENTIALITY AND PUBLICITY**

27.1 Subject to the exceptions provided in clauses 27.2 and 27.3, neither of the Parties shall, from the Effective Date until the expiry or termination of this Agreement or within the period of [two (2)] years following such expiry or termination of this Agreement, without the consent of the other Party, divulge or allow or permit its officers, employees, agents or contractors to divulge, to any person or entity any of the contents of this Agreement or any commercially confidential information relating to the negotiations concerning this Agreement or any commercially confidential information relating to this Agreement which may come to a Party's knowledge in the course of such negotiations or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party.

27.2 The restrictions imposed by clause 27.1 shall not apply to the disclosure of any information:

- (a) which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable from sources other than the Parties;
- (b) where and to the extent it is required under Applicable Laws to be disclosed to any person who is authorised by such Applicable Laws to receive the same;
- (c) where and to the extent it is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the Party making the disclosure is or is proposed to be from time to time listed or dealt in;
- (d) where and to the extent it is required to be given to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is party;
- (e) which is given by a Party to any of its officers or employees or to any of its Affiliates or such Affiliate's officers or employees who require the same to enable them properly

to carry out their duties, *provided that* such persons are bound by obligations of confidentiality equivalent to those in this clause 27;

- (f) which is given by a Party to any of its consultants, banks, financiers, insurers or advisors or to any of its Affiliate or such Affiliate's consultants, banks, financiers, insurers or advisors, *provided that* such persons are bound by obligations of confidentiality equivalent to those in this clause 27;
- (g) which is given by the Seller to a *bona fide* potential investor in, or purchaser of the shares in, the Seller or the assets comprising the Facility (or their professional consultants, banks, financiers, or advisors), *provided that* such persons are bound by obligations of confidentiality equivalent to those in this clause 27; or
- (h) which is given to the Licensed Supplier.

27.3 Without prejudice to any other rights or remedies which a Party may have, the Parties acknowledge and agree that damages would not be an adequate remedy for any breach of this clause 27 and the remedies of injunction, specific performance and other equitable relief are appropriate for any threatened or actual breach of any such provision.

## **28. GOVERNING LAW AND DISPUTE RESOLUTION**

28.1 This Agreement and any dispute or claim arising out of or in connection with it (including non-contractual claims) shall be governed by, and construed in accordance with, the laws of [ ].

28.2 Any dispute arising out of or in connection with this Agreement (including any question regarding its existence, validity or termination) will in the first instance be referred to a director of each Party who shall meet in good faith to resolve the dispute within [fifteen (15)] Business Days of the dispute being referred to them.

28.3 If the dispute is not resolved at such meeting, then:

- (a) the parties may mutually agree to request the non-binding opinion of the [Albanian Energy Regulatory Authority];
- (b) if the dispute relates to a matter expressly provided in this Agreement to be determined by the [Energy Community Secretariat's Dispute Resolution and Negotiation Centre] (or if the Parties mutually agree that the matter should be resolved by the Energy Community Secretariat's Dispute Resolution and Negotiation Centre), request a determination in accordance with Procedural Act 2018/5/EnC of Energy Community Secretariat;
- (c) if the dispute relates to:
  - (i) the determination of Metered Output;
  - (ii) the calculation of the Electricity Payment or the Availability Payment;
  - (iii) the satisfaction by the Seller of any Seller Condition;
  - (iv) the achievement of the commissioning of the Capacity by the Commercial Operations Longstop Date;
  - (v) Availability Guarantee or Energetic Availability Liquidated Damages;

- (vi) Market Readiness Assessment outcome;
- (vii) Determination of Contract Quantity for the purpose of the CfD payments;
- (viii) CfD Price Differential;
- (ix) Determination of a Market Disruption Event;
- (x) Determination of the Replacement Index;

the matter shall be resolved through Expert determination in accordance with clause 28.4; or

- (d) otherwise, the dispute shall be determined in international arbitration in accordance with clause 28.5.

28.4 Where this clause 28.4 applies in accordance with clause 28.3, the following provisions shall apply:

- (a) either Party may refer the matter for Expert determination by serving on the other a written request for the dispute to be referred for Expert determination containing the name of a suggested Expert;
- (b) if the Parties cannot agree on the appointment of the Expert to act and/or the terms of the Expert's appointment, within [fifteen (15)] Business Days of such notice, the Expert shall be appointed (upon the request of either Party) by the Independent Appointer;
- (c) subject hereto, the determination of the matter which the dispute relates shall be conducted in accordance with the Centre for Effective Dispute Resolution's Model Expert Determination Agreement from time to time in force;
- (d) the Expert shall act as an expert and not as an arbitrator;
- (e) the Expert shall be required to give written reasons for his decision;
- (f) save in the case of fraud or manifest error any Expert's determination made in accordance with this clause 28.4 shall be final and binding between the Parties and enforceable as a contractual obligation;
- (g) all matters relating to the Expert determination must be conducted, and the Expert's decision shall be written, in the English language; and
- (h) each of the Parties shall bear the whole of its own costs and one half of the costs of the Expert and any independent advisers to the Expert, unless the Expert (in his/her discretion) determines otherwise.

28.5 Subject to clauses 28.3 and 28.4, any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of in connection with this Agreement) shall be referred to and finally resolved by arbitration under the arbitration rules of the International Chamber of Commerce (ICC) ("**Rules**"). The arbitral tribunal shall consist of [three (3)] arbitrators appointed in accordance with the Rules. The seat of arbitration shall be Vienna, Austria. The language of the arbitration shall be English.

- 28.6 Neither Party shall suspend or be excused from the performance of its respective obligations, including any payment obligations, arising under this Agreement until such time any dispute has been finally resolved in the manner provided therein.
- 28.7 The occurrence of any dispute or pendency of any dispute resolution proceedings shall not affect the obligation of either Party to make payments under this Agreement. Any such amount shall be considered due and shall be paid in full pending resolution of the dispute. The reconciliation of the amounts paid shall occur promptly after and based on the final resolution of such dispute.

## **29. MISCELLANEOUS PROVISIONS**

- 29.1 No provision of this Agreement shall be construed to provide any recovery of any losses, damages, costs or other amounts for which the damaged Party has been compensated for the same losses, damages, costs or other amount under any other provision of this Agreement or the Project Development Agreement or insurance proceeds.
- 29.2 Where either Party grants the other any indulgence, forbearance or extension of time or does not ascertain or exercise any of its rights or remedies, or delays in doing so, the rights and remedies of that Party in respect of this Agreement shall be in no way diminished, waived or extinguished.
- 29.3 If either Party waives any breach of this Agreement, it will still be entitled to enforce that provision subsequently and that waiver shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 29.4 If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any sub-clause or paragraph or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Laws, the same shall be deemed omitted from this Agreement, the remainder of this Agreement shall be read accordingly and the validity or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.
- 29.5 Each Party agrees from time to time to do and perform such other and further acts and execute and deliver any and all such other instruments as may be required by law or reasonably requested by the other Party to establish, maintain and protect the rights and remedies of the other Party and to carry out and effect the intent and purpose of this Agreement.
- 29.6 At any time after the Effective Date the Parties shall, and shall use all reasonable endeavours to, procure that any necessary third party shall execute such documents and do such acts and things as that Party may reasonably require for the purpose of giving to that Party the full benefit of all the provisions of this Agreement.
- 29.7 This Agreement contains the entire agreement between the Parties in relation to its subject matter. Each of the Parties irrevocably and unconditionally waives any right it may have to claim damages for, or to rescind this Agreement because of, breach of any warranty not expressly contained in this Agreement, or any misrepresentation whether or not contained in this Agreement, unless such misrepresentation was made fraudulently.
- 29.8 A person who is not a party to this Agreement (including any employee, officer, agent, representative or subcontractor of either party) has no right to enforce any term of this Agreement.

- 22.1. Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties and no employee of one Party shall be deemed to be or have become an employee of the other Party.
- 29.9 Notwithstanding any other provision of this Agreement, neither Party shall be entitled to recover compensation or make a claim under this Agreement in relation to any loss or damage that it has incurred to the extent that it has already been compensated in respect of that loss or damage under this Agreement, the Project Development Agreement, insurance proceeds or otherwise. No Party shall be entitled to recover damages or obtain an extension of time, payment, reimbursement, restitution or indemnity more than once in respect of the same loss or damage.
- 29.10 This Agreement is prepared in three (3) copies in the Albanian language and three (3) copies in the English language. In the event of conflict between the Albanian language version and the English language version, the Albanian language version shall prevail.

***[EXECUTION BLOCKS TO BE ADDED BASED ON HOW EACH PARTY WILL BE SIGNING THE AGREEMENT]***

**SCHEDULE 1: FACILITY, SITE PLAN AND METERING DEVICE LOCATION**

**Part 1: Facility**

*[to be inserted]*



**Part 2: Site**

*[to be inserted]*

**Part 3: Metering Device Location**

*[to be inserted]*



## SCHEDULE 2: FORM OF BANK GUARANTEE

### [LETTERHEAD OF THE ISSUING COMMERCIAL BANK]

To:

[Name Of Commercial Bank]

[Address]

Place Where Issued: [PLACE]

Date Of Issuance: [DATE]

Letter Of Guarantee No. \_\_\_\_\_

#### BETWEEN:

[Name of commercial bank], [address of commercial bank] hereinafter referred to as the "Guarantor";

[name of company], [address of company] hereinafter referred to as the "Principal"; and

[name of beneficiary], [address of commercial beneficiary] hereinafter referred to as the "Beneficiary".

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Guarantee the following terms have the following meanings:

"**Agreement**" means the power purchase agreement dated [date] between the principal and the beneficiary;

"**Guaranteed Obligations**" means the principal's payment obligations undertaken or assumed by it in respect of any transactions entered into pursuant to the power purchase agreement and obligations to pay compensation for curtailment under the grid connection and operation agreement during the period from [date] up to and including [date];

"**Business Day**" shall mean a day (other than a Saturday or Sunday) on which banks are open for general business in Tirana, Albania, and [location]; and

"**Cap**" means three million euros [(EUR [◆ ]/[CONSULTANCY TEAM NOTE: This value would depend on the size of the relevant Facility; covering (i) For Trading Period I, the amount corresponding to expected PPA payments for a period of 3 months; (ii) for the Trading Period II, the amount of expected CfD payments to the Seller for a period of 3 months] in aggregate in respect of each and all demands hereunder, subject to any adjustment in accordance with paragraph 4 below.

1.2 Unless a contrary indication appears, any reference in this guarantee to the "**Guarantor**", the "**Principal**" or the "**Beneficiary**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

#### 2. GUARANTEE

2.1 At the request of the principal and in consideration of the beneficiary entering into transactions pursuant to the agreement, the guarantor hereby irrevocably and unconditionally:

- (a) guarantees to the beneficiary the punctual performance by the principal of the guaranteed obligations; and
- (b) undertakes with the beneficiary to pay to it, as if principal obligor, an amount or amounts due and owing but unpaid by the principal on first written demand (and waiving all rights of objection and defence and without reference to the principal) within 7 business days of receipt of such written demand from the beneficiary, provided that it is substantially in the form referred to in paragraph 4 below, and subject to paragraph 3 below.

### **3. LIMIT OF GUARANTEE**

- 3.1 The maximum amount payable by the guarantor to the beneficiary under this guarantee shall not exceed the cap. The cap will be reduced from time to time by an amount equal to any principal payment irrevocably and unconditionally made by the principal to the beneficiary in respect of the guaranteed obligations in accordance with the agreement.
- 3.2 Upon receipt by the beneficiary of any such payment by the principal, the beneficiary shall confirm by swift such receipt within 7 business days and that it agrees the cap shall be reduced accordingly.
- 3.3 Following receipt of such confirmation from the beneficiary that it has received a payment from the principal the guarantor will send an amendment to the beneficiary specifying the new maximum amount by means of swift.

### **4. FORM OF DEMAND**

- 4.1 Any demand by the beneficiary under this guarantee shall be served on the guarantor in swift form [and must be signed by an authorised signatory of the beneficiary]. The demand shall be substantially in the form attached to this guarantee as an appendix and shall state:
  - (a) that the principal is in breach of the guaranteed obligations;
  - (b) specify in what respect the principal is in breach; and
  - (c) specify the amount due and owing by the principal.
- 4.2 For the avoidance of doubt, the guarantor is hereby authorised and shall at all times be entitled to make payment in respect of a demand up to the cap without further investigation or inquiry and need not concern itself with the validity, genuineness, accuracy and/or propriety of any demand received by it pursuant to this guarantee. Further, the guarantor shall have no duty or obligation to verify or confirm that the person who signed any demand is, in fact, a person authorised to sign such demand on behalf of the beneficiary.

### **5. EXPIRY**

This guarantee shall come into effect from [date] and shall expire on [date] (the "**Guarantee Expiry Date**"). Following the Guarantee Expiry Date this guarantee shall become null and void and the guarantor shall have no further obligations or liability hereunder, save in respect of any obligations hereunder that have accrued or become due on or before the Guarantee Expiry Date.

## 6. TERMINATION

The guarantor may terminate this guarantee at any time by notice to the principal and the beneficiary with effect from the date (the "**Termination Date**") specified in that notice to be not less than three (3) calendar months after the notice is given to the principal and the beneficiary by the guarantor. On the termination date all obligations of the guarantor under this guarantee shall be terminated and the guarantor shall be released from all liability hereunder, save that the termination of this guarantee shall not affect any obligations of the guarantor that have accrued or become due under this guarantee prior to such termination.

## 7. MISCELLANEOUS

- 7.1 The guarantor may not assign and/or transfer any of its rights or obligations under this guarantee to any person without the prior written consent of the beneficiary and the principal.
- 7.2 This guarantee is governed by the laws of Albania. Any dispute or disputes arising out of or relating to this guarantee, including any dispute relating to the existence, validity or termination of this guarantee or any non-contractual obligation arising out of or in connection with it (a "**Dispute**") shall be referred and finally resolved by arbitration under the rules of the international chamber of commerce (ICC) (the "**Rules**"). The rules are incorporated by reference into this paragraph. The arbitral tribunal shall consist of three arbitrators appointed in accordance with such rules. The seat, or legal place, of arbitration, shall be Vienna, Austria. The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.
- 7.3 Save for the guarantor, the principal and the beneficiary, no other person has any right(s) to enforce or enjoy the benefit of any term of this guarantee.

[Except to the extent it is inconsistent with the express terms of this guarantee, this guarantee is subject to the ICC uniform rules for demand guarantees, 2010 revision, ICC publication no. 758.]

FOR AND ON BEHALF OF

[*NAME OF ISSUING COMMERCIAL BANK*]

[*NAME OF SIGNATORY*]

[*TITLE OF SIGNATORY*]



### **SCHEDULE 3: SEASONAL PROFILE AND TARGETS**

**SCHEDULE 4: FORMULA FOR ENERGETIC AVAILABILITY LIQUIDATED DAMAGES**



**SCHEDULE 5: DETERMINATION OF CONTRACT QUANTITY FOR TRADING PERIOD  
II**

**SCHEDULE 6: SUPPORT COUNTERPARTY ASSIGNMENT AGREEMENT**

**DATED**

[ ]

**(1) MINISTRY OF INFRASTRUCTURE AND ENERGY OF THE REPUBLIC OF ALBANIA**

**- and -**

**(2) [ ]**

**PROJECT DEVELOPMENT  
AGREEMENT**

relating to  
the design, financing, construction, operation,  
and maintenance of Solar PV Facility [with a  
minimum installed capacity 10 MW and  
Supported Capacity up 100 MW] to be located  
at [a site chosen by a Selected Bidder within the  
Republic of Albania]

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**BETWEEN:**

- (1) **MINISTRY OF INFRASTRUCTURE AND ENERGY OF THE REPUBLIC OF ALBANIA**, acting upon the Decision of Council of Ministers no. 349, dated 12 June 2018, and represented by the Minister Belinda Balluku, its successors or assignees as per Applicable Laws ("**Contracting Authority**");
  - (2) [ ], a company duly organized and existing under the laws of [ ], whose registered office is at [ ], and duly represented by [ ], [consortium member], a company incorporated under the laws of [ ], having its registered office at [ ], and duly represented by [ ], and [consortium member], a company incorporated under the laws of [ ], having its registered office at [ ], and duly represented by [ ] (together, "**Consortium**");
- [BIDDER], a company incorporated in [ ] (with registered no. [ ]) and having its registered office at [ ], registered with the [ ] under number [ ](the "**Bidder**"); and
- (3) The SPV established and notified in accordance with clause 2.4, upon its establishment (the "**Developer**").

**BACKGROUND:**

- A In accordance with the Decision no. 349, dated 12 June 2018, of the Albanian Council of Ministers; as amended (the "**Decision 349**"), the Contracting Authority on 19 November 2020 announced the competition procedure ("**Competition Procedure**") to submit their respective bids for the design, financing, construction, operation and maintenance of an Solar PV Faciliti(es) to be located at a site chosen by a Selected Bidder, with a minimum installed capacity 10 MW and for which it has required to get support measures under this Agreement for an installed capacity up to 100 MW (inclusive) ("**Project**"), (the part of the installed capacity receiving support referred as "**Supported Capacity**").
- B The Bidder submitted a binding bid for the Project having with a minimum installed capacity [●], a total installed capacity of [●], and for which it has required to get support measures under this Agreement for an installed capacity up to [●], (inclusive) ("**Bid**"). The Developer will be entering into the Support Agreement with an entity designated by the Contracting Authority for the installed capacity for which it is seeking support up to 100 MW ("**Supported Capacity**") which will apply for Trading Period I prior to a Positive Market Readiness Assessment in the form of a physically settled Power Purchase Agreement regulating the sale and purchase of electricity generated by the Capacity at a fixed price of EUR [ ] ([ ]) per MWh for Trading Period II, after a Positive Market Readiness Assessment recognised by a Joint Declaration, in the form of a financially settled Contract for Differences
- C The special commission of the Contracting Authority found the Bidder to be the winning bidder for the Project and the Contracting Authority awarded the right to the Bidder to enter into this Project Development Agreement in relation to the Facility having [with minimum installed capacity of 10 MW, and with up to 100 MW of Supported Capacity] for a term of fifteen (15) years, and the Developer to enter into the Support Agreement for the Capacity for a term of fifteen (15) years, as per Schedule 4.

## IT IS AGREED:

### 1. DEFINITIONS AND INTERPRETATIONS

1.1 The following words and expressions shall have the meaning ascribed to them below:

**"Affiliate"** means, in respect of a Party, a company, corporation or other legal entity which is:

- (a) directly or indirectly in control of that Party (for the purposes of this definition, a **"Parent Company"**);
- (b) directly or indirectly in control of a Parent Company; or
- (c) directly or indirectly under common control with a Parent Company,

*provided that* **"control"** shall require the ownership of the majority of the partners', shareholders' or members' (as appropriate) voting rights or the ability to exercise a dominant influence pursuant to a contract or pursuant to the articles of association or equivalent constitutional documents of that Party;

**"Agreement"** or **"Project Development Agreement"** means this agreement and all its schedules, which shall be deemed to form an integral part thereof, as amended and/or restated from time to time;

**"Albanian Grid Code"** means the document for the operation of the national Grid System operated by OST;

**"Applicable Laws"** means, with respect to any Party, any internationally binding obligation, constitutional provision, Law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorisation, guideline, governmental approval, consent or requirement of any Competent Authority having jurisdiction over such Party or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Competent Authority;

**"Albanian Labour Code"** means Law No. 7961, dated 12.07.1995 on the "Albanian labour code", as amended;

**"Availability Payment"** means as relevant:

- (a) for Trading Period I, the Electricity Price multiplied by the Deemed Available Output;
- (b) for Trading Period II net revenues from the sale of the Deemed Available Output that would have been generated by the Facility without an instructed curtailment on the Day-Ahead Market and (b) the Price Differential Amount that it would have received without the instructed.

**"Bid"** has the meaning given to it in Recital B;

**"Bidder"** has the meaning given to it in the introductory part of this Agreement;

**"Bid Security"** has the meaning given to it in the Competition Procedure Documents;

**"Business Day"** means any day other than Saturday, Sunday or any other day banks are required to be closed for business by the governing law of:

- (c) the place of business of the Party required to make a payment; and
- (d) the location in which the Site is located;

**"Capacity"** means the gross nominal (nameplate) capacity of solar PV equipment installed and commissioned at the Facility equalling [between minimum installed capacity 10 MW and with Supported Capacity up to 100 MW on the specific Project selected during the Competitive Bidding Procedure] to be located at [a site chosen by a Selected Bidder within the Republic of Albania].

**"Capacity Tolerance"** means five (5) percent (%) tolerance of the Capacity, in excess or in reduction, within which the Facility is deemed to have achieved the full Commissioning.

**"Change in Law"** means:

- (a) the coming into effect of any Law (including any Law regulating Tax) that is not in effect at the Signing Date;
- (b) the modification, repeal or replacement of any Law after the Signing Date; and
- (c) a change after the Signing Date in the interpretation or application by any Competent Authority of any Law (including any Law regulating Tax),

but shall exclude any of the above matters to the extent they constitute:

- (i) remedies or sanctions lawfully exercised by a Competent Authority as a result of any breach of any Law (including any Law regulating Tax) by the Bidder and/or the Developer,
- (ii) direct implementation or adoption of Energy Community's *acquis*;

**"CfD Counterparty"** means the entity designated under the Applicable Laws to act as a counterparty in the financially settled CfD, which might be without limitation either the Renewable Energy Operator or any other entity assigned to take this role on a transitory basis.

**"Commercial Operation Date"** means initially 00:00 hours local time on the immediately succeeding date after the date on which the Commissioning has occurred, or if mutually agreed by the Parties in writing, the first (1st) day of the month immediately following the month in which the Commissioning has occurred and as may be changed in accordance with the Support Agreement;

**"Commercial Operation Longstop Date"** means [twenty-four (24)] months from the Conditions Longstop Date or the Extended Longstop Date as maybe agreed in accordance with the Support Agreement;

**"Commercial Operation Target Date"** means [twenty-four (24)] months from the Effective Date or such other later date as maybe agreed in accordance with the Support Agreement;

**"Commissioning"** has the meaning given to it in clause 6.8 (and **"Commissioned"** shall be interpreted accordingly);

**"Commissioning Certificate"** means a certificate issued by the Joint Commission or the EPC Expert (as the case may be) subsequent to:

- (a) the Commissioning tests, as further defined in schedule 5, having been satisfactorily completed; and
- (b) the Developer having provided the Contracting Authority with all necessary commissioning documentation;

**"Commissioning Commencement Date"** has the meaning given to it in clause 6.3(a) of this Agreement;

**"Commissioning Period"** means the period commencing on the Commissioning Commencement Date until the Commercial Operation Date;

**"Competent Authority"** means any international, national, federal, regional, local or other authority, ministry, inspectorate, department, court, arbitral tribunal, administrative agency or commission or any other governmental, municipal, administrative or regulatory body (in each case to the extent each of the foregoing has jurisdiction over either or both of the Parties, this Agreement and/or the subject matter of this Agreement);

**"Competition Procedure"** has the meaning given to it in Recital A;

**"Competition Procedure Documents"** means the bidding documents published by the Contracting Authority during the Competition Procedure;

**"Conditions Longstop Date"** means [six (6) months] from the Effective Date or such other later date agreed by the Parties in accordance with this Agreement;

**"Conditions Precedent"** means the Contracting Authority and the Developer Conditions Precedent;

**"Conditions Precedent Longstop Date"** means the date occurring [sixty (60) business days] from the Signing Date of this Agreement or any other date agreed by the Parties in writing;

**"Connection Agreement"** means an agreement between the Developer and OST for connection of the Facility to the Grid System or the agreement between the independent operator of the Transmission Line and OST, as defined in the Competitive Procedure Documents and in schedule 6;

**"Contract Security"** means the guarantee procured or provided by the Developer to the Contracting Authority as security for its obligations hereunder in the form that satisfies the requirements set out in schedule 2 as reduced by fifty per cent (50%) upon Commissioning of fifty per cent (50%) of the Capacity and to be returned by the Contracting Authority to the Developer upon completion of the Commissioning of the Facility;

**"Contract for Differences" or "CfD"** means the financially settled contract for differences between a Developer and the CfD counterparty, part of the support agreement and which will



apply for the Trading Period II after completion of a Positive Market Readiness Assessment for the payment of a symmetric sliding premium against the reference market price in relation to the energy produced by the eligible Facility, for a maximum duration of [fifteen (15)] years, as defined in the Competitive Procedure Documents and in schedule 4.

**"Contracting Authority"** means the Ministry of Infrastructure and Energy of the Republic of Albania, acting upon the Decision of Council of Ministers no. 349, dated 12 June 2018, and represented by its Secretary General;

**"Contracting Authority Conditions Precedent"** has the meaning given to it in clause 2.3;

**"Curtailment"** means any event deemed to occur during any dispatch interval when there is a partial or total reduction (including reduction to zero output or non-dispatch) of the net generated electricity output of the Facility from levels of the electricity output the Facility would otherwise be capable of producing due to a measure or instruction by a Competent Authority or OST in accordance with applicable Laws for (i) congestion management, (ii) adjustment of generation, (iii) the safety and reliability of the network system (iv) redispatch measures, or (v) any other measures taken by the OST in accordance with the network codes and Applicable Laws.

**"Decision 349"** has the meaning given to it in Recital A;

**"Deemed Available Output"** means:

- (a) if the Commercial Operation Date occurred at least one (1) year prior to the date on which the circumstances giving rise to the Availability Payment, the actual volume of electricity exported by the Facility to the grid network in the corresponding period in the previous year in respect of which the obligation to pay the Availability Payment arises;
- (b) if the Commercial Operation Date occurred at less than one (1) year prior to the date on which the circumstances giving rise to an obligation to pay for the Availability Payment, the daily average of the actual volume of electricity exported by the Facility to the grid since the Commercial Operation Date, pro-rated hourly as necessary in respect of the first and last day in respect of which the Availability Payment comes due;

**"Delay Damages"** means the higher of:

- (a) the demonstrable losses, costs and damages incurred by the Support Counterparty as the consequence of the Seller not being able to operate the Facility at the Capacity; or
- (b) daily liquidated damages of EUR [ ] ([ ]) per MW of Capacity not Commissioned by the Commercial Operations Target Date or for output not sold and/or delivered to Support Counterparty,

provided that in no circumstance shall such exceed [five percent (5%)] of the Total Project Cost);

**"Depreciated Equity Amount"** means the Equity Amount reduced on a straight line basis from the Commercial Operation Date through the end of the (fifteenth) 15<sup>th</sup> anniversary of that date;

**"Developer"** means the SPV established and notified in accordance with clause 2.4;

**"Developer Conditions Precedent"** has the meaning given to it in clause 2.4;

**"Developer Conditions"** are the conditions defined in clause 2.12;

**"Development Rights"** has the meaning given to it in clause 3.1(a);

**"Direct Agreement"** means a direct agreement between the Contracting Authority, the Developer, and Financing Institutions which shall include, *inter alia*:

- (a) a right for the Financing Institutions to step-in within a specified period to ensure that the obligations of the Developer are complied with so as to prevent any circumstances arising under which the Contracting Authority could seek to terminate this Agreement and/or the right for the Financing Institutions to procure an assignment or other transfer of the Developer's rights and obligations under this Agreement in certain specified circumstances;
- (b) an acknowledgment by the Contracting Authority of any charge or other security (in respect of this Agreement) granted by the Developer to the Financing Institutions; and
- (c) an obligation on the Contracting Authority not to take any action to wind-up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Developer without giving a prescribed period of notice to the Financing Institutions, on terms acceptable to the Developer, acting reasonably, and the Financing Institutions;

**"Early Termination"** has the meaning given to it in clause 11.1;

**"Early Termination Date"** has the meaning given to it in clause 11.2;

**"Effective Date"** has the meaning given to it in clause 2.9;

**"Electricity Price"** means EUR [ ] ([ ]) per MWh;

**"EPC"** means engineering, procurement, and construction;

**"Equity"** means any capital paid by or on behalf of the shareholders of the Developer or their Affiliates to the Developer for shares and the principal amount outstanding under any loans to the Developer by the shareholders of the Developer or their Affiliates, which by their terms are *bona fide* arm's length commercial terms and subordinated to any indebtedness for borrowed money incurred by the Developer under any finance document;

**"Equity Amount"** means the amount of Equity actually paid by the Developer as at Commercial Operation Date;

**"EUR"** means the lawful currency of the member states of the European Union that have adopted and retained a common single currency through monetary union in accordance with European Union treaty law, as amended from time to time;

**"EPC Expert"** has the meaning given to it in clause 6.7;

**"Expert"** means the expert appointed in accordance with clause 23.3;

**"Extended Conditions Longstop Date"** has the meaning given to it in 2.15(b);

**"Extended Conditions Precedent Longstop Date"** has the meaning given to it in clause 2.10(b);

**"Facility"** means the electricity generating solar PV equipment and related infrastructure, including the and transmission line and described in more detail in schedule **Error! Reference source not found.** (but excluding the assets of OST situated (or to be situated) and the Transmission Line at the Site);

**"Facility Boundary Metering Point"** means the metering point designated in the Connection Agreement where the Developer may operate the Metering Device to demonstrate the Metered Output from the Facility fed into the Transmission Line;

**"Financing Institutions"** means any legal entity providing debt financing or refinancing to the Developer for the design, procurement, construction, Operation and maintenance of the Facility and for the exercise of the Development Rights, as well as their permitted successors and assigns, including any agent or trustee for such person or persons and including a shareholder or affiliate of a shareholder;

**"Force Majeure Event"** means any act or event that:

- (a) prevents the affected Party from performing its obligations in accordance with the Agreement; and
- (b) is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party; and
- (c) the affected Party is unable to overcome such act or event with the exercise of all reasonable care and skill (including the expenditure of reasonable sums),

subject to the foregoing conditions having been fulfilled, **"Force Majeure Event"** shall include without limitation the following acts or events:

- (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes;
- (ii) explosions or fires arising from lightning [outside the parameters of the Facility's lightning protection system] or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance;
- (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion;
- (iv) strikes or labour disputes, *provided that* such event is not a Material Adverse Government Action or caused solely by employees of the Developer or as a result of the Developer's failure to comply with a collective bargaining agreement;
- (v) partial or total interruption of the operation of the Facility or part of the Facility during the validity of the decision on a state of emergency for the territory of the Republic of Albania, or local self-government unit where the Facility is located; and
- (vi) failure or inability to achieve positive results from the in-depth environmental impact assessment as required by the Applicable Laws and/or Appendix 21 of

the Competition Procedure Documents, which is not the result of the Developer's non-fulfilment of all legal requirements in connection therewith and which is not attributable to illegal conduct or conduct in bad faith by either Party, and which in event of disagreement between the Parties is to be determined through mediation or expert determination by the Energy Community Mediation and Negotiation Center as per clause 23.3;

*provided that* a Force Majeure Event shall not include:

- (A) the unavailability of labour, equipment, materials, utilities or other resources (except where the unavailability is due to Force Majeure Event);
- (B) economic or financial hardship or lack of funds or inability to satisfy the obligation to pay money when due or inability to obtain financing;
- (C) lack of materials required to develop, construct or maintain the Facility (except where the material lacking is due to Force Majeure Event);
- (D) strike, slow down or labour disruptions that affects the employees of the Parties, their Affiliates, or either of their respective agents or contractors caused solely by employees of either Party or as a result of such Party's failure to comply with a collective bargaining agreement or applicable labour law; or
- (E) changes in the conditions in the relevant market;

**"Generation Attributes"** means all rights and benefits associated with the issuance of guarantees of origin and any cost or tax exemptions, reimbursement rights, commercialised value or other rights of the Relevant Output in accordance with Applicable Laws;

**"Good Industry Practice"** means that degree of skill and care which would reasonably and ordinarily be expected of a contractor experienced in the same type of undertaking (designing, engineering, installing, constructing, completing, commissioning, testing, operating and maintenance) in relation to projects of a similar size, scope, scale, nature and complexity as the Facility;

**"Grid Connection Metering Point"** means the point designated in accordance with the Connection Agreement at which electricity flows and will be metered between the electrical infrastructure operated by the Developer at the Facility and the Grid System operated by OST;

**"Grid System"** means the electrical transmission and distribution systems owned and operated by OST for the delivery of electricity beyond the Metering Point;

**"Implementation Plan"** means the detailed engineering study of the Works to be undertaken for the Facility, which shall be submitted by the Developer to the Contracting Authority for approval, including engineering designs, construction plans, construction schedule, performance specifications, commissioning procedures for testing, final inspection, approval and acceptance of the Facility;

**"Insolvency Event"** means in respect of a Party, that that Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case or any such proceeding or petition instituted or presented against it, that proceeding or petition:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (ii) is not withdrawn, dismissed, discharged, stayed or restrained in each case within [thirty (30)] days of the institution or presentation of that proceeding or petition;
- (e) has a resolution for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within [thirty (30)] days of that event; or
- (h) causes or is subject to any event with respect to it, which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) (inclusive);

**"Issuing Authority"** means the relevant Competent Authority responsible for issue of a Generation Attribute;

**"Joint Commission"** has the meaning given to it in clause 6.6;

**"Final Agreement"** has the meaning given to it in clause 2.7;

**"Law"** means (including in respect of Tax):

- (a) any law (including the common law), statute, statutory instrument, regulation, instruction, direction, rule or requirement (in each case) of any Competent Authority (but, for the avoidance of doubt, only to the extent having force of law);
- (b) any condition or other requirement of any electricity licence or other required authorisation, licence, consent, permit or approval of any Competent Authority (or of any exemption from the requirement to have the same);

**"Material Adverse Government Action"** has the meaning set forth in clause 17;

**"Material Reason"** has the meaning given to it in clause 11.4;

**"Metering Device"** means the metering equipment certified by the applicable Competent Authority and installed at the Facility to measure the electricity generated by the Facility and delivered to the Metering Point at the location specified in more detail in the Connection Agreement;

**"Metered Output"** means the amount of electricity generated by the Facility per each metered hour and fed into the Grid System as demonstrated by the Metering Device installed at the Metering Point in accordance with the Applicable Laws and the Connection Agreement;

**"Metering Point"** means the Facility Boundary Metering Point;

**"MW"** means megawatt;

**"MWh"** means megawatt hours;

**"New Support Counterparty"** has the meaning given to it in clause 3.6;

**"One Year Compensation"** has the meaning given to it in clause 17.4(b);

**"Official Credit Rating"** means (in respect of long-term, unsecured, unsubordinated debt) a credit rating with:

- (a) Standard and Poor's;
- (b) Moody's; or
- (c) any industry recognised alternative or successor rating agency to either of the above (as agreed by the Parties such agreement not to be unreasonably withheld or delayed);

**"Operation"** means all Developers' actions on production, supplying, transmission, distribution, exportation and sale of electric power, in accordance with this Agreement;

**"OSHEE"** means [*Operatori i Shpërndarjes së Energjisë Elektrike sh.a.*], a company organised and existing under the laws of the Republic of Albania, including its universal successors and permitted assignees;

**"OST"** means [*Operatori i Sistemit të Transmetimit sh.a.*], a company organised and existing under the laws of the Republic of Albania, being the owner and operator of the Grid System, including its universal successors and permitted assignees;

**"Party"** means, as applicable, the [Consortium][Bidder, subject to the Transfer Date having occurred the Developer or the Contracting Authority; together, the **"Parties"**];

**"Performance Assurance Financial Requirements"** means the ratios for EBIT to Interest, Funds from Operations, Total Debt to Total Capitalisation, and Tangible Net Worth as defined in the Support Agreement;

**"Permits and Licenses"** means any consent, permission, license, authorisation, approval or certificate, the issue or renewal of which is under the responsibility of any public authority and which is required in connection with the implementation of this Agreement;

**"Positive Market Readiness Assessment"** means the decision taken by the ERE establishing that the Market Readiness criteria following the Market Readiness Assessment has been met and which decision, where applicable, is confirmed by a Joint Declaration of the Parties or any Parties' dispute on such decision is resolved in accordance with the terms of the Support Agreement.

**"Power Purchase Agreement"** means the power purchase agreement part of the Support Agreement, between the Developer and the Support Counterparty which will apply during Trading Period I for the sale of electricity produced by the Facility for a maximum duration of [fifteen (15)] years, as defined in the Competitive Procedure Documents and in schedule 4;

**"Project"** has the meaning given to it in Recital A;<sup>1</sup>

**"Qualification Criteria"** means the criteria set out in Appendix 4 of the RFQ Documents relating to the Project, including the technical and economic criteria;

**"Required Bank Rating"** means:

- (a) in respect of a rating with Standard and Poor's, a rating of at least A- or its equivalent;
- (b) in respect of a rating with Moody's, a rating of at least A3 or its equivalent; or
- (c) in respect of a rating with any industry recognised alternative or successor rating agency to either of the above, the relevant equivalent (as agreed by the Parties, such agreement not to be unreasonably withheld or delayed);

**"Return on Investment Compensation"** means an amount equal [] [%] *per annum* and the Depreciated Equity Amount invested by the Developer, [compounded for a period equal to the lesser of: (i) 18 months or (ii) the remainder of the original term of this Agreement.

**"Revocation Event"** means the occurrence of an event where:

- (a) a Generation Attribute had previously been issued, received or accrued, and is subsequently revoked or declared to conflict with Applicable Laws by a Competent Authority or is otherwise rescinded;
- (b) any transfer of a Generation Attribute is invalid or unenforceable because the Generation Attribute which was the subject of the purported transfer was subject to a charge, lien, encumbrance, or other third party claim;
- (c) the relevant Issuing Authority, other Competent Authority or OST refuses to issue or make available the Generation Attribute (or allow it to be received or accrued or registered) where either Party reasonably believes that the Facility, the electricity generated by the Facility, or either Party (as the case may be) is eligible for the Generation Attribute (or would have been eligible had each Party complied with its obligations under this Agreement); or

the relevant Competent Authority (including the Issuing Authority) or OST requests the holder of the benefit not to redeem, cancel, or make use of the Generation Attribute

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<sup>1</sup> [In case of a Project consisting of more than one (1) Selected Site by the same Developer, termination for specific events, force majeure, penalties for commissioning lower capacities or delays in commissioning will apply separately for each Site.]

as a result the holder has not redeemed the Generation Attribute by the date by which the Generation Attribute must reasonably have been redeemed;

**"Request for Qualification (RFQ)"** means the 1<sup>st</sup> stage of the Competitive Procedure consisting in the to prequalification of prospective bidders with the required technical experience, financial resources and legal standing to deliver a Project.

**"RFP Submission"** means the technical submission and financial bid submitted by the Developer and selected as successful in the Competitive Bidding Procedure.

**"Rules"** has the meaning given to it in clause 23.4;

**"Security"** means any security including any mortgage, charge, pledge, lien, hypothecation, assignment or security interest or any other agreement or arrangement having a similar legal or economic effect as any of the foregoing;

**"Signing Date"** means the date on which this Agreement is signed by the Parties;

**"Site"** means the site selected by the Developer as per the RFP Submission, described and delimited further in schedule 1, upon which the Facility shall be located;

**"Supported Output"** means the Final Nominated Output determined in accordance with clause 6.5 and 6.6 of the Support Agreement subject to the Support Agreement being in effect;

**"SPV"** has the meaning given in clause 2.4(c);

**"Tax"** means any tax, levy, impost, duty, royalty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any or the same) including income tax and corporation tax;

**"Term"** means the period starting on the Effective Date and ending [fifteen (15)] years after the Commercial Operation Date;

**"Termination Amount"** means:

- (a) all applicable debt and interest repayments including any pre-payment charges, breakage charges, penalties, hedging charges owed by the Developer to the Financing Institutions (whether in relation to the senior debt or junior debt, whether secured or unsecured) for the financing of the Capacity; minus
- (b) any insurance proceeds prior to the Termination Date by the Developer and not spent on restoration of the Facility; minus
- (c) the aggregate amount of cash held by or on behalf of the Developer as of the Termination Date, including cash on hand and the credit balance of any such deposit, money market, reserve or securities accounts;

**"Termination Date"** means the date on which this Agreement is terminated in accordance with its terms;

**"Terminating Party"** has the meaning given to it in clause 11.1;



**"Trading Period I"** means a period of the Term starting from the Execution Date of the Support Agreement until completion of a Market Readiness Assessment notified to the Parties in accordance with terms set forth in Schedule 4;

**"Trading Period II"** means a period of the Term starting from the completion of a Market Readiness Assessment unnotified to the Parties in accordance with terms set forth in Schedule 4 until end of the Term;

**"Total Project Cost"** means EUR [ ];<sup>2</sup>

**Mark-to-Market Termination Amount** means the Gains less the aggregate of the Losses and Costs which the Terminating Party incurs as a result of the termination of the Agreement, for the purpose of which:

- (a) "Costs" means brokerage fees, commissions and other third party costs and expenses reasonably incurred by the Terminating Party either in terminating any arrangement pursuant to which it has hedged its obligation or entering into new arrangements which replace the terminated Agreement and all reasonable legal fees, costs and expenses incurred by the Terminating Party in connection with its termination of the Agreement;
- (b) "Gains" means an amount equal to the present value of the economic benefit to the Terminating Party, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner; and
- (c) "Losses" means an amount equal to the present value of the economic loss to the Terminating Party, if any (exclusive of Costs), resulting from its termination of the Agreement, determined in a commercially reasonable manner.

In calculating the Termination Amount, the Terminating Party shall calculate its Gains and Losses as

at the Early Termination Date, without being required to enter into any replacement transactions, or, if such date is not reasonably practicable, at the earliest date after the Early Termination Date. **"Wilful Misconduct"** means a deliberate act or omission that deviates from a reasonable course of action or from any provision of the agreement that is done or omitted to be done with knowledge of or conscious indifference or intent to the harmful, avoidable and reasonably foreseeable consequences;

**"Market Readiness Assessment"** means:

- the establishment of an electricity exchange and provision of clearing prices by the operator of the electricity exchange which are sufficiently frequent and sound to serve as floating reference prices against the Electricity Price (as a fixed (strike) price) to enable the financial settlement by reference to the difference between the floating price and the fixed price;
- the readiness of the day-ahead market to deliver a sound reference price is determined by a Competent Authority based on an in-depth assessment of the day-ahead market, which assessment is conducted not earlier than [twelve (12)] months after the establishment of the organised electricity market and is based on a number of key indicators,

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<sup>2</sup> To be determined based on figures included by the Preferred Bidder in the Pre-Feasibility study submitted as part of its RFP Submission.

- the establishment of the Renewable Energy Operator (REO) to act as CfD counterparty in accordance with the Applicable Laws, as well as the requirement that corporate and financing arrangements for the REO, in particular a functional mechanism for setting and collecting the renewable energy obligation in accordance with the Applicable Laws [be effective for a period of at least 3-months prior to CfD application

**"Support Agreement"** means the agreement for the support of the Project as per Schedule 4, containing terms for a physically settlement Power Purchase Agreement for Trading Period I and terms for a financially settlement Contract for Differences for Trading Period II.

**"Support Counterparty"** means the counterparty designated in accordance with the applicable Laws and the Support Agreement to act as Support Counterparty in the physically settled Power Purchase Agreement for Trading Period I, or as CfD counterparty in the financially settled Contract for Differences for Trading Period II, and to which general provisions apply for the entire Term of this Support Agreement, in combination with either the PPA terms relevant for Trading Period I or CfD terms relevant for Trading Period II.

and

**"Works"** means all the activities for the engineering planning, construction and commissioning of the Facility in accordance with the Implementation Plan.

1.2 In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and *vice versa*;
- (b) a reference to a gender shall not exclude other genders;
- (c) words importing persons shall include natural persons, bodies corporate, unincorporated associations and partnerships (whether or not any of them have separate legal personality);
- (d) reference to any legislative provision shall be deemed to include any statutory instrument, by-law, regulation, rule, subordinate or delegated legislation or order and rules and regulations which are made under it and any subsequent re-enactment or amendment of the same;
- (e) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) references to "writing" include typing, printing, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- (g) section and schedule headings, contents and front sheet are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (h) unless otherwise provided, references to clauses and schedules are references to the clauses and schedules of this Agreement, and references in any schedule to paragraphs, parts and annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the schedule or the part of the schedule in which the references appear;

- (i) references to this Agreement are references to this Agreement as amended or varied from time to time; and
- (j) reference to any agreement, contract, document or deed shall be construed as a reference to it as varied, supplemented or novated from time to time.

1.3 The schedules and any annexes and appendices thereto form part of this Agreement.

## **2. COMMENCEMENT, TERM, CONDITIONS PRECEDENT**

2.1 This Agreement shall come into force on the date it is signed and shall continue until the expiry of the Term, unless extended or subject to Early Termination pursuant to its terms.

2.2 The rights and obligations of the Parties under clauses 3, 4, 5, 6, 7, 11 and 12 shall come into force on the Effective Date.

2.3 The Contracting Authority shall:

- (a) shall procure that the Support CounterpartySupport Counterparty enters into the Support Agreement, in the form attached herein as schedule 4;

and

- (b) register the Agreement with the relevant Competent Authority in accordance with Applicable Laws;

(together, the "**Contracting Authority Conditions Precedent**").

2.4 The Bidder shall:

- (a) confirm to the Contracting Authority in writing the Facility boundaries within the Site selected by the Bidder as per the RFP Submission;
- (b) provide the Contract Security reasonably satisfactory to the Contracting Authority;
- (c) establish a special purpose vehicle ("**SPV**") as an entity established under Albanian law in which the Bidder is the direct or indirect controlling shareholder[s] and deliver to the Contracting Authority true and complete copies of:
  - (i) the articles of association (in form and in substance approved by the Contracting Authority before the Effective Date) and registration certificate of the SPV with the commercial registry; and
  - (ii) the resolutions adopted by the shareholders of the SPV authorising the performance by the SPV of this Agreement and the Support Agreement;
- (d) procure that the Developer enters into the Support Agreement with the Support Counterparty,

(together, the "**Developer Conditions Precedent**").

2.5 Upon the date of registration of the SPV with the Albanian commercial registry (the "**Transfer Date**"), all the rights and obligations of the Bidder hereunder shall be transferred to the Developer. The Bidder shall:

- (a) perform all necessary actions to ensure that such transfer is valid and documented; and
  - (b) ensure that all requirements under this Agreement regarding the Developer are appropriately incorporated into the constitutional documents of the SPV.
- 2.6 No later than the Conditions Precedent Longstop Date, the Contracting Authority shall meet the Contracting Authority Conditions Precedent and the Bidder shall meet the Developer Conditions Precedent.
- 2.7 Each Party shall keep the other informed of its progress in satisfying its Conditions Precedent. The Parties shall meet thereafter to evidence the fulfilment of the Conditions Precedent and shall sign a joint statement to that effect ("**Final Agreement**"). The representative of the Developer shall also sign the Final Agreement.
- 2.8 In the event that the Contracting Authority fails to participate in the meeting and sign the Final Agreement, *provided that* the Bidder and/or the Developer have send a written notice to the Contracting Authority [thirty (30)] Business Days prior to the meeting, the Bidder and the Developer shall be entitled to sign alone the Final Agreement and send it to the Contracting Authority. In the event that the Contracting Authority shall not object in writing to the Final Agreement within [thirty (30)] Business Days of its receipt, it will be considered that the Final Agreement has been accepted by the Contracting Authority. Any dispute in relation to the satisfaction of the Conditions Precedent, the Final Agreement and/or the Effective Date shall be resolved in accordance with clause 23.
- 2.9 The date of signature of the Final Agreement pursuant to clause 2.7 or the day following the expiry of [thirty (30)] Business Day period (where the Contracting Authority has not objected in writing in accordance with clause 2.8) shall be the "**Effective Date**".
- 2.10 In the event that the only Conditions Precedent that have not been satisfied or waived at the Conditions Precedent Longstop Date are Developer Conditions Precedent:
  - (a) the Contracting Authority may terminate this Agreement by giving [thirty (30)] days' notice to the Bidder;
  - (b) upon the expiry of such [thirty (30)] days' period, this Agreement shall automatically terminate without the need for further notice, unless all of the outstanding conditions have been satisfied at such date or the Parties have agreed in writing to extend the Conditions Precedent Longstop Date ("**Extended Conditions Precedent Longstop Date**") and the validity of the Bid Security has been extended until the Extended Conditions Precedent Longstop Date, in which case this Agreement shall terminate only on the Extended Conditions Precedent Longstop Date, unless all outstanding conditions have been satisfied prior to or on the Extended Conditions Precedent Longstop Date; and
  - (c) upon termination, the Contracting Authority shall be entitled to draw the full amount of the Bid Security as extended until the Extended Conditions Longstop Date, which amount shall be deemed to cover all losses, costs and expenses suffered or incurred by the Contracting Authority in connection with the termination of this Agreement and with the necessary action to find an alternative developer for the Facility.
- 2.11 In the event the only Conditions Precedent that have not been satisfied or waived at the Conditions Precedent Longstop Date are the Contracting Authority Conditions Precedent:

- (a) the Developer may terminate this Agreement by giving [thirty (30)] days' notice to the Contracting Authority;
- (b) upon the expiry of such period, this Agreement shall automatically terminate without the need for further notice, unless all of the outstanding conditions have been satisfied at such date or the Parties have both agreed in writing to extend the Conditions Precedent Longstop Date and the Bid Security has been extended until the Extended Conditions Precedent Longstop Date, in which case this Agreement shall terminate only on such Extended Conditions Precedent Longstop Date, unless all outstanding conditions have been satisfied prior to or on the Extended Conditions Precedent Longstop Date; and
- (c) not later than [forty-five (45)] Business Days of the date of termination of this Agreement, the Contracting Authority shall return to the Developer the Bid Security or the Contract Security whichever has been issued.

2.12 As soon as reasonably practicable [from the Signing Date], but in any event, no later than the **Conditions Longstop Date**, the Developer shall:

- (a) provide to the Contracting Authority an Implementation Plan for approval and, as applicable, revise the Implementation Plan if the Contracting Authority, acting reasonably, rejected the Implementation Plan, provided that the Contracting Authority clearly stated and justified its rejection;
- (b) subject to clause 3 and 4, and following the RFP requirements, procure that it has entered into all access rights necessary to install and operate the Facility.
- (c) complete monitoring activities and implementation of mitigation and compensatory measures as per the full ESIA in accordance with Annexes 15 of the Competitive Bidding Documents.
- (d) subject to clauses 3 and 4, and following the connection offer as per the Proposal Submission, execute the Connection Agreement with OST;
- (e) secure any relevant approvals, consents, orders, authorisations and Governmental Approvals for construction and operation, of the Facility or as otherwise required to fulfil its obligations under this Agreement and the Support Agreement,

(together, the "**Developer Conditions**").

2.13 On the date on which Developer becomes aware that one or more of the Developer Conditions have been satisfied, it shall notify the Contracting Authority in writing and provide to the Contracting Authority evidence demonstrating such satisfaction as the Contracting Authority reasonably requires.

2.14 Subject to clause 2.15, if the Developer is prevented from fulfilling one or more Developer Conditions on or before the Conditions Longstop Date due to one or more of the following causes:

- (a) as a consequence of a Change in Law; or
- (b) as a consequence of a Force Majeure Event for which relief is available under clause 16; or

- (c) as a consequence of a Material Adverse Government Act in accordance with clause 17 or as consequence of a failure of the Contracting Authority to procure that OST complies with clause 3.1 of the Project Development Agreement;

the Developer Conditions Longstop Date shall be postponed in accordance with clause 2.15(a)

2.15 The Parties agree and acknowledge that the Conditions Longstop Date shall only be varied in the following circumstances:

- (a) where the Developer and the Contracting Authority mutually agree in writing upon another date to be the Conditions Longstop Date; or
- (b) where the Developer is prevented from fulfilling one or more Developer Conditions on or before the Conditions Longstop Date in events or circumstances falling under clause 2.14,

in which case the relevant date shall be as agreed in writing by the Parties (in respect of an agreement under clause 2.15(a) or shall be postponed for a period of time commensurate with the delay to achieving the affected Developer Conditions caused by such events or circumstances, *provided that* such postponement shall be limited to a maximum of [one (1)] year following the original Conditions Longstop Date (in respect of the application of clause 2.14) ("**Extended Conditions Longstop Date**"). In such circumstances references in this Agreement to the Conditions Longstop Date shall be read as references to the Extended Conditions Longstop Date.

2.16 If the Commissioning Commencement Date has not occurred on or before the Commercial Operations Longstop Date as a result of the Developer not satisfying the Developer Conditions by the Conditions Longstop Date (subject to the Conditions Longstop Date being extended pursuant to clause 2.15), then the Developer shall pay the Delay Damages for each day (or part of a day) between the Conditions Longstop Date and the date of full satisfaction of the Developer Conditions.

2.17 If the date of full satisfaction of the Developer Conditions does not occur within six (6) months from the Conditions Longstop Date, the Contracting Authority may send a notice of termination on such grounds, and, on delivery of such notice to the Seller, the Agreement shall then terminate.

2.18 Nothing in this clause shall limit the obligations of the Contracting Authority and/or the Support CounterpartySupport Counterparty, or the rights of the Financing Institutions, under the Direct Agreement. In case of discrepancy between this clause and the provisions of the Direct Agreement, the provisions of the Direct Agreement shall prevail.

2.19 Any dispute or disagreement as to the length of time by which the relevant Condition Longstop Date ought to be extended under clause 2.15 shall be dealt with in accordance with clause 24.

### **3. FACILITATION OBLIGATIONS**

3.1 The Contracting Authority, upon the request of the Developer, shall provide reasonable assistance to the Developer in order for it to timely obtain from the relevant Competent Authority all Permits, Licenses and the Right of Way required for the purpose of the Project, including, without limitation, required renewals thereof. Such facilitation by the Contracting

Authority shall not apply in case the non-issuance or refusal of renewal of Permits, Licenses and Right of Way is the result of the Developer's non-fulfilment of all requirements under Applicable Laws in connection therewith.

- 3.2 The Contracting Authority shall provide reasonable assistance to the Developer in connection with any dealings with the relevant Competent Authorities responsible for providing the necessary utility services to the Facility. The Developer shall however make its own arrangements in connection with the provision of water, sewage treatment and electricity and shall bear all costs, expenses and liabilities in connection therewith.
- 3.3 The Contracting Authority shall provide reasonable assistance to the Developer in connection with the negotiation and timely conclusion of the Connection Agreement.
- 3.4 The Contracting Authority shall use its reasonable endeavours to procure that there are no other developments undertaken in the vicinity of the Site which may have an adverse impact on the efficiency of the Facility or its ability to generate electricity with optimal efficiency.
- 3.5 If the Project is linked to or is part of a larger project containing a Merchant Capacity and if the grid connection issued or to be issued covers that Merchant Capacity, the Contracting Authority shall use its reasonable endeavours to support and facilitate the application for an authorisation under the Council of Ministers Decision 822 in connection to the Merchant Capacity.
- 3.6 In case of designation of a new entity to act as counterparty in the Support Agreement in accordance with the Applicable Laws ("**New Support Counterparty**"), the Contracting Authority shall procure that:
  - (a) the transferring Support Counterparty shall perform all of its obligations under Support Agreement until the New Support Counterparty accedes to the Support Agreement as the Support Counterparty;
  - (b) the transferring Support Counterparty and the New Support Counterparty shall remain jointly and severally liable to the Developer for all Support Counterparty obligations that have arisen under the Support Agreement prior to the transfer; and
  - (c) without prejudice to article 14.1 of the Support Agreement, in event and as long as the Support Counterparty fails to fulfil the same Performance Assurance Financial Requirements as the transferring Support Counterparty or has the Official Credit Rating lower than the Official Credit Rating of the transferring Support Counterparty at the time of the transfer of the Support Agreement, the transferring Support Counterparty and the New Support Counterparty shall remain jointly and severally liable to the Developer in respect of all Support Counterparty obligations under the Support Agreement, unless the Developer agrees otherwise in writing.

#### **4. TRANSMISSION LINE**

- 4.1 The Developer shall take all necessary steps for the exercise of the Right of Way for the construction of the Transmission Line and shall compensate at its own cost in accordance with the Applicable Laws, damages caused to third parties by the exercise of such Right of Way;
- 4.2 The Developer shall design and construct the Transmission Line at its own cost in accordance with Applicable Laws, RFP submission and subject to the requirements of the Connection Agreement;
- 4.3 Upon successful completion and commissioning of the Transmission Line, the Developer shall transfer the ownership of the Transmission Line to the OST, in accordance with the Applicable Laws Connection Agreement;
  - (a) upon transfer of the ownership of the Transmission Line to OST as per this clause the Facility Boundary Metering Point shall be deemed to be the Grid Connection Metering Point;
  - (b) OST shall be responsible for the operation and maintenance of the Transmission Line, in accordance with the Applicable Laws and the Connection Agreement.

#### **5. CAPACITY, ELECTRICITY AND GENERATION ATTRIBUTES**

- 5.1 The Developer shall:
  - (a) design and construct the Facility to achieve the Capacity by the Commercial Operations Longstop Date;
  - (b) sell and deliver the Relevant Output at the Electricity Price;
  - (c) comply with its obligations under this Agreement, the Support Agreement in the form of a Power Purchase Agreement for Trading Period I and Contract for Differences for Trading Period II, the Connection Agreement, and Applicable Laws;and
  - (d) following the termination of the Support Agreement, continue to make available all electricity generated at the Facility and the Capacity to the power market in accordance with the market model and rules pursuant to the Applicable Laws.
- 5.2 In consideration for the selection of the Bidder in the Competition Procedure, the provision of development support under this Agreement, and the purchase of electricity at the Electricity Price in accordance with the Power Purchase Agreement for the Trading Period I, Contract for Differences for Trading Period II, all value and benefits of Generation Attributes (including but not limited to any value and benefits arising from generation of electricity from renewable energy sources in respect of the Relevant Output) are included in the Electricity Price. The Contracting Authority shall exclusively be entitled to these Generation Attributes.
- 5.3 In accordance with Applicable Laws and at the direction of the Contracting Authority, the Developer shall not to apply for or take the benefits of Generation Attributes connected with the Relevant Output, or if required for compliance with state aid restrictions under the Energy Community Treaty or transfer or to make available to the Contracting Authority all Generation Attributes connected with the Relevant Output free of charges, liens, other



encumbrances and third party claims and the Developer shall not challenge any right of the Contracting Authority to:

- (a) any Generation Attributes connected with the Relevant Output; or
- (b) offer to any third party all or any part of the Generation Attributes with the Relevant Output.

## 6. CONSTRUCTION AND COMMISSIONING

6.1 The Developer shall use all reasonable endeavours to procure that the construction and Commissioning of the Facility is carried out and completed in accordance with all Applicable Laws, Good Industry Practice, RFP Submission and the terms and conditions of the Support Agreement.

6.2 The Developer shall:

- (a) commence the Works within [thirty (30)] Business Days from the Conditions Longstop Date or the Extended Conditions Longstop Date as applicable.

6.3 The Developer shall notify the Contracting Authority and the Support Counterparty in writing of:

- (a) its best estimate of the date on which it anticipates it shall commence Commissioning (the date referred to in such notice being the ("**Commissioning Commencement Date**") as soon as reasonably practical following satisfaction of the Developer Conditions;
- (b) its best estimate of the date on which it anticipates occurrence of the Commercial Operation Date as soon as reasonably practical; and
- (c) the occurrence of the Commercial Operation Date without delay upon such occurrence.

6.4 During the Commissioning Period, the Developer has the right to sell to the Support Counterparty (under the Support Agreement) and the Support Counterparty may (but is not obliged to), by notice to the Developer, elect to purchase and accept any Metered Output generated by the Facility. If the Support Counterparty does not elect to purchase the Metered Output during the Commissioning Period, the Developer may offer the Metered Output on the free electricity market in accordance with the electricity market rules and the Applicable Laws. This may include without limitation the right of the Developer to participate in tenders for the sale of electricity to cover Grid System losses in accordance with Applicable Laws.

6.5 The Developer shall use all reasonable endeavours to complete the construction and Commissioning of the Facility by the Commercial Operation Target Date, but the Developer shall complete the construction and Commissioning prior or on the Commercial Operation Longstop Date.

6.6 The Developer shall notify the Contracting Authority on the completion of Facility. Within [twenty (20)] days from receipt of such notification by the Contracting Authority, the Developer and the Contracting Authority shall establish a joint commission composed of [four (4) individuals, two (2) representatives of the Developer, and two (2) representatives of the Contracting Authority] ("**Joint Commission**"), which will be responsible for the evaluation of Commissioning test and issuance of the Commissioning Certificate.

- 6.7 In the event that the Contracting Authority fails to nominate its [two (2)] members in the Joint Commission for the Commissioning of the Facility, or its members fail to participate at the performance of the Commissioning test, or if there is a deadlock in the Joint Commission in determining whether Commissioning has occurred, in accordance with clause 6.6, the Developer may appoint a reputable and independent EPC Expert, who must (i) have a degree in electrical or mechanical engineering, (b) have at least 10 years of appraisal experience in the renewable energies sector, (c) have at least five (5) bankable appraisals of commissioning of similar solar PV plants ("**EPC Expert**"), at the Developer's expense, to carry out the Commissioning test and issue the Commissioning Certificate. The Commissioning Certificate and a detailed technical report of the findings of the EPC Expert shall be submitted to the Contracting Authority by the Developer within [ten (10)] days from the date of the issuance of the Commissioning Certificate and shall be binding on the Parties.
- 6.8 "**Commissioning**" shall be achieved when:
- (a) the Facility has installed and commissioned generation facilities equal to the Capacity and is capable of delivering a corresponding quantity of electricity to the Metering Point and of exporting such quantity of electricity to the Grid System;
  - (b) the Facility has successfully completed all of the reliability, efficiency and availability tests ordinarily required by an operator of a plant similar to the Facility who is acting in accordance with Good Industry Practice;
  - (c) the connection referred to in the Connection Agreement is installed and energised so as to allow the export of electricity from the Facility to the Grid System;
  - (d) a Metering Device has been installed in respect of the Facility; and
  - (e) the Joint Commission or the EPC Expert (as the case may be) has issued the Commissioning Certificate in respect thereof.
- 6.9 Subject to clause 6.10, in the event that the Commissioning is not achieved by the Commercial Operation Target Date, the Developer shall pay to the Contracting Authority daily liquidated Delay Damages per MW of Capacity which has not been Commissioned accruing from the Business Day immediately following the Commercial Operation Target Date until the Commercial Operations Date or a date of Early Termination, which liquidated damages amount shall be the Contracting Authority's sole and exclusive remedy and deemed to cover all losses, costs and expenses suffered or incurred by the Contracting Authority as a result of not achieving the Commissioning by the Commercial Operation Target Date.
- 6.10 The Parties agree that the Delay Damages provided in clause 6.9:
- (a) shall not be payable if the Commissioning Date has been prevented or delayed as a result of:
    - (i) a Force Majeure Event and/or a Material Adverse Government Action;
    - (ii) as a result of an occurrence of a Change in Law; or
    - (iii) if the Parties mutually agree upon a later Commercial Operation Target Date for the Facility and
  - (b) in any event shall not exceed [five percent (5%)] of the Total Project Cost.

- 6.11. If the commissioning has not occurred on or before the Commercial Operations Longstop Date (subject to the conditions longstop date being extended pursuant to clause 2.15. of this Agreement or the Commercial Operations Longstop Date being extended pursuant to clause 16 of this Agreement), the Contracting Authority shall be entitled to draw the full amount of the Contract Security.

## **7. GENERAL MONITORING AND SUPERVISION**

- 7.1 The Contracting Authority may monitor and inspect the construction of the Facility during the construction phase of the Project in the presence of an authorised representative of the Developer upon reasonable prior written notice to the Developer, in order to verify the fulfilment of the Developer's obligations under this Agreement.

- 7.2 The Contracting Authority may exercise general supervision of the Operation phase of the Project in the presence of an authorised representative of the Developer and upon reasonable prior written notice to the Developer, in order to verify that the ongoing Operation of the Plant, quality and conformity of the Operation are pursuant to the Implementation Plan and operational rules.

- 7.3 During the construction of the Facility, on the first (1st) day of every quarter (or the next Business Day) following the first (1) month after start of the construction, the Developer shall provide a construction progress report to the Contracting Authority, detailing:

- (a) the items of the Works both completed and in progress for the preceding month (except for the month preceding the start of the construction phase);
- (b) the Works anticipated to be completed during that month;
- (c) the estimated time until completion of the Works;
- (d) any event or circumstance reasonably likely to hinder or delay the achievement of the Commercial Operations Date; and
- (e) any other matters as the Contracting Authority may reasonably request.

- 7.4 If any obstacle beyond the Developer's control occurs that would result in delay in the performance of the Works or in achieving of the Commercial Operations Date, the Developer shall send a report to the Contracting Authority within [ten (10)] Business Days of discovery of such obstacle outlining the reasons that led or will lead to such delay and the measures that shall be applied to avoid or minimise delay in finalising of the Works by the Commercial Operations Date.

- 7.5 In the case that any defect, non-fulfilment, default or similar is detected during the general monitoring and supervision of the Works, the Contracting Authority shall notify the Developer in writing of the issues identified, the measures to be undertaken and duties to be fulfilled in order to address and remedy it. Such written notification shall set out explicitly and clearly the measures to be taken to mitigate them and include an adequate timeframe for achieving it, in view of the requested mitigation measures, for the Developer to resolve it.

## **8. REPRESENTATIONS AND WARRANTIES**

- 8.1 The Contracting Authority represents and warrants that:

- (a) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof.

8.2 At the Signing Date[each member of the Consortium][and up to and including the date that is the Transfer Date, the Bidder, and from the Transfer Date and throughout the Term, the Developer represents and warrants that:

- (a) it is duly organised, validly existing and in good standing under Applicable Laws;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (d) it has taken all necessary action to ensure delivery and performance in accordance with the RFP Submission;
- (e) the execution and delivery of this Agreement and/or the performance of any of its obligations as set forth under this Agreement violates none of:
  - (i) any Applicable Law applicable to it;
  - (ii) its charter, bylaws or other corporate documents binding on it; and/or
  - (iii) any enforceable contract signed by it;
- (f) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (g) the Developer and each of its direct or indirect shareholders has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (h) the Developer (as the SPV) shall be a sole purpose corporate entity and the business it is allowed to transact is restricted to that which is necessary and expedient for the proper performance of all of its obligations under this Agreement;
- (i) neither the Developer nor any of its direct or indirect shareholders is in bankruptcy or liquidation proceedings;
- (j) neither the Developer nor any of its direct or indirect shareholders has been convicted of fraud, corruption, collusion or money laundering or for a criminal act committed in the course of professional activity performance;
- (k) neither the Developer ) nor any of its direct or indirect shareholders has been excluded or disqualified from any bid or public procurement process in the Republic of Albania;

- (l) neither the Developer nor any of its direct or indirect shareholders has been debarred pursuant to the public sanctions list of any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decision of 9 April 2010 ([www.crossdebarment.org](http://www.crossdebarment.org)), nor is any of the forgoing persons included in any sanctions lists promulgated by the UN Security Council or its committees, or any other recognised international sanctions list or in any other way involved in activities (directly or through any subsidiary) that are not in compliance with the sanctions promulgated by the UN Security Council or its committees or national sanctions in the Republic of Albania);
- (m) neither the Developer nor any of its direct or indirect shareholders has any conflict of interest or potential conflict of interest arising from prior or existing contracts, agreements or relationships which affects or could affect its potential involvement in the Project; and
- (n) neither the Developer, nor any of its direct or indirect shareholders has committed, with respect to the Project, any corrupt, fraudulent, collusive, coercive acts, nor other acts that could violate any Applicable Laws.

## **9. TRANSFER RESTRICTIONS**

- 9.1 The Developer shall timely notify the Contracting Authority the proposed transaction and shall submit to the Contracting Authority all particulars thereof that may be reasonably requested by the Contracting Authority.
- 9.2 The Developer undertakes that:
  - (a) until a date falling not earlier than [(3) years] following the Commercial Operations Date, each individual member of the Consortium][Bidder that have contributed to the satisfaction of the Qualification Criteria, shall own (directly or indirectly) the same percentage of shares with the Developer as of the Effective Date; and
  - (b) for a period of [twelve (12)] years from the third (3rd) anniversary of the Commercial Operations Date, any transfer of shares in the Developer shall be subject to Contracting Authority's prior written consent (which shall not be unreasonably withheld or delayed, *provided that* it shall be reasonable for the Contracting Authority to withhold its consent to a transfer of obligations where it reasonably believes the proposed transferee has insufficient financial standing or technical knowledge to fulfil the transferor's obligations under this Agreement).
- 9.3 The Developer may assign its rights under this Agreement by way of Security to or in favour of the Financing Institutions without the consent of the Contracting Authority. The Developer shall notify in writing the Contracting Authority of any such assignment as soon as reasonably practicable, but in any case prior to the assignment.
- 9.4 The Contracting Authority shall, where reasonably requested by the Developer or the Financing Institutions, enter into a Direct Agreement (or replacement Direct Agreement, as applicable) with the Developer and the Financing Institutions within [thirty (30)] Business Days of receipt of written notice from the Developer or the Financing Institutions requesting that the Contracting Authority delivers an executed Direct Agreement in accordance with this Agreement.
- 9.5 The Developer shall procure that any beneficiary in or transferee of shares in the Developer or any transferee of rights or obligations under this Agreement, at the sole discretion of the

Contracting Authority, accedes to this Agreement or signs such agreements or documents as may be required by the Contracting Authority, acting reasonably, to give full effect to the obligations under this Agreement.

## 10. DEVELOPER UNDERTAKINGS

10.1 From the Effective Date and throughout the Term:

- (a) the Developer shall remain a "limited liability Company" or "joint stock Company", operating in accordance with law no 9901, dated 14 April 2008 "*On Entrepreneurs and Commercial Companies*";
- (b) the Developer's sole corporate object shall be the design, construction, Operation, and maintenance of the Facility to the Contracting Authority, including the planning, financing, building, export and sale of electric power, pursuant to this Agreement; and
- (c) the Developer shall maintain its registered address in the Republic of Albania.

10.2 Within [three (3)] weeks from the Commissioning Commencement Date, the Developer shall provide the Contracting Authority with certified copies of insurance certificates evidencing (to the reasonable satisfaction of the Contracting Authority) that the Developer has obtained all insurance policies and covers required in accordance with clause 15.

10.3 The Developer shall comply with the provisions of the Albanian Labour Code and all regulations on technical security, technical discipline, protection at work, hygiene and fire security, in order to prevent any damage or fatality at work.

10.4 The Developer shall ensure due and proper application of all security and safety measures at the Facility in accordance with Good Industry Practice and Applicable Laws.

10.5 The Developer shall pay all expenses and costs connected with the application and issuance of any Licenses and Permits and any notary expenses.

10.6 In the event a refinancing with the Financing Institutions after the Commercial Operations Date results in a higher Termination Amount, the Developer shall require the approval by the Contracting Authority of the refinancing, in particular of proposed amendments to the provisions affecting the Termination Amount after the Commercial Operations Date, which approval shall not to be unreasonably withheld or delayed. The Contracting Authority shall notify in writing its position to the Developer within [ten (10)] Business Days of receipt of a written request by the Developer. The Contracting Authority may request an extension of this deadline providing reasonable justification. If the Contracting Authority does not submit a written response by [ten (10)] Business Days from receipt of such a request by the Developer, it shall be deemed to have approved the refinancing terms as notified by the Developer.

10.7 The Bidder that has contributed to the satisfaction of the Qualification Criteria, shall remain jointly and severally liable under this Agreement, alongside the Developer, from the Effective Date until the Commercial Operations Date.

## 11. TERMINATION

11.1 If a Material Reason with respect to a Party has occurred and is continuing the other Party (the "**Terminating Party**") may terminate the Agreement ("**Early Termination**") by giving the other Party written notice.

- 11.2 A notice of Early Termination shall specify the relevant Material Reason for the Early Termination and shall designate a day as an early Termination Date ("**Early Termination Date**"). The Early Termination Date may not be earlier than the day the notice is deemed to have been received under the Agreement nor later than [twenty (20)] days after such day. With effect from the Early Termination Date, all further payments and performance in respect of the Agreement shall be released (and not merely suspended) and existing duties and obligations of the Parties shall be replaced by the obligation of the other Party to pay damages for non-fulfilment to the Terminating Party in an amount (if any) calculated in accordance with clause 12.
- 11.3 The Termination Amount shall be payable by to the Terminating Party within [sixty (60)] Business Days of its notification by the Terminating Party in accordance with clause 12.
- 11.4 The Agreement may be terminated at any time for one or more of the following reasons (each, a "**Material Reason**"):
- (a) by the Contracting Authority if:
    - (i) the Support Agreement is terminated early by the Support Counterparty due to breach of the Support Agreement by the Developer;
    - (ii) the Developer suffers an Insolvency Event or takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any Insolvency Event; or
    - (iii) subject to clause 2.15, the Developer has not met the Developer Conditions or has not achieved Commissioning by the Commercial Operations Longstop Date;
    - (iv) the Developer is in material breach of an undertaking, warranty or representation under clause 8.2 or clause 10, which material breach is capable of remedy (disregarding time of performance) and which the Developer has failed to remedy within [sixty (60)] Business Days of having been required in writing by the Support Counterparty to remedy the relevant material breach;
    - (v) the Developer is not complying with the material terms of an arbitration award rendered pursuant to clause 23;
    - (vi) the Developer is in material breach of the transfer restrictions under clause 9, which the Developer has failed to remedy within [sixty (60)] Business Days of having been required in writing by the Support Counterparty to remedy the relevant material
    - (vii) in the case that any defect, non-fulfilment, default or similar is detected during the general monitoring and supervision of the Works, and the Developer fails to remedy on the issues identified and measures to be taken as per clause 7 within [sixty (60)] Business Days of having been required in writing by the Support Counterparty to remedy the relevant material breach
    - (viii) the Developer has failed to pay any undisputed amount due and payable under this Agreement within [thirty (30)] Business Days of receiving notice requiring payment of such overdue amount from the Contracting Authority;
    - (ix) the Developer is involved in Wilful Misconduct (or causes environmental

damage under the Applicable Laws or is otherwise in material breach of any of its obligations under this Agreement, and which misconduct or material breach if capable of remedy the Developer failed to remedy within [sixty (60)] Business Days of having been required in writing by the Contracting Authority to remedy the relevant misconduct or material breach;

(b) by the Developer if:

- (i) the Power Purchase Agreement during Trading Period I or the Contract for Differences during Trading Period II has been terminated by the Developer as a consequence of the Support Counterparty (or any New Off-taker, if applicable) persistently breaching its payment obligations thereunder, provided that the outstanding payments could not be realised by the Developer drawing such amounts under credit support provided by or on behalf of the Support Counterparty under the Support Agreement;
- (ii) the Support Counterparty or Counterparty transferred the Support Agreement to an entity that does not fulfil the same Official Credit Rating or the same Performance Assurance Financial Requirements as the original Off-taker under the Support Agreement and the original Support Counterparty is not held jointly liable as per clause 3.6 of this Agreement, and which breach the Contracting Authority has failed to remedy within sixty (60) Business Days of having been required in writing by the Developer to remedy the relevant material breach;
- (iii) the Contracting Authority is in material breach of an undertaking, warranty or representation under clause 3.5 or clause 8.1, which material breach is capable of remedy (disregarding time of performance) and which the Contracting Authority has failed to remedy within sixty (60) Business Days of having been required in writing by the Developer to remedy the relevant material breach;
- (iv) the Contracting Authority has failed to pay any undisputed amount due and payable under this Agreement within thirty (30) Business Days of receiving notice requiring payment of such overdue amount from the Developer;
- (v) the Contracting Authority is involved in Wilful Misconduct or is otherwise in material breach of any of its obligations under this Agreement, and which misconduct or material breach if capable of remedy the Contracting Authority or any other Competent Authority failed to remedy within sixty (60) Business Days Business Days of having been required in writing by the Developer to remedy the relevant misconduct or material breach; or
- (vi) an event giving rise to the right of termination of this Agreement due to a Material Adverse Government Action, as set forth in clause 17.2, occurred.

11.5 The rights of the Contracting Authority to terminate this Agreement shall be subject to the deferral and other rights in favour of the Financing Institutions set out in the Direct Agreement as may apply in respect of the Facility.

11.6 The Contracting Authority shall notify the Financing Institutions in writing should it reasonably anticipate taking action pursuant to this clause 11 by providing such details as may be required pursuant to the terms of the Direct Agreement.



## **12. CONSEQUENCES OF EARLY TERMINATION OF THE AGREEMENT**

- 12.1 The Terminating Party shall calculate an amount to be paid by the other Party by calculating its loss in accordance with the provision of this clause 12.
- 12.2 Subject to clause 6.11, if the Developer terminates this Agreement in accordance with clause 11.4(b), the Developer may require the Contracting Authority to pay to the Developer:
- (a) an amount equal to the Termination Amount plus Return on Investment Compensation, against transfer of the Facility and other related rights to the Contracting Authority
  - or
  - (b) an amount equal to a Mark-to-Market Termination Amount. In such case, the Developer is afforded the right to maintain and continue operation the Facility provided that the economic benefit resulting thereof is calculated in the Market-Market Termination Amount.
  - (c) minus any termination compensation received under the Support Agreement.
- 12.3 If the Contracting Authority terminates this Agreement in accordance with clause 11, the Contracting Authority may elect to require the Developer to:
- (a) transfer the Site and the Facility to the Contracting Authority in accordance with clause 19 and acknowledge the payment to the Developer of an amount equal to the Termination Amount, or;
  - (b) subject to clauses 16 and 17, pay to the Contracting Authority either:
    - (i) an amount that the Contracting Authority reasonably determines, in good faith and according to Good Industry Practice to be its total losses and costs to the Contracting Authority to procure another contractor to reinstate a generation facility similar to the Facility or
    - (ii) an amount that the Contracting Authority reasonably determines to be a Mark-to-Market Termination Amount from the loss of output of the Facility at the Electricity Price, plus any reasonably and properly incurred legal fees and out-of-pocket expenses.
  - (c) minus any termination compensation received under the Support Agreement.
- 12.4. The Terminating Party shall notify the other Party of the Termination Amount including detailed support for the Termination Amount calculation. The Terminating Party shall not be required to enter into a replacement agreement in order to determine the Termination Amount. Early Termination shall not relieve the Developer or the Contracting Authority of any obligations accrued prior to the Termination Date or obligations hereunder which expressly or by implication survive Early Termination.

## **13. SUBCONTRACTING**

- 13.1 The Developer is entitled to enter into subcontracts for the realisation of the Works and Operation of the Facility and any other contract in relation to the Facility. The Developer is obliged to comply with the conditions of this Agreement and RFP Documents and has to ensure the same for each of its proposed or appointed subcontractors. The Developer shall provide the

Contracting Authority with the following information on the proposed subcontractor:

- (a) name and address; and
- (b) the scope of contracting of the proposed subcontractor, including every service that will be offered by the proposed subcontractor;

13.1 The Contracting Authority shall not be liable of any obligation of the Developer towards its subcontractors, suppliers and other third parties, including in case of disputes that may arise between them and the Developer.

#### **14. CONTRACT SECURITY**

14.1 On the Effective Date, the Developer, as a security for the performance of its obligations under the Agreement (whether sanctioned by the payment of liquidated damages or otherwise) shall provide in favour of the Contracting Authority the Contract Security, in the form set out in schedule 2. The Contract Security shall be issued by a reputable international bank with at least one Official Credit Rating equivalent to or higher than the Required Bank Rating.

14.2 Not later than [forty-five (45)] Business Days of the Commissioning of the Facility or the date of termination of this Agreement due to a Force Majeure Event in accordance with clause 16, the Contracting Authority shall return the Contract Security to the Developer.

#### **15. INSURANCES**

15.1 The Developer shall obtain, hold and renew, at any time, all insurances required in accordance with Good Industry Practice and Applicable Laws in connection with the exercise of its rights under this Agreement and shall deliver (or provide for delivery) to the Contracting Authority of certified copies of any insurance policy, upon reasonable request by the Contracting Authority.

15.2 In case of damages to the Facility or the Site during construction or Operation of the Facility, the insurance proceeds shall be used by the Developer to rebuild, repair and/or restore the condition prior to the occurrence of the insurable event.

15.3 The Developer shall insure its liabilities for damages that may be caused to third parties as consequence of the activity and shall stipulate the Contracting Authority as co-insured in all insurance policies.

#### **16. FORCE MAJEURE**

16.1 Subject to clause 16.2, a Force Majeure Event shall not entitle a Party to terminate this Agreement and neither Party shall be in breach of this Agreement, or otherwise liable to the other, by reason of any failure or delay in the fulfilment of any of its obligations under this Agreement to the extent such failure or delay is due to a Force Majeure Event.

16.2 The Party affected by the Force Majeure Event shall only have the benefit of relief under clause 16.1 if:

- (a) it gives written notice to the other Party, as soon as reasonably possible after the occurrence of the Force Majeure Event, demonstrating that the Force Majeure Event in question has reasonably prevented or delayed the affected Party's fulfilment of its obligations and stating the anticipated extent and likely duration of the Force Majeure Event in question;

- (b) it takes all reasonable steps to minimise the impact of and remedy the effects of the Force Majeure Event as soon as reasonably possible; and
  - (c) it provides to the other Party a report (or a recovery and rehabilitation plan, in the case of an epidemic or related restrictions affecting the Facility), in relation to the steps it is taking in accordance with clause 16.2(b) and an update of those reports as regularly as reasonably necessary with a view of the anticipated extent and likely duration of the Force Majeure Event, and in the case of epidemics or related restrictions, of the mitigation and recovery measures that are being taken to overcome the detrimental effects.
- 16.3 Subject to clause 16.5, either Party may immediately terminate this Agreement at any time by written notice to the other Party if a Force Majeure Event prevents the affected Party from fulfilling its obligations under this Agreement for a consecutive period exceeding twelve (12) months.
- 16.4 Subject to clause 16.3, the Term (as well as relevant intermediate dates such as the Condition Precedent Longstop Date, Conditions Longstop Date, Commercial Operation Longstop Date, the Commissioning Commencement Date, the Commercial Operation Date and the Commercial Operation Target Date) shall be extended on a day-for-day basis where any Party suspends its obligations under this Agreement due to a Force Majeure Event under this clause 16.
- 16.5 Where the Developer is the Party affected by the Force Majeure Event and the relevant Force Majeure Event reduces the Capacity of the Facility, the Contracting Authority may only terminate this Agreement if the Developer, in accordance with Good Industry Practice, fails to reinstate the Facility over the continuous [twelve (12) months] period immediately following the occurrence of the Force Majeure Event.

**17. MATERIAL ADVERSE GOVERNMENT ACTION**

- 17.1 The Developer may request that the Contracting Authority remedies any Material Adverse Government Action in accordance with this clause 17.
- 17.2 **"Material Adverse Government Action"** means:
- (a) expropriation, requisition, confiscation or nationalisation of the Facility and/or the Development Rights;
  - (b) prohibition or restriction on repatriation or transferability of Developer's profits or gains and debt service from the Republic of Albania (including foreign exchange prohibition and restrictions);
  - (c) any imposition or Change in Law which would have the effect of making the Applicable Laws, this Agreement or the Support Agreement more stringent than the obligations of the Republic of Albania under the Energy Community Treaty or any other international treaty and any implementing instrument, with respect to substantially the same subject matter;
  - (d) non-compliance by the Contracting Authority with material terms of an arbitration award rendered pursuant to clause 23;
  - (e) any full or partial Curtailment in the output from the Facility, provided that such Curtailment is made as a result of a mandatory order made under Applicable Law by a

Competent Authority or a person authorised under Applicable Law to make such an order, *provided that* no such curtailment shall exist in the following cases:

- (i) a failure of the Developer to maintain the Facility and keep the Facility energised in accordance with the Applicable Law, the Connection Agreement or requests of a Competent Authority;
  - (ii) mechanical or equipment breakdown at the Facility (except where the breakdown is due to Force Majeure Event);
  - (iii) a defect in any design, workmanship, equipment or other component of the Facility; or
  - (iv) conditions attributable to normal wear and tear;
- (f) action or inaction by a Competent Authority resulting in any license, permit, approval or other authorisation necessary for meeting the obligations or exercising the rights under this Agreement ceasing to be valid or put out of force, or not being issued, amended or extended within the prescribed deadlines upon a duly submitted request, for reasons not attributable to illegal conduct or conduct in bad faith by either Party;
- (g) an illegal action or failure to act on the part of OST (including to enter into the Connection Agreement) that is not otherwise attributable to the action, inaction or failure by the Developer to perform its obligations under the this Agreement or, where applicable, the Connection Agreement or to comply with Applicable Law, and which causes a delay that has, or is reasonably likely to have, the effect of delaying the achievement of Commissioning or the Commercial Operation Date; or
- (h) failure by the Contracting Authority to procure that Market Readiness Assessment and application of Trading Period I and Trading Period II occur in accordance with terms and conditions set forth in clause 20,

and which materially and adversely affects on the ability of the Developer to exercise, observe or perform any of its rights and obligations under the Agreement or which affects the legality, validity, binding nature or enforceability of this Agreement.

17.3 If the Developer reasonably believes that a Material Adverse Government Action has occurred or is expected to occur, the Developer shall notify the Contracting Authority and provide sufficiently detailed information about the Material Adverse Government Action and how it materially and adversely affects the Developer in its rights or the performance of its obligations under this Agreement.

17.4 Within [thirty (30)] Business Days of notice to the Contracting Authority, the Parties shall meet, discuss and develop in good faith a mutually satisfactory solution to restore the Developer to the same commercial position it would have been in had such Material Adverse Government Action not occurred or an equivalent commercial position. If the Parties determine that no mutually satisfactory solution may be reasonably made for the purpose of addressing the impact of Material Adverse Government Action on the performance of obligations under this Agreement, the following shall apply:

- (a) if the Material Adverse Government Action occurs prior to the Commercial Operations Date and lasts up to [one (1)] year, the Commercial Longstop Date shall be automatically prolonged on a day-by-day basis during the existence of such Material Adverse Government Action;

- (b) if the Material Adverse Government Action occurs after the Commercial Operation Date and lasts up to [one (1)] year, and the Seller is not able to obtain compensation equal to an Availability Payment under the Grid Connection Agreement or any other arrangement with the OST [within 60 (sixty) Business Days] upon written request to the OST, the Contracting Authority shall pay to the Developer an amount equal to the Availability Payment in respect of the Deemed Available Output during the period from the date of occurrence of the Material Adverse Governmental Action until the [first (1st) anniversary] thereof ("**One Year Compensation**"). For the avoidance of doubt, any Availability Payment under this Agreement shall be deducted by any compensation received for the same settlement period for the same Curtailment under any other agreement with the OST or the Support Counterparty
- (c) if the Material Adverse Government Action occurs at any time during the Term and, in the reasonable opinion of the Developer, is of permanent nature, the Developer shall have the right to terminate this Agreement in accordance with clause 11.4 and be compensated in accordance with clause 12.2;
- (d) if the Material Adverse Government Action occurs at any time during the Term and lasts more than [one (1)] year:
  - (i) the Developer shall be entitled to the One Year Compensation; and
  - (ii) following the [first (1) anniversary] of occurrence of the Material Adverse Governmental Action, the Developer shall have the right to terminate this Agreement in accordance with clause 11.4 and be compensated in accordance with clause 12.2.

17.5 The Developer shall not be excused from performance of its obligations under this Agreement upon the occurrence of Material Adverse Government Action, unless it makes it illegal or impossible for the Developer to perform an affected right or obligation.

17.6 If an event or circumstance that would otherwise constitute or give rise to a Force Majeure Event also constitutes a Material Adverse Government Action, it is to be treated as a Material Adverse Government Action and shall not constitute a Force Majeure Event.

## **18. CHANGE IN LAW**

18.1 If either Party considers that there has been a Change in Law which:

- (a) renders it impossible or unlawful to give effect to this Agreement;
- (b) renders any material matter required to be ascertained under this Agreement impossible to ascertain;
- (c) causes the provisions of this Agreement to become inconsistent with Applicable Laws (including where any word or expression defined in this Agreement is defined by reference to its meaning in any Applicable Laws);
- (d) introduces, replaces, modifies or extinguishes Generation Attribute or otherwise the Revocation Event has occurred as a consequence of a Change in Law;
- (e) (without prejudice to clauses 18.1(a) to 18.1(d) inclusive above) severely and adversely affects the benefit of this Agreement to either or both of the Parties,

then that Party may serve a notice on the other Party requesting that the Parties shall meet to discuss such circumstances and shall, in good faith, seek to agree the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the Effective Date.

- 18.2 If the Parties are unable to agree pursuant to clause 18.1, then either Party may refer the issue to the Energy Community Secretariat's Dispute Resolution and Negotiation Centre for determination of the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the Effective Date. Where a matter has not been settled within [sixty (60)] Business Days (or such other time as the Parties may agree) of its referral to mediation by the Energy Community Secretariat's Dispute Resolution and Negotiation Centre, either Party may initiate international arbitration in accordance with clause 23.
- 18.3 For the avoidance of doubt, it is neither Party's intention that fluctuations in wholesale electricity market prices in themselves (as opposed to fluctuations caused by Changes in Law) should give rise to any amendments pursuant to this clause 18.
- 18.4 Where an agreement or determination under clause 18.1 or 18.2 occurs after the Change in Law, such agreement or determination should take into account any reconciliation required in order to put the Parties in the position in which they would have been if the agreement or determination had occurred immediately prior to the relevant Change in Law.
- 18.5 Without prejudice to the other provisions of this clause 18, the Parties agree that:
- (a) neither Party shall be liable to the other Party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law (and such circumstance shall constitute a Force Majeure Event);
  - (b) subject to clause 18.5(a), the occurrence of a Change in Law will not of itself constitute a Force Majeure Event or otherwise entitle either Party to suspend or terminate its obligations under this Agreement;
  - (c) any Change in Law which also constitutes a Material Adverse Government Actions shall be dealt with in accordance with clause 17; and
  - (d) each of them shall use its reasonable endeavours to minimise and mitigate the consequences of Changes in Law on the performance of its obligations under this Agreement.

## **19. TRANSFER OF THE PROJECT UPON ELECTION BY THE CONTRACTING AUTHORITY**

- 19.1 In event of a Developer Default and termination for Material Reason by the Contracting Authority in accordance with clause 12.3 (a) , the Contracting Authority shall have the right to require the Developer to hand over and transfer free and quiet Enjoyment of the Site and the Facility to the Contracting Authority free of any charge ("**Hand Over**"), in compliance with a schedule to be executed between the Developer and the Contracting Authority, with a joint inspection by the Contracting Authority and the Developer.
- 19.2 In such case, the Developer shall transfer, without compensation, to the Contracting Authority:

- (a) any and all rights and interests it holds in respect of the Site;
  - (b) any immovable property real rights over the Facility built by the Developer;
  - (c) buildings, machineries and equipment related to the Facility and the Site;
  - (d) rights and obligations deriving from any existing contracts, but the Contracting Authority reserves the right to terminate such existing contracts without any liability and compensation and the Developer shall ensure that the relevant contracts contain this right of the Contracting Authority (or will otherwise be liable to compensate the Contracting Authority for all additional costs reasonably incurred or sustained by the Contracting Authority as a consequence of the Contracting Authority terminating such existing contract(s));
  - (e) books, documents, records and data (including any relevant guaranties) related to the assets set forth in clause 19.3(a) to 19.3(d) inclusive; and
  - (f) any other right held or obtained by the Developer pursuant to, or in connection with, this Agreement.
- 19.3 The Contracting Authority shall accept the Site and the Facility "as is" on the date of the Hand Over in accordance with the clause and the Developer shall not incur any expense, and shall not be responsible for any claim from the Contracting Authority in relation with the Facility or the Site's condition.

**20. MARKET READINESS ASSESSMENT AND CFD APPLICATION FOR TRADING PERIOD II**

20.1 The Contracting Authority shall procure that:

- (a) a Market Readiness Assessment is completed in accordance with terms set forth in this Agreement, the RFP Documents and the Support Agreement as per pre-determined terms thereunder;
- (b) for the Trading Period I prior completion of a Positive Market Readiness Assessment confirmed by a Joint Declaration of the Parties and/or in event of a Disputed Market Readiness Assessment otherwise resolved as per terms of the Support Agreement, support will take the form of a physically settled Power Purchase Agreement and for Trading Period II after completion of a Positive Market Readiness Assessment confirmed by a Joint Declaration, support will take the form of a financially settled Contract for differences in accordance with terms set forth in the Support Agreement.
- (c) transition from application of the Power Purchase Agreement during Trading Period I into a Contract for Differences during Trading Period II, with due regard to the different nature of these two agreements, must maintain the same or similar balance of benefits, liabilities, risks and rewards between the Parties.

20.2 In particular, the Contracting Authority shall procure that:

- (a) the Electricity Price shall serve as strike price in a converted contract for differences; and
- (b) hourly Day-Ahead Market clearing prices shall serve as floating reference prices against the Electricity Price, to enable financial settlement by reference to the

difference between the floating price and the Electricity Price in accordance with terms and conditions of the Support Agreement.

20.3 In Trading Period II, the Contracting Authority shall procure that:

- (a) the Seller shall be offered the option of entering into a route-to-market services agreement with a Last Resort Support Counterparty in accordance with the Applicable Laws, and which provides services for routing the Contract Quantity on the market for a discounted price equal to [eighty (70-80)%] of the Reference Price for the relevant settlement periods.
- (b) the Seller shall be offered the option of entering into or maintaining the balancing services agreement with a Balancing Responsible Group Party, which may either be the former Support Counterparty or a third party designated by it or the Last Resort Support Counterparty taking the role of a Balancing Group Responsible Party, acting in accordance with clauses 7.8 to 7.16 and clause 15 of the Support Agreement.

## 21. NOTICES

21.1 Any notice or other communication to be given by either Party to the other in relation to this Agreement must be in writing, and shall be deemed duly served if delivered personally, by prepaid registered post, by facsimile transmission, or by email to the addressee at the address or (as the case may be) the facsimile number or email address set out below (or such other address or facsimile number subsequently notified in accordance with this clause 21); *provided that*, where no postal address, email address and/or facsimile number is given in respect of particular notices, no such notices may validly be served by such method of communication.

21.2 For the purposes of this clause 21, the initial notice details of the parties are as follows:

- (a) For the Contracting Authority:

Address: [    ]

Tel: [    ]

Email: [    ]

- (b) For the Developer:

Address: [    ]

Tel: [    ]

Email: [    ]

21.3 Subject to clause 21.4, any notice shall be deemed to have been received:

- (a) in the case of delivery by hand, on delivery;
- (b) in the case of prepaid registered post, on the second day following the date of posting;
- (c) in the case of facsimile, on acknowledgement of the addressee's facsimile machine; *provided that* a copy is also sent by first class pre-paid post within [one (1)] Business Day; and



- (d) in the case of email, on delivery to the recipient's server and provided no error message is received by the sender.

21.4 Any notice deemed to be received on a day that is not a Business Day, or after 17:00 hours local time at the recipient's location on a Business Day, shall be deemed to have been received at 09:00 hours local time at the recipient's location on the next following Business Day.

## 22. CONFIDENTIALITY AND PUBLICITY

22.1 Subject to the exceptions provided in clauses 22.2 and 22.3, neither of the Parties shall, from the Signing Date until the expiry or termination of this Agreement or within the period of one year following such expiry or termination of this Agreement, without the consent of the other Party, divulge or allow or permit its officers, employees, agents or contractors to divulge, to any person or entity any of the contents of this Agreement or any commercially confidential information relating to the negotiations concerning this Agreement or any commercially confidential information relating to this Agreement which may come to a Party's knowledge in the course of such negotiations or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party.

22.2 The restrictions imposed by clause 22 shall not apply to the disclosure of any information:

- (a) which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable from sources other than the Parties;
- (b) where and to the extent it is required under Applicable Laws to be disclosed to any person who is authorised by such Applicable Laws to receive the same;
- (c) where and to the extent it is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the Party making the disclosure is or is proposed to be from time to time listed or dealt in;
- (d) where and to the extent it is required to be given to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is party;
- (e) which is given by a Party to any of its officers or employees or to any of its Affiliates or such Affiliate's officers or employees who require the same to enable them properly to carry out their duties, *provided that* such persons are bound by obligations of confidentiality equivalent to those in this clause 22;
- (f) which is given by a Party to any of its consultants, banks, financiers, insurers or advisors or to any of its Affiliate or such Affiliate's consultants, banks, financiers, insurers or advisors, *provided that* such persons are bound by obligations of confidentiality equivalent to those in this clause 22; or
- (g) which is given by the Developer to a *bona fide* potential investor in, or purchaser of the shares in, the Developer or the assets comprising the Facility (or their professional consultants, banks, financiers, or advisors), *provided that* such persons are bound by obligations of confidentiality equivalent to those in this clause 22.

22.3 Without prejudice to any other rights or remedies which a Party may have, the Parties acknowledge and agree that damages would not be an adequate remedy for any breach of this clause 22 and the remedies of injunction, specific performance and other equitable relief are appropriate for any threatened or actual breach of any such provision.

## 23. GOVERNING LAW AND DISPUTE RESOLUTION

- 23.1 This Agreement and any dispute or claim arising out of or in connection with it (including non-contractual claims) shall be governed by, and construed in accordance with the laws of Albania.
- 23.2 Any dispute arising out of or in connection with this Agreement (including any question of its existence, validity or termination) shall in the first instance be referred to a director of each Party who shall meet in good faith to resolve the dispute within [thirty (30)] Business Days of the dispute being referred to them.
- 23.3 Where this Agreement requires a dispute be referred to the Energy Community Secretariat's Dispute Resolution and Negotiation Centre for resolution or where the Parties mutually so agree, the dispute may be referred by either Party to the Energy Community Secretariat's Dispute Resolution and Negotiation Centre) and shall be determined in accordance with Procedural Act 2018/5/EnC of Energy Community Secretariat. If the dispute relates to the determination of a Force Majeure Event as per point (vi) under clause 1 in connection to the in-depth environmental impact assessment, or the calculation of liquidated damages as per clause 6.9 and 6.10, either Party may refer the matter for Expert determination in accordance with Procedural Act 2018/5/EnC of Energy Community Secretariat, by serving on the other a written request for the dispute to be referred for Expert determination containing the name of a proposed Expert. If the Parties cannot agree on the appointment of the Expert to act and/or the terms of the Expert's appointment, within [fifteen (15)] Business Days of such notice, the Expert shall be appointed (upon the request of either Party) by the Energy Community Secretariat's Dispute Resolution and Negotiation Centre in accordance with the Procedural Act 2018/5/EnC of Energy Community Secretariat. In event of an Expert determination as per this clause, the following shall apply:
- (a) save in the case of fraud or manifest error any Expert's determination made in accordance with this clause, shall be final and binding between the Parties and enforceable as a contractual obligation;
  - (b) all matters relating to the Expert determination must be conducted, and the Expert's decision shall be written, in the English language; and
  - (c) each of the Parties shall bear the whole of its own costs and one half of the costs of the Expert and any independent advisers to the Expert, unless the Expert (in his/her discretion) determines otherwise.
- 23.4 Subject to clauses 23.2 and 23.3, any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of in connection with this Agreement) shall be referred to and finally resolved by arbitration under the arbitration rules of the [International Chamber of Commerce (ICC)] ("**Rules**"). The arbitral tribunal shall consist of [three (3)] arbitrators appointed in accordance with the Rules. The seat of arbitration shall be [Vienna, Austria]. The language of the arbitration shall be English.
- 23.5 Neither Party shall suspend or be excused from the performance of its respective obligations, including any payment obligations, arising under this Agreement until such time any dispute has been finally resolved in the manner provided therein.
- 23.6 The occurrence of any dispute or pendency of any dispute resolution proceedings shall not affect the obligation of either Party to make payments under this Agreement. Any such amount shall be considered due and shall be paid in full pending resolution of the dispute. The

reconciliation of the amounts paid shall occur promptly after and based on the final resolution of such dispute.

## **24. MISCELLANEOUS PROVISIONS**

- 24.1 No provision of this Agreement shall be construed to provide any recovery of any losses, damages, costs or other amounts for which the damaged Party has been compensated for the same losses, damages, costs or other amount under any other provision of this Agreement, the Support Agreement or insurance proceeds.
- 24.2 Where either Party grants the other any indulgence, forbearance or extension of time or does not ascertain or exercise any of its rights or remedies, or delays in doing so, the rights and remedies of that Party in respect of this Agreement shall be in no way diminished, waived or extinguished.
- 24.3 If either Party waives any breach of this Agreement, it will still be entitled to enforce that provision subsequently and that waiver shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 24.4 If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any sub clause or paragraph or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Laws, the same shall be deemed omitted from this Agreement, the remainder of this Agreement shall be read accordingly and the validity or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.
- 24.5 Each Party agrees from time to time to do and perform such other and further acts and execute and deliver any and all such other instruments as may be required by law or reasonably requested by the other Party to establish, maintain and protect the rights and remedies of the other Party and to carry out and effect the intent and purpose of this Agreement.
- 24.6 At any time after the Effective Date the Parties shall, and shall use all reasonable endeavours to, procure that any necessary third party shall execute such documents and do such acts and things as that Party may reasonably require for the purpose of giving to that Party the full benefit of all the provisions of this Agreement.
- 24.7 This Agreement contains the entire agreement between the Parties in relation to its subject matter. Each of the Parties irrevocably and unconditionally waives any right it may have to claim damages for, or to rescind this Agreement because of, breach of any warranty not expressly contained in this Agreement, or any misrepresentation whether or not contained in this Agreement, unless such misrepresentation was made fraudulently.
- 24.8 A person who is not a party to this Agreement (including any employee, officer, agent, representative or subcontractor of either party) has no right to enforce any term of this Agreement.
- 24.9 Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties and no employee of one Party shall be deemed to be or have become an employee of the other Party.
- 24.10 Notwithstanding any other provision of this Agreement, neither Party shall be entitled to recover compensation or make a claim under this Agreement in relation to any loss or damage that it has incurred to the extent that it has already been compensated in respect of that loss under this Agreement, Support Agreement, insurance proceeds or otherwise. No Party shall

be entitled to recover damages or obtain an extension of time, payment, reimbursement, restitution or indemnity more than once in respect of the same loss or damage.

- 24.11 The Contracting Authority and the Developer agree to cooperate in order to facilitate the implementation of the Project.
- 24.12 The Parties shall ensure that, within [thirty (30)] Business Days from the Effective Date, this Agreement is registered with the relevant real estate registry office in the Republic of Albania.
- 24.13 This Agreement is prepared in three (3) copies in the Albanian language, and three (3) copies in the English language (in the event of conflict, the Albanian version shall prevail), and after reading it to the Parties declared to understand and accept its content, duly sign it with its free will, and I, the Notary, certify the above according to the Applicable Law.

**EXECUTION PAGE**

On behalf of

**Ministry of Infrastructure and Energy of the Republic of Albania**

.....

Minister [    ]

On behalf of

[    ]

.....

[    ]



**SCHEDULE 1: FACILITY AND SITE**

**Part 1: Facility**

**Part 2: Site**

Next page

## SCHEDULE 2: CONTRACT SECURITY

The Contract Security shall:

1. be an unconditional and irrevocable on-demand bank guarantee on terms and conditions that comply with the requirements set out in paragraphs 2 to 9 and is in form and substance satisfactory to the Contracting Authority;
2. be for the account of the Developer and name the Contracting Authority as the beneficiary thereof;
3. be effective from the date not later than the Conditions Precedent Longstop Date and be maintained by the Developer until the earlier of the date falling forty-five (45) Business Days after:
  - 3.1 the Commissioning of the Facility in accordance with this Agreement, and
  - 3.2 the termination of this Agreement;
4. be denominated in EUR and have a minimum amount available for draw of [EUR 60,000 per MW for the Total Capacity of a Project];
5. become drawable on first demand solely against delivery of a demand certificate to the issuer notifying the issuer that the Developer is in breach of its obligations under this Agreement;
6. include feasible and practical drawing procedures in the reasonable view of the Contracting Authority, *provided that* it shall not contain any condition to drawing other than the confirmation by the issuer that any drawing certificate required to be delivered in connection with a drawing appears to comply on its face with the requirements of such Contract Security;
7. be issued by a bank or other financial institution which is reasonably acceptable to the Contracting Authority and which is situated in a country reasonably acceptable to the Contracting Authority;
8. provide that the beneficiary thereof may make multiple drawings upon it; and
9. in the case of a demand guarantee, expressly state that it shall be subject to the "Uniform Rules for Demand Guarantees", and, to the extent not inconsistent with the "Uniform Rules for Demand Guarantees", the laws of Albania.



**SCHEDULE 3: BID**

Next page

**SCHEDULE 4: SUPPORT AGREEMENT WITH TERMS OF A POWER PURCHASE  
AGREEMENT FOR TRADING PERIOD I AND CONTRACT FOR DIFFERENCES FOR  
TRADING PERIOD II**

## **SCHEDULE 5: COMMISSIONING TESTS**

**SCHEDULE 6: CONNECTION AGREEMENT**



**REPUBLIC OF ALBANIA**



REPUBLIKA E SHQIPËRIË  
MINISTRIA E INFRASTRUKTURËS  
DHE ENERGJISË

**MINISTRY OF INFRASTRUCTURE AND ENERGY**

**BIDDING PROCEDURE DOCUMENTS  
FOR THE SELECTION OF SOLAR PV PROJECTS  
THAT WILL RECEIVE SUPPORT MEASURES,  
AT LOCATIONS IDENTIFIED BY DEVELOPERS**

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## **REQUEST FOR PROPOSAL**

The Ministry of Infrastructure and Energy ("**MIE**") is providing the Bidders with these Bidding Documents and is inviting them to prepare and submit a Proposal (as defined below) as part of the Bidding Pre-Qualification, Qualification and Evaluation Procedure (as defined below) in connection with the Projects (as defined below). This Request for Proposal is the first and single stage for this process.

## **DISCLAIMER**

Neither MIE nor any of its consultants or advisors:

- (a) makes any representation or warranty (express or implied) as to the accuracy or completeness of the information contained herein or in any other document made available to a Bidder (at any time) in connection with the Bidding Procedure;
- (b) shall have any liability for these Bidding Documents, for the Projects or for any other written or oral communication transmitted to a Bidder in connection with the Bidding Procedure or a Bidder's qualification; or
- (c) will be liable to reimburse or compensate a Bidder for any costs or expenses incurred by a Bidder in evaluating or acting upon these Bidding Documents or otherwise in connection with the Bidding Procedure or Projects or otherwise.

These Bidding Documents constitute an invitation to submit one or more Proposals.



## DEFINITIONS

<b>Admissibility Criteria</b>	means the criteria relating to the legal standing set out in Appendix 10.
<b>Authorized Representative</b>	means the representative of the Bidder (or in the case of a Consortium, the authorized representative of the Consortium) authorized to sign the Proposal pursuant to the power of attorney in the form of Appendix 6 ( <i>Power of Attorney</i> ).
<b>Applicable Laws</b>	means, with respect to any party, any internationally binding obligation, constitutional provision, Law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorisation, guideline, Governmental Approval, consent or requirement of any Competent Authority having jurisdiction over such Party or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Competent Authority.
<b>Bid Security</b>	means the irrevocable bank guarantee provided by a Bidder in order to guarantee such Bidder's compliance with its Bid substantially in the form of Appendix 2 ( <i>Form of Bid Security</i> ).
<b>Bid Security Validity Period</b>	means the period ending 180 calendar days from the Submission Deadline date, as may be amended or extended at the option given to the Bidders in accordance with section 4.4. of these Bidding Documents.
<b>Business Day</b>	means any day other than Saturday, Sunday or public holidays as determined by the Applicable Laws in the Republic of Albania.

<b>Ceiling Price</b>	is 59.97 Euro/MWh.
<b>Competent Authority</b>	means any international, national, local or other authority, ministry, inspectorate, department, court, arbitral tribunal, administrative agency or commission or any other governmental, municipal, administrative or regulatory body (in each case to the extent each of the foregoing has jurisdiction over these Bidding Procedure.
<b>Consortium</b>	shall have the meaning specified in paragraph 3.14 of these Bidding Documents.
<b>Contact Person</b>	means the person identified in paragraph 1.1 of these Bidding Documents.
<b>Contract for Differences (CfD)</b>	means the financially settled contract for differences between a Developer and the CfD Counterparty, the terms of which are contained in Appendix 17 and which will apply for the Trading Period II after completion of a Market Readiness Assessment as per pre-set terms, for the payment of a symmetric sliding premium against the reference market price in relation to the energy produced by the eligible Facility.
<b>CfD Counterparty</b>	means the entity designated under applicable Laws to act as a counterparty in a financially settled Contract for Differences which might be without limitation Renewable Energy Operator or any other entity assigned to take this role on a transitory basis.
<b>Contracting Authority or MIE</b>	means the Ministry of Infrastructure and Energy of the Republic of Albania.
<b>Contract Security</b>	has the meaning specified under the Project Development Agreement, as appended in Appendix 16.
<b>Control</b>	means the possibility of exercising decisive influence on an undertaking, natural or legal person, on the basis of shareholding or voting rights, contracts or any other means, either separately or in combination, and having regard to the considerations of fact and law involved.

<b>DCM 822 or Council of Ministers Decision 822</b>	Council of Ministers Decision No. 822, dated 7.10.2015 “On approval of rules and proceedings for the construction of new capacities for the construction of electricity, which are not subject to tender”, as amended.
<b>Developer</b>	means each Selected Bidder at this Bidding Procedure, which will each enter into a Project Development Agreement with the Contracting Authority and a Support Agreement with the Support Counterparty.
<b>DSO</b>	means the distribution system operator, Operatori i Shperndarjes se Energjise Elektrike, OSHEE Sh.a. established and operating in accordance with the Applicable Laws.
<b>Evaluation Criteria</b>	means the criteria for the evaluation of the Financial Bids as determined under Appendix 18 ( <i>Evaluation Criteria and Scoring Methodology</i> ).
<b>Facility</b>	means the electricity generating equipment and related infrastructure, including the solar panels to be located at a site chosen by a Selected Bidder within the Republic of Albania and a transmission line to be developed by a Selected Bidder.
<b>Financial Bid</b>	means the price in EUR per MWh, for the energy produced, to be submitted by a Bidder as part of the Bid, in accordance as per Appendix 1 ( <i>Financial Bid</i> ).
<b>Good Industry Practice</b>	means that degree of skill and care which would reasonably and ordinarily be expected of a contractor experienced in the same type of undertaking (designing, engineering, installing, constructing, completing, commissioning, testing, operating and maintenance) in relation to projects of a similar size, scope, scale, nature and complexity as the Facility.
<b>Governmental Approval</b>	means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorisation issued by or on behalf of any applicable Competent Authority.
<b>Lead Member</b>	has the meaning specified in paragraph 3.14.2 of these Bidding Documents.
<b>Market Readiness Assessment</b>	means: <ul style="list-style-type: none"><li>- the establishment of an electricity exchange and provision of clearing prices by the operator of the electricity exchange which are sufficiently frequent and sound to serve as floating reference prices</li></ul>

against the Electricity Price (as a fixed (strike) price) to enable the financial settlement by reference to the difference between the floating price and the fixed price;

- the readiness of the day-ahead market to deliver a sound reference price is determined by ERE in accordance with the transitory provisions under the Renewable Energy Law based on an in-depth assessment of the day-ahead market, which assessment is conducted not earlier than ten (10) months after the establishment of the organised electricity market and is based on a number of key indicators, including but not limited to: (1) availability of a clearing day-ahead price(s) by the ALPEX to enable the financial settlement by reference to the difference between the floating price and the fixed price, over a period of at least 10 (ten) consecutive calendar months (2) traded volumes on the day-ahead market relative to physical market size (i.e. churn factor) which are to be assessed against assessments of wholesale electricity markets conducted by national regulatory authorities in at least one (1) or two (2) European Union (EU)`s countries and determined to be within a comparable margin of churn factors in those countries; (3) the bid spreads on the organised electricity market which are to be assessed against assessments of wholesale electricity markets conducted by EU regulators and determined to be within a comparable margin as bid spreads in at least one (1) or two (2) markets in the European Union; (3) number and market share of main electricity generation companies on the Albanian market; the availability of independent offtakers, aggregators and traders; and (8) market coupling with interconnected countries;
- the establishment of a Renewable Energy Operator (REO) to act as CfD Counterparty in accordance with the Applicable Laws, as well as the requirement that corporate and financing arrangements for the REO, in particular a functional mechanism for setting and collecting the renewable energy obligation in accordance with the Applicable Laws, included without limitation the Renewable Energy Law.

**Non-Qualified Bidder** means a Bidder, who has not met the Qualification Criteria, as described in paragraph 8.3.6 f the Bidding Documents.

**Qualified Bidder** means a Bidder, who has met the Qualification Criteria, as described in paragraph 8.3.5. of the Bidding Documents.

**Marginal Bid Rule** has the meaning set forth in Appendix 18 (*Evaluation Criteria and Scoring Methodology*).

**Notice Form** means a notice in the form of Appendix 20 (*Selected Bidder Notice Form*).

<b>Person</b>	means a natural person or a Company.
<b>Positive Market Readiness Assessment</b>	means the decision taken by the ERE establishing that the Market Readiness criteria following the Market Readiness Assessment has been met and which decision, where applicable, is confirmed by a Joint Declaration of the Parties or any Parties` dispute on such decision is resolved in accordance with the terms of the Support Agreement.
<b>Power Purchase Agreement or PPA</b>	means the power purchase agreement between a Developer and the Support Counterparty, terms of which are published in Appendix 17 and which will apply during Trading Period I, if applicable, until a a Positive Market Readiness Assessment is completed for the sale of the energy produced by the eligible Facility.
<b>Preliminary examination</b>	has the meaning specific in paragraph 8.3. of the Bidding Documents.
<b>Pre-Qualified Bidder/s</b>	means the Bidders that have cumulatively met the Admissibility Criteria and the Pre-Qualification Criteria and are being assessed against the Qualification Criteria.
<b>Preferred Bidder</b>	shall have the meaning specified in paragraph 9.2.5. of these Bidding Documents.
<b>Project</b>	means the design, financing, construction, operation and maintenance of each Solar PV Facility with a minimum installed capacity than 10 MW (inclusive) and with Supported Offered Capacity up to 100 MW (inclusive), which is proposed by a Bidder to get support measures, to be located at site(s) chosen by a Selected Bidder within the Republic of Albania.
<b>Project Development Agreement or PDA</b>	means the Project Development Agreement to be entered into between the Contracting Authority and a Selected Bidder, a draft of which is published in Appendix 17 .
<b>Project Documents</b>	means the Project Development Agreement, and Support Agreement as applicable depending on the Market Readiness Assessment.

<b>Proposed Site</b>	means the site identified and selected by the Bidder for the development of a Project as part of its Proposal in accordance with this Bidding Procedure. A site is generally considered as distinct site if it corresponds to one grid connection point and is to be covered by a single development permit.
<b>Proposal Submission</b>	means the submission made by the Bidder to propose a Project for award.
<b>Pre- Qualification Criteria</b>	means together (i) the Admissibility Criteria relating to the legal standing as per Appendix 10 and (ii) the Specific Qualification Criteria relating to the financial capabilities and technical past experience set out in Appendix 11.
<b>Submission Deadline</b>	means the time and date stated in paragraph 1.10 of the Bidding Documents.
<b>Specific Qualification Criteria</b>	means the criteria relating to the financial capabilities and technical past experience set out in Appendix 11.
<b>Qualification Criteria</b>	means the criteria relating to the specific permitting, siting and Project feasibility set out in Appendix 12, as referring as appropriate to Appendix 13 and Appendix 14.
<b>Qualification Procedure</b>	means the technical qualification procedure set out in these Bidding Documents.
<b>Rectification Deadline</b>	15 (fifteen) Business Days from the Proposals Opening Date or any other deadline as may be otherwise notified by the Special Commission.
<b>Request for Proposal</b>	means the request for proposal documents that will be published by MIE to all Bidders.
<b>Renewable Energy Law</b>	means Law No. 4/2023 “On support to renewable energy in the Republic of Albania”, dated 23.03.2023.
<b>Bidding Documents</b>	means this document together with its appendices, as may be amended by the Contracting Authority, as part of the Request for Proposals.
<b>Bidding Procedure</b>	means the procedure set out in these Bidding Documents.

<b>Proposal or Submission</b>	means together the Technical Proposal and the Financial Bid submitted by a Bidder in this Bidding Procedure.
<b>Technical Proposal</b>	means a technical proposal containing information as determined in Appendix 10 ( <i>Pre-Qualification Criteria</i> ), Appendix 11 ( <i>Specific Qualification Criteria</i> ), Appendix 12 ( <i>Site And Project Qualification Criteria</i> ), in accordance with these Bidding Documents.
<b>Selected Bidder</b>	means a Bidder, or a Consortium, selected to enter into a Project Development Agreement/Support Agreement as a result of the evaluation of Proposals and Financial Bids at this Bidding Procedure and which award decision has become final after expiry or completion of the appeals processes.
<b>Site</b>	means a site selected by a Bidder for the erection of a Project and which is to be covered by an individual development permit and one Grid Connection point.
<b>Special Commission</b>	means the committee set up by Contracting Authority to manage the Bidding Procedure on behalf of the Contracting Authority by Decree of the Minister.
<b>Special Purpose Vehicle or SPV</b>	means an entity established under Albanian law in which a Selected Bidder or the members of a Selected Consortium only, are the only direct or indirect controlling shareholder[s], (in the event of a Consortium, in compliance with the Consortium Agreement).
<b>Supported Offered Capacity or Supported Capacity</b>	means that the total or a part of the installed capacity of the Solar PV Facilit(ies) to be located at site(s) chosen by a Selected Bidder within the Republic of Albania, for which a Bidder requires to get support measures under the Support Agreement as appended in Appendix 17, and which cannot be higher than 100 MW (inclusive) in aggregate across different Projects for that Bidder.
<b>Trading Period I</b>	means a period of the Term starting from the Execution Date of the Support Agreement until completion of a Positive Market Readiness Assessment determined in accordance with terms set forth in the Support Agreement in Appendix 17.
<b>Trading Period II</b>	means a period of the Term starting from the completion of a Positive Market Readiness Assessment determined in accordance with terms set forth in the Support Agreement in Appendix 17 until the end of the Term.

<b>Technical Specifications</b>	means the minimum technical requirements to be met by a Bidder in relation to the Project, as set out in Appendix Appendix 13 ( <i>Minimum Technical Specifications</i> )
<b>Tie-Breaker Rule</b>	has the meaning set forth in Appendix means the criteria set out in Appendix Appendix 18 ( <i>Evaluation Criteria and Scoring Methodology</i> ).
<b>Total Auctioned Capacity</b>	means the total capacity 300 MW which is auctioned to receive support measures under this Bidding Procedure.
<b>TSO</b>	means the Transmission System Operator (in Albanian, <i>Operatori I Sistemit te Transmetimit, OST</i> ).
<b>Support Agreement</b>	means the agreement published as per Appendix 17 containing terms for a physically settled Power Purchase Agreement for Trading Period I and terms for a financially settled Contract for Differences for Trading Period II.
<b>Support Counterparty</b>	means the counterparty designated in accordance with the applicable Laws and the Support Agreement to act as offtaker in the physically settled Power Purchase Agreement for Trading Period I, or as CfD Counterparty in the financially settled Contract for Differences for Trading Period II and to which general provisions apply for the entire Term of this Support Agreement, in combination with the PPA terms relevant for Trading Period I or CfD terms relevant for Trading Period II.

Unless where otherwise defined in these Bidding Documents, terms that have been defined under the Project Development Agreement or the Support Agreement shall bear the same meaning hereunder.



## 1 REQUEST FOR PROPOSAL NOTICE

On April 2023, the Ministry of Infrastructure and Energy (MIE) of the Republic of Albania initiated a tender process for utility-scale, Solar PV power plants<sup>1</sup>.

The MIE invited Bidders to identify and propose sites viable for the design, financing, construction and operation of solar PV power plants in the Republic of Albania.

To assist Bidders, the MIE has commissioned a high-level analysis of Albanian territory to indicate areas potentially suitable for developing new solar PV projects and areas unsuitable / non-eligible for developing new solar PV projects defined as “constraints” or “no go areas”. The study can be accessed at: [here](#).

Participation in this tender process is restricted to Projects with a minimum installed capacity 10 MW (inclusive) and which require support for up to 100 MW of their installed capacity. Through this tender process, the MIE will select Projects that require support measures as described below for all or part of their installed capacity for a Total Auctioned Capacity of 300 MW.

Each Selected Bidder will sign a Project Development Agreement and a 15-year Support Agreement, applying as a Power Purchase Agreement to sell 100% of the energy output generated from its Supported (Offered) Capacity against the Electricity Price during Trading Period I until a Positive Market Readiness Assessment and as a Contract for Difference guaranteeing payment of a symmetric sliding premium above the market reference price for the energy output generated from its Supported (Offered) Capacity during Trading Period II after a Positive Market Readiness Assessment.

The tender process has been implemented as a single-stage process, with an assessment and evaluation following sub-stages as per the below:

- i. Pre-Qualification Criteria, to prequalify Bidders with the required legal standing, technical experience, and financial resources to deliver one or more Project(s).
- ii. Qualification Criteria to demonstrate the viability of the proposed Site(s) and technical and environmental feasibility of the Project(s) on the proposed Site(s).
- iii. Evaluation Criteria to evaluate and rank the Financial Bid(s).

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<sup>1</sup> The Swiss State Secretariat for Economic Affairs (SECO) has provided grant funding to support the solar auction.

### **1.1 Name and Address of Contracting Authority**

Contracting Authority: Ministry of Infrastructure and Energy of the  
Republic of Albania  
Address: Rruga “Abdi Toptani”, no. 8, Tirana, Albania  
Tel/Fax: +355 4 2222245  
Contact Person: Mr. Igli Percuke  
E-Mail: igli.percuke@infrastruktura.gov.al  
Internet Address: www.infrastruktura.gov.al

Any communication, question or information required by the Bidders concerning the Bidding Procedure shall be addressed only to the Contact Person.

### **1.2 Type of Contracting Authority and the scope of its action or main activity**

Central Institution

### **1.3 Terms of each Project Development Agreement**

The subject of the Project development Agreement consists in the the design, financing, construction, operation, and maintenance of one or more solar PV Facilities with minimum installed capacity 10 MW (inclusive) and which require support for all or part of their installed capacity, of which the Supported Capacity can be up to 100 MW (inclusive), to be located at one or more Sites chosen by a Selected Bidder within the Republic of Albania.

Participation in this tender process is restricted to Projects that require support for a Supported Capacity of up to 100MW (inclusive) of their installed capacity. Through this tender process, the MIE will select Projects that require support measures as described below for all or part of their installed capacity for up to the Total Auctioned Capacity.

***Option to submit multiple Projects:*** For the avoidance of doubt, a Bidder may submit more than one Project, provided that each Project has with minimum installed capacity of 10 MW (inclusive) and the total Supported Capacity for which support is being sought does not exceed 100 MW across all the Projects submitted by a Bidder. Each Selected Project will have a separate Project Development Agreement, to be entered into by the Contracting Authority and a Selected Bidder that proposed that Project. Depending on the number of Projects that have been awarded, one Bidder may enter into more than one Project Development Agreement(s).

The Successful Bidder is granted a Project Development Agreement, starting on the Effective Date and ending 15 years after the start of commercial Operation, for the Supported Capacity. Detailed terms of the Contract for Project Development Agreement are published in a draft in Appendix 17.

### **1.4 Terms of each Support Agreement which will apply as Power Purchase Agreement during Trading Period I and as Contract for Difference during Trading Period II**

For each Project that is awarded as successful, the Selected Bidder will be offered a Support Agreement for a term starting on the Effective Date and ending 15 years after the start of

commercial operation. During Trading Period I until a Positive Market Readiness Assessment, the Support Agreement will apply in the form of a physically settled Power Purchase Agreement which guarantees the purchase by the Support Counterparty of the Supported Output for the Supported (Offered) Capacity at the Electricity Price.

Upon the completion of a Positive Market Readiness Assessment the Support Agreement will apply in the form of a financially settled Contract for Difference. The Contract for Difference must guarantee payment of a symmetric sliding premium above the market reference price for the Supported Output in connection to the Supported Capacity in accordance with the pre-set terms and conditions.

The relevant contractual structures and key terms are presented for the Trading Period I before a Market Readiness Assessment under Section 1.5.1. and for the Trading Period II after the completion of a Market Readiness Assessment under Section 1.5.2.

Detailed terms of the PPA for Trading Period I and of the CfD terms for Trading Period II are published in a draft in Appendix 17. The Support Agreement in Appendix 17 contains all key terms of a physically settled Power Purchase Agreement during Trading Period I and those of a financially settled Contract for Difference during Trading Period II.

***Option to submit multiple Projects:*** For the avoidance of doubt, the Procedure will select Project(s), and a Bidder may submit more than one Project, provided that each Project has a minimum installed capacity equal to higher than 10 MW and the total Supported Capacity for which support is being sought does not exceed 100 MW across all the Projects submitted by a Bidder.

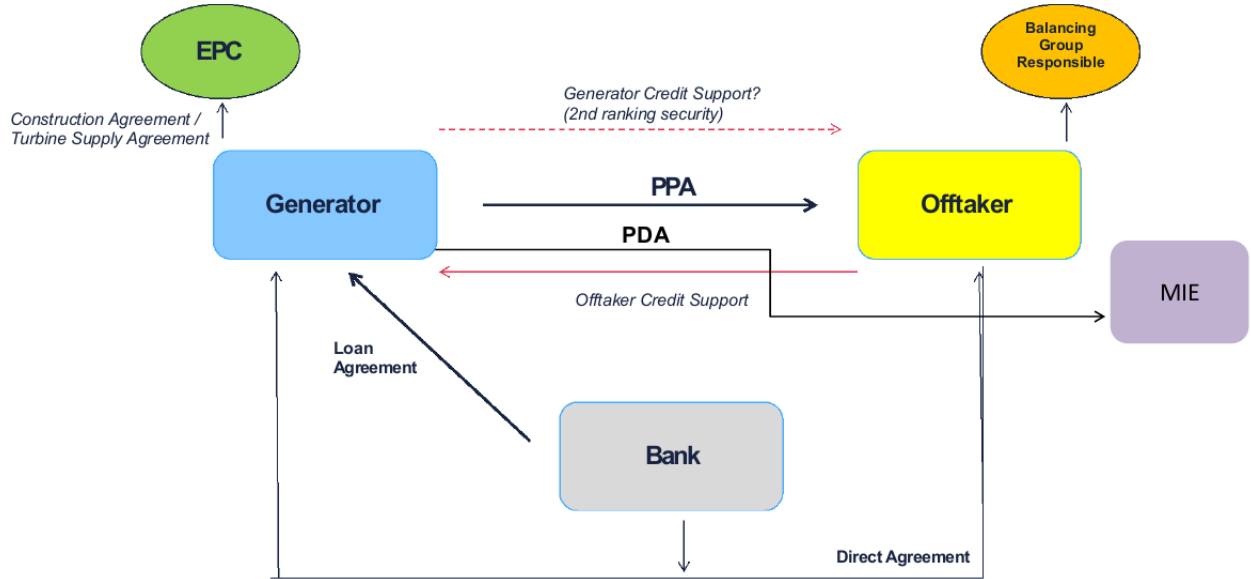
Each Selected Project will be offered a separate Support Agreement to be entered into by the Support Counterparty and a Selected Bidder that proposed that Project. Depending on the number of Projects that have been awarded, one Bidder may enter into more than one Support Agreements.

The terms of such a physically settled Power Purchase Agreement and a financially settled Contract for Differences achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the parties.

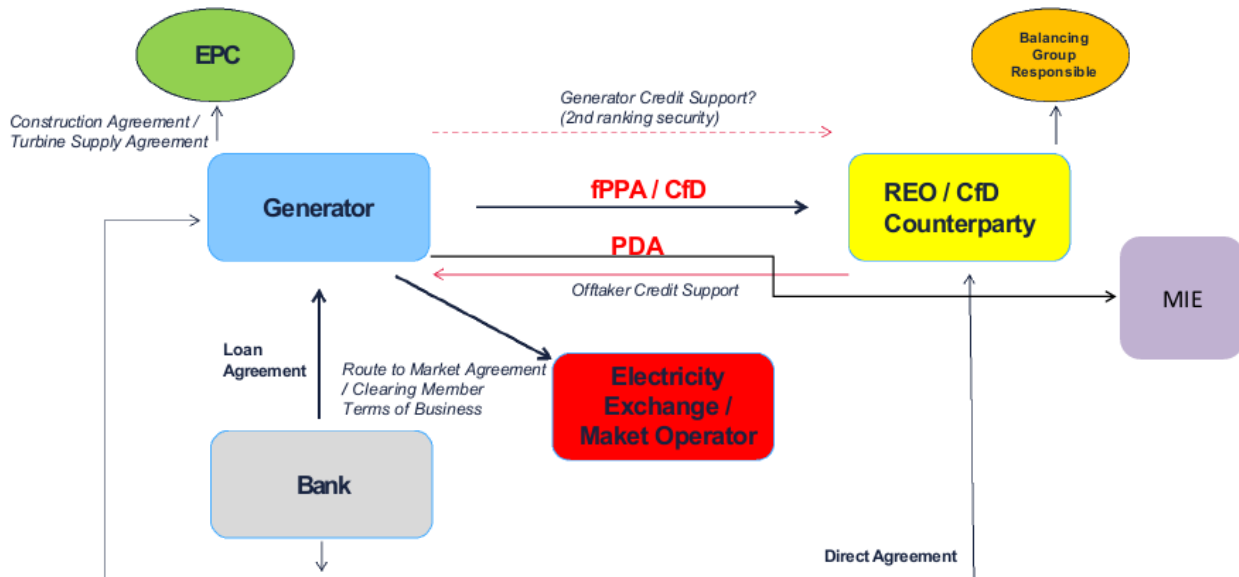
The Support Agreements are depicted and further explained in the graphic under Section 1.5.2. (a) and (b) and in Appendix 17.

The Contracting Authority will make the necessary information in relation to the Market Readiness Assessment publicly available. Bidders will be allowed to submit comments and questions in relation to such an assessment of a Market Readiness Assessment, in accordance with these Bidding Documents and the Support Agreement in Appendix 17.

**1.4.1 Contractual structure in the form of PPA terms during Trading Period I before completion of a Positive Market Readiness Assessment**



**1.4.2 Contractual structure in the form of CfD terms during Trading Period II after completion of a Positive Market Readiness Assessment**



## **1.5 Location of each Site**

Sites to be identified and proposed by Bidder(s) in accordance with the Bidding requirements, in particular Appendix 12 (*Site And Project Qualification*), Appendix 14 (*Terms of Reference for Preliminary ESIA*), Appendix 15 (*Terms of Reference for full Environmental and Social Impact Assessment Study (to be completed post-Award if selected as Selected Bidder)*), and Appendix 16 (*Siting Study*).

For the avoidance of doubt, a Site is considered as separate if it is covered by one Grid Connection point and a singular Development Permit.

## **1.6 Grid Connection Point(s) at Transmission Network or Distribution Network**

Based on the Law 43/2015, "On the Electric power Sector", as amended, the network connection infrastructure (which includes the construction of the lifting substation, high voltage line and line at the point of connection to the network) must be realized by the Developer.

The transformer tract in the Solar PV substation and the respective overhead power line tracts must be equipped with all the necessary primary and secondary elements, in accordance with the standards used by the TSO or DSO.

The complete implementation Project that includes the Solar PV Station, the overhead power line and the line tract at the point of connection to the network must be approved by TSO or DSO depending on whether the proposed Project is to be connected to the TSO or DSO network in accordance with the Applicable Laws, before the start of its implementation. The Developer must implement all the technical conditions of design and implementation of equipment and electrical installations in this investment. TSO or DSO, as relevant, will be supervising in all phases of the Project implementation of the connecting infrastructure of this investment for the part that belongs to the line outputs and the high voltage plant, until its final testing.

The TSO or DSO, as relevant depending on the Connection Point for the Proposed Project, will have full access to make in the future the expansion of the Station near a Selected Site with a new exit in the high voltage busbars, for needs transmission system development.

The technical data of the high voltage equipment to be used, as well as the control and protection system of the rising transformer/s and the line outputs, must be in full compliance with the latest publications of the IEC and EN standards. For the those Projects that are to be connected to the TSO network, the technical specifications of the equipment and those of the protection control of the side elements 110 kV must meet the main technical parameters according to the Transmission Network Code and approved by the TSO. For those Projects that are to be connected to the DSO network, technical specifications of the equipment and those of the protection control of the side elements, must meet the technical parameters according to the DSO network codes and requirements.

For projects that will be connected to the TSO network, the measuring points of the electric power that the plant will inject in the Transmission Network, will be at the high-voltage output of the 110 / TM boost transformer to be installed and must meet the standard required by the Transmission Grid Code and Metering Code respectively.

For projects that will be connected to the DSO network, the measuring points of the electric power that the plant will inject to the Distribution Network, need to be at voltage levels as required by the DSO network codes and meet the standards as required by the Applicable Laws.

The Developer will bear costs for the construction of the Transmission Line and grid connection at the connection point selected by the Selected Bidder. The TSO/DSO as relevant depending on the proposed connection point for the proposed Project, bears costs of grid reinforcement if applicable.

### **1.7 Timeline for Execution of Works:**

The time for execution of works is defined in the draft Project Development Agreement and Support Agreement in Appendix 17.

### **1.8 Legal, Economic, Financial and Technical Information (Qualification Documents)**

At the time of the Submission Deadline, Bidders shall submit a Bid Security in the amount of EUR 7.5 per kW (seven point five euros per kW) or EUR 7,500 (seven thousand and five hundred) per MW of the Supported Capacity of the proposed Facility.

### **1.9 Bidding Procedure**

Open Procedure

### **1.10 Deadline for the Submission of Proposals**

**Date: 17 May 2024**

**Time: 18.00 Central European Time**

If the Submission is delivered via mail (including the USB as required below), it will be deemed to have been duly submitted by the Submission Deadline if it cumulatively meets the following requirements:

- postmarked date on the Envelopes, confirmed by note of the postal service, is no later than the Deadline for the Submission of Proposals Submission (*i.e. 17 May 2024 Time: 18:00 Central European Time*);
- the MIE receives the Proposal Submission no later than the date for the opening of the Proposals, (*i.e. 24 May 2024 Time: 12:00 Central European Time*).

MIE will issue the confirmation of receipt of the Proposal Submission, with the date and time of acceptance. Proposal Submissions submitted in person after the Submission Deadline or submitted by mail that do not cumulatively meet the above conditions will not be considered. They will be returned to the Bidders without being opened.

### **1.11 Opening of the Technical Proposals**

**Date: 24 May 2024**      **Time: 12.30 Central European Time**

The information communicated during the public opening of the Proposal Submission submitted by postal means shall be communicated, upon request, to all the Bidders who have submitted a Proposal Submission.

### **1.12 Opening of the Financial Proposals**

**Date: 10 July 2024**      **Time: 12.00 Central European Time**

The information communicated during the public opening of the Financial Proposals shall be communicated, upon request, to all Qualified Bidders.

### **1.13 Language**

Unless otherwise provided in these Documents and subject to authentication, legalization and translation requirements in Appendix 11, the language of the Submission shall be in Albanian and English language. If the documentation is submitted in English, the Bidder is obliged to submit also a certified and notarized translation into Albanian language. In case of discrepancy the Albanian translation will be used to interpret information and any ambiguities.

The Bidding Documents shall be made available to interested Bidders in Albanian and English. In case of discrepancy the Albanian language shall prevail.

### **1.14 Date of Announcement of Procedure Notice**

**Date: 15 January 2024**

### **1.15 Date of Conference for Bidders**

As per Estimated Timetable Appendix 22.

### **1.16 Notices and Correspondences**

Any and all correspondence and notifications between the Contracting Authority and the Bidders shall be done electronically at the e-mail address of the Contact Person, as specified in paragraph 1.1.1 and the e-mail address of the Bidder's Contact. Notices sent by one party to the other are deemed to have been received in the moment they are electronically sent (via e-mail) from the sending party.

Contracting Authority may choose at its discretion that certain information, or documents, are sent to the Contracting Authority's address in hard copy.

### **1.17 Fee confirming participation interest**

A prospective Bidder shall make payment of a fee equal to EUR 1,000.00 (*one thousand*) at least five (5) Business Days prior to the Submission Deadline, at any of the bank accounts indicated by the Contracting Authority below, and transfer a proof of payment to the Contracting Authority's Contact point. Such proof of payment bearing a confirmation receipt by the Contracting Authority will be deemed to also constitute a confirmation of interest of that Bidder to participate in the process and submit a Proposal by the Submission Deadline.

**BANK ACCOUNT:**

1	Banka e Bashkuar e Shqiperise (UBA)	AAISALTR/1701007600000460	AL17 2031 0019 1701 0076 0000 0460
2	Banka Credins	CDISALTR/589007	AL32 2121 1016 0000 0000 0058 9007
3	Alfa Bank	CRBAALTR/902020125000045319	AL25 9021 1209 0201 2500 0045 3199
4	Banka Amerikane e Investimeve (ABI)	EMPOALTR/000035449	AL88 2101 1012 0000 0000 0003 5449
5	Pro Credit Bank	FEFAALTR/107701190001	AL73 2091 1108 0000 1077 0119 0001
6	Banka e Pare e Investimeve (FIB)	FINVALTR/43400020900256900	AL28 2151 1031 ALL5 3000 0025 6900
7	Banka Kombetare Tregtare (BKT)	NCBAALTX/401279588OLTHESALLAL	AL91 2051 1014 0127 9588 OLTHE SALLA
8	OTP bank (B.POPULLORE)	PUPPALTR/00000211514	AL27 2131 1013 0000 0000 0021 1514
9	Raiffeisen Bank	SGSBALTX/0104030780	AL22 2021 1013 0000 0001 0403 0780
10	Tirana Bank	TIRBALTR/0100320000100	AL80 2061 1004 0000 1003 2000 0100
11	Union Bank	UNALALTR/111100925160118	AL61 2141 1209 0111 1009 2516 0118
12	Intesa Sanpaolo Bank (B.Amerikane)	USALALTR/2014730702	AL15 2081 1008 0000 0020 1473 0702



## II. REQUEST FOR PROPOSAL DOCUMENTS – INSTRUCTIONS FOR BIDDERS

### 2 INTRODUCTION

In accordance with decision of the Council of Ministers no. 349, dated 12.06.2018 "*On the approval of support measures for the promotion of the use of electricity from renewable sources of sun and wind, as well as procedures for selecting projects for their benefit*", as amended and the Decree of the Minister no. 336/1, dated 20.12.2019, the Ministry of Infrastructure and Energy has decided to implement a scheme for the "Design, financing, construction, operation, and maintenance of solar PV Facility(ies), each with a minimum installed capacity 10 MW (inclusive) and which require support for all or part of their installed capacity, of which the Supported Capacity can be up to 100 MW (inclusive), to be located at a site(s) chosen by a Selected Bidder within the Republic of Albania."

Participation in this tender process is restricted to Projects that require support for Supported Capacity up to 100MW of their installed capacity . Through this tender process, the MIE will select Projects that require support measures for the total or a part of their capacity totalling 300 MW that will receive support measures as described below. For the avoidance of doubt, the Procedure will select Projects, and a Bidder may submit more than one Project. For the avoidance of doubt, each Selected Project will have a separate Project Development Agreement and Support Agreement, to be entered into by the Contracting Authority and Support Counterparty and a Selected Bidder that proposed the Project. Depending on the number of Projects that have been awarded, one Bidder may enter into more than one Project Development Agreement and more than one Support Agreement.

This Supported Capacity will benefit from the measures promoted by Council of Ministers Decision no. 349, dated 12.06.2018, as amended and a 15 year PPA or Contract for Differences as applicable.

Bidders are hereby invited to submit a Submission which complies with the requirements of these Bidding Documents. Bidders shall complete the relevant Appendices annexed to these Documents.

#### 2.1 Legal Basis

The Bidding Procedure, has been organized in accordance with the Council of Ministers no. 349, dated 12.06.2018 "*On the approval of support measures for the promotion of the use of electricity from renewable sources of sun and wind, as well as procedures for selecting projects for their benefit*", as amended.

### **3. PRE-QUALIFICATION AND QUALIFICATION PROCEDURE**

#### **3.1 Questions Clarifications and Amendments**

- 3.1.1 Any Bidder requiring clarification on these Bidding Documents may send a request for clarification no later than 15 April 2024, electronically by e-mail to the Contracting Authority's Contact Person.
- 3.1.2 The response to such requests for clarification, including an explanation of the query but no identification of its source, shall be posted electronically by e-mail for all registered Bidders at regular intervals (e.g. at least once per month, depending on the volume of requests) starting from the Announcement Date. Where it deems appropriate or necessary, the Special Commission may decide, but is not obliged to, post answers to requests for clarification before the respective round. The Contracting Authority may choose to provide a single response to a group of similar queries.
- 3.1.3 A Bidder may propose amendments and/or corrections to be made to these Documents, together with a separate note explaining the rationale behind any proposed amendment and/or corrections.
- 3.1.4 Amendments/corrections proposed by Bidders to these Documents shall be sent electronically by e-mail to the Contact Person, no later than 15 April 2024. The Contracting Authority reserves the right not to accept such proposed amendments to these Bidding Documents.
- 3.1.5 The right of the Bidders to request amendments to the Documents in accordance with 3.1.3 and 3.1.4 shall not be interpreted as the right of the Bidder to object these Documents. For the avoidance of doubt, the right of Bidders to amend the Documents in accordance with paragraph 3.9 and 7.3 below shall not be interpreted as the right of Bidders to submit a Submission that is conditional to such amendments being accepted.
- 3.1.6 If applicable, the amended versions of these Documents will be made available to all Pre-Bidders before Submission Deadline in which case they shall be binding on the Bidders. No other communications of any kind whatsoever, including, without limitation, the responses to questions or requests for clarifications, shall be construed as modifying these Documents.
- 3.1.7 The Contracting Authority may at any time and for any reason, amend *ex officio*, these Documents (including their Appendices and Schedules). The amended versions shall be made available to all Bidders and shall be considered as the final Documents for this Bidding Procedure. In this case, the Contracting Authority may, *ex officio*, postpone at its discretion, the Submission Deadline and notify the new Submission Deadline, if applicable.

#### **3.2 Estimated Timetable**

- 3.2.1 The Estimated Timetable of the Bidding Procedure is specified in Appendix 22 (*Estimated Timetable*).

3.2.2 MIE may, in its sole discretion, amend the Estimated Timetable. In this case, MIE shall promptly notify Bidders of changes made to the Estimated Timetable.

### **3.3 Conference for Bidders**

MIE will organize a Conference for Bidders on 14 March 2024 to promote engagement and participation in the RProcedure. This may include without limitation a detailed explanation of the requirements of the Bidding Documents, including the Support Agreement and and replies to selected questions of relevance submitted by Bidders.

A schedule of the Conference and option to submit questions will be notified to the Bidders. Further Conferences may be arranged at the discretion of the MIE. Bidders' participation in any of the Conferences shall be at their sole cost, risk and responsibility.

### **3.4 Bidders Due Diligence**

Each Bidder shall be solely responsible for conducting its own independent research, due diligence and any other work or investigation and for seeking any other independent advice necessary or desirable for the preparation of its Submission.

### **3.5 Confidentiality of the Proposal Submission**

3.5.1 Any material, document, act or written statement containing any information shall be regarded as confidential in accordance with applicable laws, only if it:

- is by its nature confidential;
- is determined to remain confidential.

3.5.2 Bidders must clearly identify any document or information that they wish to remain confidential by filling in the form as provided in Appendix 4 (*List of Confidential Information*).

3.5.3 If not provided by law, any court decision or these Proposal Documents, no party may disclose technical information, pricing information or any other information relating to the Pre-Qualification and Qualification Procedure without prior approval.

3.5.4 The Contracting Authority shall be considered to not have violated the obligations to maintain confidentiality regarding a Bidder in the case when data:

- is provided by the Contracting Authority to its employees, consultants or subcontractors only in relation to the Bidding Procedure or in order to prepare for or manage any contract;
- is provided to personnel of the Contracting Authority to enable the effective management and control of the Bidding Procedure;
- is issued by the Special Commission to enable the evaluation of Bidding Proposal;

- is issued by the Contracting Authority in response to a request by a committee of the Parliament of Albania;
- is issued by the Contracting Authority within the Government of Albania or to a different Government Department or Agency in accordance with the legitimate interests of the Government of Albania and the Contracting Authority;
- is required to be issued in accordance to the law.

### **3.6 Confidentiality of the Contracting Authority information**

The Contracting Authority may require that all written information (whether confidential or not) and regardless of the way such information has been provided to Bidders:

- be returned to the Contracting Authority – in which case all such information shall be returned immediately by the Bidder to the address identified by the Contracting Authority; or
- be destroyed by the Bidder – in which case Bidders will be required to immediately destroy all such information and provide the Contracting Authority with written evidence of such destruction.

### **3.7 Use of Submission documents**

3.7.1 All Submissions become the property of the Contracting Authority.

3.7.2 Notwithstanding the above and without prejudice to any subsequent agreement signed between the Contracting Authority and any Bidder, the ownership of intellectual property rights in respect of information contained in the Proposal Submission remains unchanged.

3.7.3 The Contracting Authority may use data contained in any proposal or data provided by a Bidder for the purposes of the Bidding Procedure (including the preparation or management of any contract or agreement).

3.7.4 The Contracting Authority shall treat the Bidders equally during the Bidding Procedure respecting confidentiality and information provided by them.

### **3.8 Publication subject to Contracting Authority consent**

The Bidder shall not make any statement or issue any document or material or provide information for publication in any media in connection with the Qualification Procedure, the assessment of Submissions, the acceptance of any Submission, the conduct of negotiations or any notice of appointment of a Bidder without the prior written consent of the Contracting Authority.

### **3.9 Additional rights of Contracting Authority**

3.9.1 Without limitation to its other rights during the Qualification Procedure, the Contracting Authority may, but is not obliged to, at any time without giving any reasons:

- provide any additional information or clarification to all Bidders;
- seek further information or clarification from any Bidder about its Submission;
- seek missing information or supplementing documentation from Bidders in complementation of the Submission;
- require Bidders to clarify supporting documents with additional information or where necessary additional documentation, provided such information does not substantially change the Submission;
- correct obvious clerical errors in the Technical Submission after confirmation of the correction by the Bidder, provided such correction does not substantially change the Qualification;
- answer any questions addressed for clarification to the Contracting Authority by the Bidders and publish the question and response via email;
- repeat, suspend, re-establish or terminate the Procedure in accordance with reasons provided in the relevant laws.

3.9.2 Bidders waive their right to make any claim against the MIE, the Special Commission, the Government of Albania or any of its officials, contractors, employees, agents or advisers in relation to the exercise or failure to exercise any of the rights set out in this paragraph 3.9.

### **3.10 False information**

Any Bidder who provides false information may be excluded from the Bidding Procedure at any time. If the provision of false information is discovered after prequalification or after selection, the Contracting Authority has the right to exclude the Bidder from the Bidding Procedure, or after signature of the Project Development Agreement, terminate the Project Agreements in accordance with its terms. Bidders shall use these Bidding Documents without altering their content. Under the Criminal Code of the Republic of Albania, providing false information, drafting of false or forged documents, as well as providing any false statement or data, is considered a criminal offence.

### **3.11 Conflict of interest**

Cases of conflict of interest shall be dealt in accordance with law 9367/2005 “*On the Prevention of Conflict of Interest in the Course of Exercise of Statutory Functions*”, as amended and its by-

laws.

### **3.12 Unlawful actions**

3.12.1 In accordance with the legislation on preventing conflicts of interest and on ethics in public administration, the Contracting Authority shall reject any Proposal submitted by a Bidder that has:

- given or is intending to give to any present or former employee of the Contracting Authority a gift in cash or any other form as an inducement to affect an action or decision during the Bidding Procedure;
- has an unresolved conflict of interest or dispute in relation to the Bidding Procedure; or
- has submitted false documents/information related to the requirements of these Bidding Documents.

3.12.2 No Bidder (including its agents and representatives) shall contact or attempt to contact any member of the Contracting Authority, any member of the Special Commission, or any member or employee of the Government of Albania or its departments, ministries, agencies or local executive bodies, in relation to the Qualification Procedure, except per the procedures set forth in this Bidding Documents.

3.12.3 The Contracting Authority will inform in writing any Bidder and any entity of the Government of Albania with respect to any unlawful action and will include any notifications in the report on the Bidding Procedure.

### **3.13 Costs**

3.13.1 Each Bidder shall bear its own costs and expenses in respect of the preparation and submission of its Proposal Submission.

### **3.14 Consortium**

3.14.1 A Bidder may take the form of a consortium (a “**Consortium**”) comprised of two or more companies, corporate bodies or other legal entities.

3.14.2 Each Consortium shall appoint and authorize one lead member (“**Lead Member**”) to irrevocably represent all members of the Consortium in all matters connected with the Bidding Procedure and the Bidding Procedure.

3.14.3 No Bidder or member of a Consortium may have Control over another Bidder or member of another Consortium.

### **3.15 Compliance with the Bidding Documents**

Any Bidder shall consider the guidelines, criteria, requirements, specifications, deadlines

and all the information included in these Bidding Procedure Documents. In case the Bidder:

- does not fulfil all the documentation and information included in the Bidding Documents; or
- submits a Bidding Submission that does not comply to terms and conditions of the Bidding Documents; or
- submits a Technical Proposal that deviates from the structure proposed under this Bidding Procedure and which is not brought into compliance as required during the Rectification Process.

The Contracting Authority shall determine that the Proposal Submission is non-compliant with the Bidding Documents and shall disqualify the Proposal Submission.

## **4 PREPARATION OF THE PROPOSAL SUBMISSIONS**

### **4.1 Content of the Proposal Submission**

The Submission Documents shall comprise:

- (a) The Technical Proposal including:
  - The documents required to meet the Pre-Qualification Criteria, namely the Admissibility Criteria set forth in Appendix 10 and the Specific Qualification Criteria Appendix 11;
  - The documents required to meet the Qualification Criteria relating to the viability of the Project and Site in accordance with the requirements of Appendix 12, and as appropriate with the requirements in Appendix 13 and 14;
- (b) the Financial Bid, in accordance with the requirements of Appendix 1 and 8.

### **4.2 Language of the Proposal Submission**

Unless otherwise provided herein, Bidders shall prepare their Proposal Submission in Albanian **and** English language. When the original documents contained in the Proposal Submission are in English language or other foreign language, they shall be accompanied with a certified and notarized translation in Albanian language. In event of a conflict between the Albanian and English language version, the Albanian version shall prevail. Brochures that are part of the Proposal Submission documents, may be submitted in English language or a foreign language with certified translation of the pertinent passages in English or Albanian.

### **4.3 Clear Reference**

- 4.3.1 Bidders should include in any document a clear reference to the relevant page and paragraph of the Bidding Documents.
- 4.3.2 Any financial information in connection with the Pre-Qualification and Qualification procedure should be expressed in Euro. If any elements of a Proposal Submission are submitted in a currency, other than Euro, that amount will be evaluated by reference to Euro. All amounts would be converted by reference to the official rate of the European Central Bank, on the day of issuance of these Bidding Documents.

### **4.4 Bid Security**

- 4.4.1 Each Bidder shall provide, before the Submission Deadline, a Bid Security in the amount of EUR 7,500 per MW of the Supported Capacity of the proposed Facility, in full compliance with Appendix 2.
- 4.4.2 The Bid Security shall obligatorily be submitted in the form of a deposit or bank guarantee issued by a reputable bank (i.e. reputable bank for the purpose of this document means an international bank with a minimum credit rating of A3 by Moody's (or equivalent) or a local secondary level bank duly registered in the Republic of Albania



and licensed by the Bank of Albania<sup>1</sup>). The Bidder shall ensure that its Bid Security remains in force during the Bid Security Validity Period (i.e. for a period equal to 180 days from the Submission Deadline, as may be extended by the Contracting Authority). The Contracting Authority may, by a reasoned decision, request the Bidder to extend the Bid Security Validity Period, in case specific circumstances affect the extension of the deadlines for the evaluation of Bids or the Selected Bidder fails to provide the Contract Security or in any other case that affect the extension of a mandatory deadline. Failure to extend the Bid Security Validity Period, when requested, is considered a valid reason for its non-qualification.

4.4.3 The Bid Security of the Selected Bidder shall remain valid until the later of (i) the expiry of the Bid Security Validity Period or (ii) the date on which the Developer (as defined in the Project Development Agreement) has delivered a Contract Security in accordance with the Project Development Agreement. In the second case, the Selected Bidder shall cause the validity of its Bid Security to be extended accordingly. After award of the first ranked Bidders, the Contracting Authority may offer the option to next-ranked or next-next ranked Bidders to extend the Bid Security Validity Period for an additional period of either up to 6 (six) calendar months or up to the effectiveness of the Project Agreements for the Selected Project(s) at their election.

4.4.4 The Bid Security of a Bidder may be forfeited if any one of the following events occurs:

- (a) the Bidder withdraws or modifies its Bid during the Bid Security Validity Period;
- (b) the Selected Bidder fails to sign any of the Project Agreements as per the final version appended in Appendix 17;
- (c) the Selected Bidder, or any subsequent Bidder to whom the Project is awarded, fails to extend its original Bid Security Validity Period until the date on which the Contract Security has been delivered in accordance with the Project Development Agreement;
- (d) if applicable, the Selected Bidder fails to complete the energy yield and/or the Environmental and Social Impact Assessment (ESIA) by the end of the Bid Security Validity Period;
- (e) the Bidder has provided false information; or there results to be a material deviation between a Bidder's Proposal in breach of paragraph 6.3.;
- (f) in case the Selected Bidder does not pay the costs provided in Section 3.13 of these Bidding Procedure Documents.

4.4.5 The Bid Security of a Bidder shall be promptly and in any case not later than 30 days, released and remitted to the Bidder without being forfeited, in circumstances where:

- (a) the Bid Validity Period has expired and the Bidder refuses to extend the Bid Security Validity Period;

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<sup>1</sup> [https://www.bankofalbania.org/Supervision/Licensed\\_institutions/Banks/](https://www.bankofalbania.org/Supervision/Licensed_institutions/Banks/)

- (b) The Bidder is the Selected Bidder and has delivered the Contract Security.

#### **4.5 Bid Validity Period**

- 4.5.1 The Submissions shall remain valid for the Bid Validity Period.
- 4.5.2 Prior to expiry of the Bid Validity Period, the Contracting Authority may request, in writing, that the Bidders extend the period of validity for a specified additional period and a Bidder shall respond in writing to this request. A Bidder may refuse the request without its Bid Security being forfeited (except if the provisions of paragraph 4.4.4 apply).
- 4.5.3 The Bid of the Selected Bidder will be valid until the signing of the Project Development Agreement and the Contracting Authority shall be able to request that the Bid of an unsuccessful Bidder be extended for any duration up until the Long-stop Date (as defined in the Project Development Agreement), such extension to be at the discretion of the relevant Bidder. Upon request of the Contracting Authority, after award of the first-ranked Bidders if the latter fail to enter into an effective Support Agreement, the Contracting Authority may offer the option to next-ranked or next-next ranked Bidder(s), to extend their Bid Validity Period for an additional period of either up to 6 calendar months or up to the effectiveness of the Project Agreements for the Selected Bidders Project(s) at their election.

## 5 SUBMISSION OF PROPOSAL

### 5.1 Submission Deadline

5.1.1 The Submission Deadline for the Proposal Submission is:

Date: 17 May 2024

Time: 18:00, Central European Time

5.1.2 MIE may at its discretion, extend the Submission Deadline by giving notice to all Bidders.

### 5.2 Form of Submission

5.2.1 Bidders shall submit their Proposal at the following address: Ministry of Infrastructure and Energy, Abdi Toptani St., no 8, Tirana, Albania, not later than the date and hour as indicated at 5.1.1. in printed and electronic version.

5.2.2 If the Submission is delivered via mail, the application will be deemed to have been duly submitted by the Deadline for the Submission if it cumulatively meets the following requirements:

- postmarked date on the Envelopes, confirmed by note of the postal service, is no later than the Deadline for the Submission of Proposal (*i.e. 17 May 2024, Time: 18:00 Central European Time*);
- the MIE receives the Bid Application no later than the Date for Opening of the Bids (*i.e. 24 May 2024, Time: 12:00 Central European Time*).

Submission documents submitted in person after the Proposal Submission Deadline or submitted by mail that do not cumulatively meet the above conditions will be rejected.

5.2.3 ***Option to submit multiple Projects:*** Each Submission shall be for one (1) Project which might include one or more Sites. Each Project shall have a minimum installed capacity equal or higher than 10 MW (inclusive). The aggregate Supported Capacity for which each Bidder requires support across all of its Projects and Site(s) cannot exceed 100 MW. For the avoidance of doubt, each Bidder may submit more than one Submission.

5.2.4 Requests for clarification in relation to the submission of the Proposal Documents shall be submitted to the Contact Person, not later than 15 April 2024.

5.2.5 The Proposal of Bidders shall be submitted in original or in authenticated original copies, as per requirements provided under these Documents, in particular authentication, legalisation and translation requirements in Appendix 10. Each page of the documents contained in the original Proposal Submission must be consecutively numbered and initiated by the Authorized Representative of the Bidder.

5.2.6 All figures expressed in the Submission should be expressed in numbers and words, in the following format “1,000 (one thousand) (e.g. three million: 3,000,000)” and in the case of inconsistency words shall prevail over numbers.

5.2.7 Each original hard-copy of the Proposal Submission, shall be typed or written in indelible ink. An electronic version of the Proposal Submission saved on an USB drive shall

accompany the hard-copy. The Authorized Representative of the Bidder shall sign the original hard-copy Proposal Submission and initial all of its pages, except for un-amended pre-printed literature. The Proposal Submission shall contain no alterations, omissions or additions, unless such corrections are signed by the person or persons signing the Proposal Submission.

- 5.2.8 Any and all the documents to be submitted by the Bidder must be contained in a closed and sealed envelope (Envelope 1), and be saved in electronic version in a dedicated USB drive contained in a closed envelope (Envelope 2), except only for the Financial Bid Form (as per Appendix 1), which shall be contained in a separate closed and sealed envelope (Envelope 3). Envelope 1, Envelope 2 containing the USB drive, as well as Envelope 3 shall be placed into a fourth closed and sealed envelope (Envelope 4), which shall be submitted by the Bidder. For the avoidance of doubt, Bidders must submit Envelope 4 only, which should contain inside both Envelope 1, Envelope 2 and Envelope 3.
- 5.2.9 Envelope 1 must contain all Qualification Documents, as specified under these Documents, and especially under Appendix 10 (*Pre-Qualification Criteria*), Appendix 11 (*Specific Qualification Criteria*) and Appendix 12 (*Site And Project Qualification Criteria*). The USB drive must contain the same documents in electronic version.
- 5.2.10 Each Envelope should be clearly labelled with (i) its envelope number; (ii) the name and address of the Bidder / Consortium (and its members); (iii) the name and address of the Contracting Authority; and (iv) the note: Proposal for the design, financing, construction, operation, maintenance of solar PV Facility with minimum installed capacity 10 MW (inclusive), and Supported Capacity that get support measures up to 100 MW, to be located at a site selected by a prospective Bidder within the Republic of Albania; “Envelope 3 should indicate the note: “Do not open, except for cases where the Special Commission is present, and not before 10 July 2024, 12:00 CET””.

## **6 WITHDRAWAL OF PROPOSAL SUBMISSION**

### **6.1 Requirements for additional information**

A Bidder shall immediately notify the Contracting Authority in the event that any Bidder considers that there is any non-compliance, mistake, uncertainty or discrepancy in the Bidding Procedure, or in the Bidding Documents.

### **6.2 Withdrawal of Qualification Applications**

A Bidder may withdraw its Proposal Submission without penalty after submission, provided that a notice of the withdrawal is received by the Contracting Authority prior to the Proposal Submission Deadline.

### **6.3 Material non-conformities, non-material deviations, unintentional errors, irregularities or missing information in the Proposal**

The Contracting Authority may require Bidders to provide amendments, additional information and supplementing documentation in due form by a deadline as indicated by the Evaluation Commission, or rectify or make amendments to the supporting documents by the Rectification Deadline as per paragraph 7.3. (this process referred as **`Rectification`**). Provided that during the Rectification process, the Contracting Authority ensures equal and fair treatment of all Bidders and give Bidders that are in a comparable position an equal opportunity to make similar amendments or rectifications, such Rectification process can result in a materially changed Technical Submission (but cannot result in any change to the Financial Bid).

The Contracting Authority may correct obvious clerical errors in the Bid after confirmation of the correction by the Bidder by the Rectification Deadline.

Unless otherwise provided under specific provisions of these Bidding Procedure, the Contracting Authority will not accept any further modification or addition to a Proposal following the Rectification during the Qualification Phase. The Contracting Authority shall not be responsible for any losses or consequences arising out of a Qualification Application containing an error.

If following the Submission Deadline, a Bidder decides to withdraw its Submission or there is a material deviation from the Proposal of that Bidder due to an error, the Contracting Authority shall be entitled to call the Bid Security.

## **7 GENERAL RULES REGARDING ASSESSMENT OF PROPOSAL SUBMISSIONS**

- 7.1 Upon expiry of the Submission Deadline, the Special Commission shall identify the Bidders and shall open the Proposal Submissions which have been submitted to the Contracting Authority.
- 7.2 Proposal Submissions will be qualified in accordance with the criteria and rules of Section 8. Qualified Bidders will further progress to the evaluation of the Financial Bids and be evaluated in accordance with the criteria and rules determined in the Appendix 18 of the Bidding Documents.
- 7.3 Where the Special Commission deems it convenient or necessary, it may (but shall not be obliged to) request via e-mail or postal mail written clarification or additional information from a Bidder as per the below. Whenever such request is made, the Bidder shall provide written clarifications or additional missing information or supplementing documents to the Special Commission by such date and in such form as may be specified by the Special Commission.
- 7.3.1 In an attempt to promote competition and transparency in the Bidding Procedure, the Special Commission may, but is not obliged to, request Bidders:
- clarify supporting documents, make amendments or rectify certain material deviations that can be reasonably rectified by the Rectification Deadline through submission of additional information or additional documentation by a deadline as indicated by the Evaluation Commission, or
  - rectify formal or non-substantial irregularities by the Rectification Deadline;
  - to ask for further clarification, supplementation of missing information on the Technical Submission without materially changing their Submissions provided that this information is not related to new facts not originally included in the Submission and provided that the missing information is rectifiable within a reasonable time within a Rectification Deadline.
- 7.3.2 Contracting Authority may in its discretion invite Bidders in various rounds of clarification, supplementing of additional information or rectification.
- 7.3.3 During the Rectification process, the Contracting Authority will ensure equal and fair treatment of all Bidders. Upon request, Contracting Authority shall disclose with all Bidders in an anonymised form categories of amendments or rectifications that have been permitted for the Bidders. This information will be disclosed in aggregated and anonymised form, ensuring in particular protection of confidential or business sensitive information. The Contracting Authority must give Bidders that are in a comparable position an equal opportunity to make similar amendments, supplementations or rectifications.
- 7.3.4 The Special Commission will not contact Bidder(s) with further clarification or rectification requests during the Pre-qualification phase as per this section, if it

determines their Proposal Submission as non-responsive based on other substantial non-conformities or irregularities that cannot be reasonably remedied or rectified by the Rectification Deadline.

7.3.5 The Special Commission will not contact Bidder(s) with further clarification or rectification requests during the evaluation phase as per this section, if it reasonably determines that Bidders have abusively or by gross negligence submitted incomplete Proposals.

7.3.6 Examples of additional information, clarification or rectification that the Contracting Authority may request during the examination phase as per paragraph 7.4.1. above, could, without limitation, consist of the following:

- *Insufficient treatment or information in certain sections of the Pre-feasibility Study as required under Appendix 12 and 13:* The Contracting Authority might, without being obliged to, require Bidders to supplement insufficient treatment or information on sections of the Pre-feasibility study. This should however not include collection of new data or new facts, but only an extension or review of a certain analysis or assessment, such as for example provide additional information on Information on EPC, O&M, suppliers and engineers, which might have not been submitted properly, O&M Solar plant general description (including activities program and an organizational structure), Personnel list (including the number of O&M teams, a weekly schedule, the number and qualification of technical and administrative staff, the number of foreign staff and CVS of key personnel), Financial report with project cash-flow (including energy-related revenues, OpEx, CapEx and rate of return), etc.
- *Insufficient treatment or missing information in certain sections of the preliminary ESIA as required under Appendix 12 and 14.* The Contracting Authority might decide without being obliged to require the Bidders to submit its treatment of some key missing elements, such for example: flooding Risk including events related to possible sea level rise, flora, fauna and ecosystems, Natural Habitat, Priority Biodiversity Features and Critical Habitat, Protected Areas (general description and maps), Land use and ecosystem services, and Cultural resources.

7.3.7 None of the above provisions shall be deemed as creating legal rights on the Bidders to claim from the Special Commission to seek amendments, additional or clarification information. For the avoidance of doubt, the Special Commission may, but is not obliged to exercise its powers under paragraphs 7.3.1 to 7.3.6.

7.4 The Special Commission may waive any minor non-conformity or irregularity in an Application, which does not constitute a material deviation from the Proposal Submissions, and which does not prejudice or affect the determination of responsiveness or evaluation of the Proposal Submission in accordance with the provisions of these Bidding Documents.

7.5 The Contracting Authority or the Special Commission may ask for any assistance or advice from other state institutions or experts (including legal, financial or technical) during the

Applications evaluation process. The Special Commission will review any suggestions, assessment or advice provided by other state institutions or experts as a relevant part of the Proposal Submissions evaluation process.

- 7.6 The Contracting Authority may perform any reasonable investigation or similar procedure that it deems necessary to examine the integrity and financing relating to a Proposal of the Bidder, or any other elements that it deems appropriate, or necessary.
- 7.7 A Bidder shall immediately provide any information or assistance required by the Contracting Authority in order that any necessary investigation can be made.



## 8 QUALIFICATION OF BIDDERS

### 8.1 Pre-Qualification and Qualification of Bidders

The Special Commission shall conduct:

- a detailed examination of the Proposal Submission against the Pre-Qualification Criteria, namely the Admissibility Criteria in Appendix 10 and the Specific Qualification Criteria in Appendix 11, in order to determine whether a Bidder will pre-qualify; and subsequently,
- a detailed examination of the Proposal Submission against the Qualification Criteria relating to the viability of the Site and Project in accordance with Appendix 12, and as required Appendix 13 and 14, in order to determine whether a Bidder will qualify.

### 8.2 Technical Submission

The Technical Submission shall comprise all the documents set out in Appendix 10 (*Pre-Qualification Criteria*), Appendix 11 (*Specific Qualification Criteria*), Appendix 12 (*Site And Project Qualification*). Each Bidder is invited to demonstrate the viability of its Proposed Site, the technical, environmental and social feasibility of its Project.

### 8.3 Examination of Technical Submission (s)

8.3.1 The Special Commission will examine each Bidder's Technical Submission (including supplementary information or documentation provided following clarification / rectification requests in a Rectification process in accordance with paragraph 7.3.) to determine whether all documents required as per Appendix 10 (*Pre-Qualification Criteria*), Appendix 11 (*Specific Qualification Criteria*), Appendix 12 (*Site And Project Qualification*) have been submitted and whether these documents have been properly executed ("**Preliminary Examination**").

8.3.2 Any Technical Submission (including supplementary information or documentation provided following clarification / rectification requests in a Rectification process in accordance with paragraph 7.3.) which are found not to contain a full set of properly presented or executed documents as per the requirements of Appendix 10 (*Pre-Qualification Criteria*), Appendix 11 (*Specific Qualification Criteria*), will be rejected by the Special Commission and not included for further consideration. **The Pre-Qualification Criteria set out in Appendix 10 (*Pre-Qualification Criteria*) and Appendix 11 (*Specific Qualification Criteria*) shall be assessed on a "pass" or "fail" basis for each such criteria.**

8.3.3 The Special Commission will carry out detailed examination of the Technical Submission (including supplementary information or documentation provided following clarification / rectification requests in a Rectification process in accordance with paragraph 7.3.) that have not been rejected after Preliminary Examination, in order to determine whether they are responsive to the Qualification Criteria set forth in Appendix 12 (*Site And Project Qualification*) and as relevant in Appendix 13 and 14. In order to reach such a determination, the Special Commission will examine the information and documentation supplied by each Bidder in the Technical Submission to meet requirements of Appendix 12, 13 and 14 (including supplementary information or documentation provided following

clarification / rectification requests in a Rectification process in accordance with paragraph 7.3.). **The Qualification Criteria set out in Appendix 12 (Site And Project Qualification), read in conjunction with Appendix 13 and 14, shall be evaluated on a “pass” or /“fail” basis for each such criteria.**

- 8.3.4 A Bidder whose Submission Documents are determined by the Special Commission to meet cumulatively all Pre-Qualification Criteria and Qualification Criteria specified in Appendix 10 (*Admissibility Criteria*), Appendix 11 (*Specific Qualification Criteria*), Appendix 12 (*Site And Project Qualification Criteria*) and shall be designated as a “**Qualified Bidder**”.
- 8.3.5 A Bidder whose documents under the Technical Submission are determined by the Special Commission not to meet the Pre-Qualification Criteria specified in Appendix 10 (*Pre-Qualification Criteria*), and/or Appendix 11 (*Specific Qualification Criteria*), and/or Appendix 12 (*Site And Project Qualification Criteria*) and shall be designated as a “**Non-Qualified Bidder**”. For the avoidance of doubt, the Contracting Authority reserves the right to designate a Bidder as a “**Non-Qualified Bidder**” for a particular Project if it determines during the Preliminary Examination that its Proposal does not meet Pre-Qualification Criteria specified in Appendix 10 (*Pre-Qualification Criteria*), Appendix 11 (*Specific Qualification Criteria*), without a need to further proceed to the examination of the Qualification Criteria relating to the Site and Project under Appendix 12.
- 8.3.6 Following evaluation of the Technical Submission, the Special Commission will either:
- designate a Bidder as a Non-Qualified Bidder and reject its Proposal Submission on the grounds that it does not meet all Pre-Qualification and Qualification Criteria and/or other requirements set forth in Appendix 10 (*Admissibility Criteria*), and/or Appendix 11 (*Specific Qualification Criteria*), and/or Appendix 12 (*Site And Project Qualification Criteria*) in which case the Contracting Authority shall notify the Non-Qualified Bidder according to Appendix 19 (*Non-Qualified Bidder Notification Form*); or
  - designate a Bidder as a Qualified Bidder. The Contracting Authority shall provide a notice to all the Qualified Bidders.
- 8.3.7 The Non-Qualified Bidder may present a claim to the Contracting Authority for its non-qualification, as per the form in Appendix 21 (*Contract Authority Complaint Form*), within 10 (ten) calendar days from the day it has received notice, of the Non-Qualified Bidder Notification Form.
- 8.3.8 The Special Commission shall proceed with evaluating the Qualified Bidders according to Evaluation Criteria in Section 9.

## 9 EVALUATION OF BIDS AND FINAL AWARD

### 9.1. Financial Bid

- 9.1.1 Bidders shall submit the form set forth in Appendix 1 (*Financial Bid Form*), in which they clearly propose the price for a MW/h in EUR, excluding VAT, as per instruction under these Bidding Procedure Documents. The Financial Bid Form shall correspond to a fixed 15-year tariff in EUR / MWh for a Solar PV Facility, with a minimum installed capacity equal or higher than 10 MW (inclusive) and a certain total installed capacity, for which the Bidder seeks support for the Supported Capacity consisting in the total or a part of that installed capacity up to 100 MW (inclusive), to be located at one or more Site(s) chosen by the Selected Bidder, for the purchase of energy produced by such Supported Capacity. The price proposed by the Bidder in the Financial Bid Form, shall not be higher than the Ceiling Price.
- 9.1.2 For the avoidance of doubt for all Bidders, Appendix 1 (Financial Bid Form), which will contain the price proposed by the Bidder, shall be put in the separate Envelope 3, as per specifications under paragraphs 5.2.7 and 5.2.8 of these Bidding Procedure Documents and shall **not** be included in the USB.

### 9.2 Evaluation of the Bid Financial Form and Final Award

- 9.2.1 Financial Bids of Qualified Bidders will be evaluated on the extent to which they materially meet the requirements and objectives of the Contracting Authority for the Project(s) as set out in the Bidding Documents.
- 9.2.2 Financial Bids of Qualified Bidders shall be evaluated, scored and ranked on the basis of the criteria set out in Appendix 18 (*Evaluation Criteria and Scoring Methodology*).
- 9.2.3 Special Commission shall notify the Qualified Bidders on the date, time and venue of the opening of the Financial Bids of the Qualified Bidders.
- 9.2.4 The Special Commission in the presence of the Qualified Bidder (if they chose to participate), shall open the Envelope 3 which contains the Financial Bids, of all Qualified Bidders.
- 9.2.5 The Special Commission shall compile the scoring for all Qualified Bidders in accordance with Appendix 18 (*Evaluation Criteria and Scoring Methodology*) (and the final ranking which shall be notified to all Qualified Bidders. The Qualified Bidder(s) who receives the highest ranking pursuant to the methodology set out in Appendix 18 (*Evaluation Criteria and Scoring Methodology*), and otherwise submitted a Bid in conformity, shall be declared as the preferred Bidder(s) (“**Preferred Bidder**”).
- 9.2.6 A Bidder may request an administrative review of the evaluation process if it considers that an action taken by the Special Commission or the Contracting Authority is in breach of the Albanian applicable legislation. Any claim to the Contracting Authority shall be made in the appropriate form of Appendix 21 (*Contracting Authority Complaint Form*) indicating the

name and address of the claimant, the reference for the respective procedure, the legal basis and a description of the infringement.

- 9.2.7 Upon completion of the appeal process or the complaint deadline of 10 calendar days from the day of having received notice, as applicable, the Special Commission prepares the final Bid evaluation report and informs the Contracting Authority accordingly on the results of the Bidders and the Preferred Bidder(s).
- 9.2.8 The Contracting Authority informs the Preferred Bidder(s) that they are Selected Bidder(s) by delivery of the Selected Bidder Notice Form as per Appendix 20 (*Selected Bidder Notice Form*).

## 10 EXECUTION OF THE PROJECT AGREEMENTS

- 10.1.1 The Contracting Authority shall proceed with the signing of the Project Development Agreement only after all appeal and review procedures have been exhausted as provided in the Bidding Documents.
- 10.1.2 The Project Development Agreement and the Support Agreement shall be entered as per the final version in Appendix 17 of the Bidding Procedure Documents. Any clarification or amendment request to these Project Agreements should have been submitted by 15 April 2024 in accordance with Section 3.1. The Contracting Authority will publish or confirm a final version of the Project Agreements to be re-appended in Appendix 17 by 1 May 2024 and prior any Submission Deadline.
- 10.1.3 Following the publication of the final version of the Project Agreements by 1 May 2024, no further amendments can be made to the Project Agreements, with the exception of the technical project-specific details relating to the Selected Project. For the avoidance of doubt, such final version of the Project Agreements is **non-negotiable**. Following the award decision, Selected Bidders shall **only** fill-in the details specific to the Project identified in square brackets in the Project Agreements appended in Appendix 17. The latter may include: (i) technical specifications of the project, (ii) availability guarantee; (iii) commissioning tests.
- 10.1.4 Upon completion of the evaluation procedure and the announcement of the designated Selected Bidder(s) the Contracting Authority sets a deadline for the execution of the Project Development Agreement and Support Agreement that it is foreseen to be not later than 30 (thirty) Business Days from the issue of the said decision. This deadline may be extended at the discretion and by decision of the Contracting Authority.
- 10.1.5 Failure by the Selected Bidder to conclude the Project Agreements as per Appendix 17 within the pre-determined deadline entitles the Contracting Authority to draw on the Bid Security 4.4.4(b).
- 10.1.6 Each Selected Bidder shall be committed in submitting its Bid that in case it is appointed as a Selected Bidder, it will incorporate the SPV(s) for the implementation of the Project(s) (in accordance with the provisions of the PDA).

## **11 UNSUCCESSFUL PROGRESS WITH ORIGINALLY SELECTED BIDDERS**

11.1.1 Where the Contracting Authority determines that the originally Selected Bidders have not concluded the Project Development Agreement and the Support Agreement by the indicated deadline, and/or where applicable a Selected Bidder(s) fails to complete the condition(s) subsequent in accordance with the Project Development Agreement or the Support Agreement, then the Contracting Authority, only at its own discretion, may invite the next ranked Qualified Bidder(s) to conclude the Project Agreements, and if failing to reach an agreement even with the next ranked Qualified Bidder(s), will then invite the next-next ranked Qualified Bidder(s) and so on. This sequence is subject to the Marginal Bid and Tie-Breaker Rules specified in Appendix 18 (*Evaluation Criteria and Scoring Methodology*). For the avoidance of doubt, the concerned next or next-next ranked Qualified Bidder(s) will not be allowed to conclude Project Agreements unless it has agreed to extend the Bid Validity Period and the Bid Security Validity Period as required by the Contracting Authority in accordance with Sections 4.4. and 4.5. above.

11.1.2 The Contracting Authority may in accordance with legal provisions refuse to enter into Project Agreements as per Appendix 17 with any or all remaining Qualified Bidder(s) where negotiations break down with the first Selected Bidder(s) and the first Selected Bidder(s) does not execute the Project Development Agreement and/or where applicable do not fulfill the condition(s) subsequent in accordance with the Project Development Agreement or the Support Agreement.

## **12 LIMITATIONS**

### **12.1 Right to suspend or discontinue the Bidding Procedure**

The Contracting Authority reserves the right to suspend the tender process, either temporarily or permanently, in accordance with legal provisions following any decision taken by the Contracting Authority in the event of internal reorganization or in any other unforeseen situation.

Bidders will have no right to receive any compensation for loss of profit, costs or expenses in the event that the Bidding Procedure is suspended.

### **12.2 Right to declare the Bidding Procedure unsuccessful**

The Contracting Authority will consider this Bidding Procedure unsuccessful if:

- No Proposal Submission has been submitted;
- No Proposal Submission comply with the Bidding requirements; or
- The Contracting Authority decides that the Project or Proposals do not provide an economic or acceptable solution for the Project(s) to the Contracting Authority.

### **12.3 Right to declare the Bidding Submission invalid**

A Proposal Submission shall be considered invalid in the event that:

- The Proposal Submission contains false information; or
- The Proposal Submission does not comply with any requirements of the Bidding Procedure.

### **13 FURTHER INFORMATION ON FUTURE SOLAR TENDERS**

This tender process the first in a planned series of solar PV bidder-sited competitive procedures. Projects that are unsuccessful in the first tender process will be allowed to participate in future competitive procedures for the award of support measures to solar projects. The Contracting Authority plans to publish information on the timing and capacities of future competitive procedures in due course. The restrictions on individual project size and constraints for the proposed sites will also be reviewed for future tender rounds.

**APPENDIX 1**

**FINANCIAL BID FORM**

*[Appendix to be filled out by the Bidder]*

**[N.B. TO BE INCLUDED IN A SEPARATE ENVELOPE 3 AND NOT COPIED IN THE USB]**

**To: Ministry of Infrastructure and Energy**

**Tender Procedure:** Open

**Description of the Project:** Design, financing, construction, operation, maintenance of a Solar PV Facility, with a certain installed capacity, of which Supported Capacity up to 100 MW will get support measures, to be located at one or more Site(s) chosen by a Selected Bidder within the Republic of Albania (the “Procedure”).

I, the undersigned [•], hereby declare that:

The 15-year levelized fixed tariff for the energy produced from the Supported Capacity, as part of support measures, for the purchase of energy produced by such capacity is:

\_\_\_\_\_ (specified in 4 decimal places in numbers and words) Euro /  
MWh, without VAT.

Bidder name\_[•]

**Representative of the Bidder**

**Signature**

**Seal**

**Date:** [•]



**APPENDIX 2**  
**FORM OF BID SECURITY**  
 (Logo and the letterhead of the Bank)

Date: [•]

Beneficiary: Ministry of Infrastructure and Energy of the  
 Republic of Albania (“**Contracting Authority**”)

In the name of: [Name and address of Bidder, or Consortium]

**Tender Procedure:** Open

**Short Description of the Project:** Design, financing, construction, operation, maintenance of a Solar PV Facility, with a certain installed capacity, of which minimum installed shall be at least 10 MW and Supported Capacity up to 100 MW will get support measures, to be located at one or more Site(s) chosen by a Selected Bidder within the Republic of Albania (the “**Procedure**”).  
 (the “**Procedure**”).

With reference to the aforementioned Procedure, we have been informed that [•] (hereinafter called the “**Bidder**”) has been requested by you to submit before the Contracting Authority the Bid Security in the amount of **7,500/MW of Supported (offered) Capacity** as a condition for securing the Bid to Ministry of Infrastructure and Energy of the Republic of Albania in relation to the Project.

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

The bank irrevocably undertakes to transfer in the account of Ministry of Infrastructure and Energy of the Republic of Albania the bank guarantee of the Bidder, in the amount of **7,500/MW of Supported Capacity** (within 15 (fifteen) calendar days from the submission of the first request in writing by the Contracting Authority, without demanding any explanations, provided that the request identifies the non-fulfilment of one of the following conditions:

- the Bidder withdraws or modifies its Bid during the Bid’s validity period;
- the Bidder does not provide the contract security and/or does not sign the Project Development Agreement/Support Agreement within the terms specified in Appendix 5 - (*Proposal Declaration Form*);
- the Bidder has offered or tried to offer any kind of recompense to employees of the Contracting Authority that are related to the Project;
- the Bidder has made false declarations in its Bid;
- the Bidder does not make payments in accordance with paragraph 3.13 (Costs) of the Bidding Procedure Documents within the period established by the Contracting Authority;
- the Bidder becomes the Selected Bidder, and it fails to extend its original Bid Security Validity Period until the date on which the Contract Security has been delivered in accordance with the Project Development Agreement.

This guarantee shall remain in force up to the provision of the Contract Performance Guarantee under the Support Agreement [•] and including [•], and any demand in respect thereof should reach the Bank not later than the above date.

[Signature and stamp of the Bank]

### APPENDIX 3

#### CORPORATE INFORMATION ON THE BIDDERS

<b>Bidder Information</b>	
Name:	
Type: (Corporation, Partnership etc.)	
Commercial registration no.:	
Legal seat:	
Address of principal office:	
Telephone number:	
Fax number:	
Email address:	
Primary area of business:	
Shareholder certificate (attach separately)	

<b>Consortium Member Information</b> (if applicable, fill in details for all members identifying the Lead Member)	
Name:	
Type: (Corporation, Partnership etc.)	
Commercial registration no.:	
Legal seat:	
Address of principal office:	
Telephone number:	
Fax number:	
Email address:	

<b>Consortium Member Information</b> <b>(if applicable, fill in details for all members identifying the Lead Member)</b>	
Primary area of business:	
Shareholder certificate (attach separately)	

**APPENDIX 4****LIST OF CONFIDENTIAL INFORMATION**

*[Appendix to be filled out by the Bidder]*

(Note down the information you wish to remain confidential)

Type, nature of information to be kept confidential	Number of pages and points in the tender documents you wish to remain confidential	Reasons for keeping this information confidential	Time limit for keeping this information confidential

## APPENDIX 5

### PROPOSAL DECLARATION FORM

**Tender Procedure:** Open

**Short Description of the Project:** : Design, financing, construction, operation, maintenance of a Solar PV Facility, with a certain installed capacity, of which up to 100 MW (inclusive) Supported Capacity will get support measures, to be located at a site chosen by a Selected Bidder within the Republic of Albania (the “**Procedure**”).

Referring to the above-mentioned Procedure, we, the undersigned [•], in the capacity of [•] declare that:

- A. having examined the Bidding Documents, we accept without reservation the requirements, deadlines and conditions stated in the Bidding Documents;
- B. we fulfil all legal, economic, financial and technical requirements stated in the Bidding Documents;
- C. our Technical and Financial Proposal is valid for the period stated in the Bidding Procedure Documents, and will remain binding on us if we are designated as Selected Bidder;
- D. the total installed capacity for the proposed Project is [•], and the Supported Capacity for which we seek support measures in this individual proposed Project is [•], as well as we provide information whether the proposed Supported Capacity is part of a greater project part of which will be operated on merchant terms [**yes/no**], and in the affirmative planned installed capacity for such part to be operated on merchant terms is [•],
- E. the aggregate Supported Capacity as per the Proposal or our Proposals considered jointly, in case of more than one Submission, does not exceed 100 MW;
- F. we authorize the Contracting Authority to verify the information and documents attached to this Proposal;
- G. we understand that MIE may cancel the Bidding Procedure at any time, that MIE is not bound to accept any Proposal that it may receive and that MIE invites the Bidders to submit their Proposals for the Project without incurring any liability to Bidders, in accordance with paragraph 12 of the Bidding Documents. We agree and understand that the Proposal is subject to the provisions of the Bidding Documents. In no case shall we have any claim or right of whatsoever nature if the Project is not awarded to us.

Date of Declaration:

Bidder or Lead Member of Consortium:

Signature:

Seal:

## APPENDIX 6

### FORM OF POWER OF ATTORNEY

*(form to be completed from the Bidder)*

Today, on [ date], before me the Public Notary [public notary data], the undersigned Mr / Mrs [name, surname], born on [date], in [place, country], with his/her passport no [passport no], in the capacity of [position] with the [ Bidder / Consortium], hereby grants this power of attorney, to Mr / Mrs [name, surname], born on [date], in [place, country], with his/her passport no [passport no] (the **Representative**), to represent the [Bidder / Consortium member] in the bidding procedure “Design, financing, construction, operation, maintenance of a Solar PV Facility, with a certain installed capacity, of which up to 100 MW will get support measures, to be located at one or more Site(s) chosen by a Selected Bidder within the Republic of Albania” (**Procedure**) organized by the Ministry of Infrastructure and Energy of the Republic of Albania (**Contracting Authority**). The appointed Representative shall:

- (a) represent the Bidder / Consortium in the Bidding Procedure before the Contracting Authority;
- (b) execute and deliver any and all Bidding Documents, including but not limited to appendixes and financial bid forms, as prepared by the Bidder / Consortium and deliver them to the Contracting Authority, as per the requirements of the Bidding Documents;
- (c) sign on behalf of the Bidder / Consortium any and all Bidding Documents to be submitted;
- (d) represent the Bidder / Consortium in the correspondence, any questions and answers procedure with the Contracting Authority;
- (e) in general represent without limitation, the Bidder / Consortium under all matters, as per the Bidding Documents and the procedure.

The Bidder / Consortium shall remain liable before the Contracting Authority and any institutions in the Republic of Albania for any and all actions of the Representative.

I, the Public Notary [name, surname], hereby certify the execution of this Power of Attorney before me, in the free will of the party who has granted this Power of Attorney, and I do certify this document in accordance with the Law.

The Bidder / Consortium member

Public Notary

## APPENDIX 7

### STATEMENT ON CONFLICT OF INTEREST

*[Appendix to be filled out by the Bidder, or every member of the Consortium]*

To: [Name of the Contracting Authority]

We, [Name of the Bidder] are participating in the competitive process which will take place on [•] as announced by the Ministry of Infrastructure and Energy of the Republic of Albania, with contract value [•].

Conflict of interest is the state of conflict between the public duty and private interests of an official, where he has private interests, directly or indirectly that affect, which may affect or appear to affect the unfair carrying out of statutory duties and responsibilities.

In implementation of Article 21, point 1, of Law no. 9367, dated on 07.04.2005, the categories of Officials stipulated in Chapter III, Section II, that are absolutely forbidden to directly or indirectly benefit from the conclusion of contracts with a public party is:

- President of the Republic, Prime Minister, Deputy Prime Minister, Ministers, or Deputy Ministers, Members of Parliament, Judges of Constitutional Court, Judges of High Court, the Head of High State Audit, General Prosecutor, the Ombudsman, Members of the Central Election Commission, Members of High Council of Justice or General Inspector of the High Inspectorate of Disclosure and Audit of Assets, Members of regulatory Entities (Supervision Council of Bank of Albania, including the Governor and the Deputy Governor, of competition, Telecommunication, Electricity, Water Supply, insurance, bonds, media), General Secretaries of Central Institutions as well as every public official in each public institution whose position is equivalent to that of the General Directors.

If the official holds the position of the Mayor or Deputy Mayor, Chair or Deputy Chair of the Commune or City Council, member of the respective council or is an official of a high ranking position of a local government unit, the prohibition due to the private interests of the official, stipulated in herein, is only applied to the formation of contracts, according to case, with the Municipality, Commune or the county council where the official exercises these functions. This prohibition is also applied when party in the contract one is a public institution, subordinate to this unit (Article 21 point 2 of law No. 9367, dated on 07.4.2005).

The prohibitions stipulated in Article 21, points 1, 2 of Law no. 9367, dated on 04/07/2005, with the relevant exceptions, are applied to the same extent to the persons related to the official which to this law means: **the spouse, co-habitant, adult children or the parents of the official and the spouse or co-habitant.**

I, the undersigned \_\_\_\_\_, in the Capacity of the representative of the legal person, declare under my personal responsibility that:

I am aware of the requirements and prohibitions provided in Law No. 9367, dated on 07.04.2005 "*On the Prevention of Conflict of Interest in the Course of Exercise of Statutory Functions*" amended, as well as in the by-laws issued for its implementation by the High Inspectorate of Disclosure and Audit of Assets.

In accordance with them, I declare that none of the officials set out in **Chapter III, Section II** of law no.

9367, dated on 07.04.2005, and in this statement, does not possess private interests, directly or indirectly with the legal person I represent herein.



Date of statement submission [•]

**Name, Surname, Signature**

---

Seal

## **APPENDIX 8**

### **STATEMENT OF CLEAR CRIMINAL RECORD**

*(to be completed from the Bidder)*

Statement of the Bidder participating in the competitive process which will take place on [•] as announced by the Ministry of Infrastructure and Energy of the Republic of Albania subject to the Project.

I, the undersigned [•] in the capacity of [•] of the Bidder [•] hereby state that:

- The Bidder [•] has not been convicted of a criminal offense,
- The Bidder [•] has not been convicted by a final court decision, relating to its professional activity.

Date of statement: [•]

Representative of the Bidder

Signature

Stamp

## APPENDIX 9

### AFFIDAVIT FOR FOREIGN BIDDERS

*(To be completed from the foreign bidders, or each foreign Consortium members)*

For the participation in the competition procedure [please insert the name of the procedure

here] of the Ministry of Infrastructure and Energy of the Republic of Albania.

To: Ministry of Infrastructure and Energy of the Republic of Albania

Date: [•]

[*Name of Bidder / Lead Member of Consortium*] hereby represents and warrants that, as of the date of this letter [*Name of Bidder / Lead Member of Consortium*] [and each member of our Consortium (if applicable)]:

1. is duly registered, active, and it is not in bankruptcy or liquidation proceedings;
2. has not been convicted of fraud, corruption, collusion or money laundering or for a criminal act committed in the course of professional activity performance;
3. is not undergoing criminal investigation related to fraud, corruption, collusion or money laundering at the date of submission of the Bid and for the last three (3) years before submission of the Bid;
4. is not disqualified from bids or public procurement process in the Republic of Albania;
5. has not been debarred pursuant to the public sanctions list of any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decision of 9 April 2010 ([www.crossdebarment.org](http://www.crossdebarment.org)) or be not included in any sanctions lists promulgated by the UN Security Council or its Committees, or any other recognized international sanctions list; or in any other way be not involved in activities (directly or through any subsidiary) that are not in compliance with the sanctions promulgated by the UN Security Council or its Committees or national sanctions in the Republic of Albania).
6. has not had any unsettled tax liabilities, social security liabilities or liabilities in respect of judgments awarded in criminal or misdemeanor proceedings in the period of no less than three years prior to the date of the Bidding Documents publication.
7. acknowledges that a similar statement will be required to be issued at each stage of this Procedure.

Respectfully,

*Authorised Signature*

*Name and Title*

*Signatory Name of*

*Bidder*

*Address*



## APPENDIX 10

### PRE-QUALIFICATION CRITERIA

Pre-Qualification Documents shall comprise the following documents:

- Part I – Documents required by Section 1.1.1 hereunder;
- Part II – Information required by Section 1.1.2 hereunder;
- Part III – where the Bidder is a Consortium, documents required by Section 1.1.3 hereunder;
- Part IV – Power of Attorney required by Section 1.1.4; and
- Part V – optional, separately bound pre-printed literature as specified by Section 1.1.5.
- Part VI – Declaration of compatibility of the proposed technology and adherence to international standards

#### **Authentication, legalisation and translation Requirements**

- All documents comprising the Qualification Documents must be submitted in original or copies certified by a notary public.
- All documents comprising the Qualification Documents which were issued by non-Albanian public and state authorities must be legalised or apostilled in accordance with the Legalisation and Apostille requirements set forth by the Applicable Laws and the Albanian Ministry of Foreign Affairs.
- Documents notarised or certified copies by a public notary, outside the territory of Albania must also be legalised or apostilled in accordance with the Legalisation and Apostille requirements set forth by the Applicable Laws and the Albanian Ministry of Foreign Affairs.
- Bidders, upon written and duly signed notice to be included in the Qualification Application, may request to submit original, certified, legalised copies of the Qualification Documents after the Submission Deadline but no later than the Rectification Deadline as per paragraph 7.3. of the Bidding Documents.
- Documents in foreign (non-Albanian) language must be accompanied by the Albanian language translated version, which translation must be certified before a notary public and legalised or apostilled in accordance with the Legalisation and Apostille requirements set forth by the Applicable Laws and the Albanian Ministry of Foreign Affairs.
- For documents submitted in English, the Bidder may submit an Albanian language translated certified and legalised version after the Submission Deadline but no later than the Rectification Deadline as per paragraph 7.3. of the Bidding Documents.
- For documents submitted in English language version in certified and legalised form, the Contracting Authority may waive the requirements of submitting an Albanian language translated version prior to the award decision, provided that the Bidder(s) issue a binding commitment in a form satisfactory to the Contracting Authority to provide an Albanian language translated version by a given deadline as instructed by the Contracting Authority.
- The Contracting Authority reserves the right (but is not obliged) to request Bidders to rectify authentication, legalisation and/or translation requirements of all documents comprising the Qualification Documents during the evaluation phase, in accordance with the procedure under Section 7.3 of the Bidding Rules.

### 1.1.1 Part I – Admissibility Criteria

In Part I of the pre-qualification criteria each Bidder, or member of a Consortium of bidding companies shall provide the following:

- (a) The following legal documents and background information:
  - i. An excerpt issued by the Trade register, the Court vested with Commercial matter of competence, or any other competent public authority in the jurisdiction of the bidder, evidencing the registration of the bidder as a legal entity;
  - ii. A certificate issued by a competent public authority in the jurisdiction of the bidder, confirming that the bidder is not in bankruptcy or liquidation proceedings;
  - iii. An attestation issued by a competent authority in the jurisdiction of the bidder certifying that the bidder has not been convicted of a criminal offense;
  - iv. An attestation issued by a competent authority at the jurisdiction of the bidder certifying that the bidder has not been convicted in connection with its professional activity;
  - v. An attestation issued by a competent authority in the jurisdiction of the bidder certifying that the bidder's capitals and assets are not subject of a bailiff enforcement order;
  - vi. An attestation issued by a competent authority in the jurisdiction of the bidder certifying that the bidder is not in criminal prosecution;
  - vii. An attestation issued by a competent public authority in the jurisdiction of the bidder (i.e. tax authority), certifying that the bidder does not have unsettled tax liabilities or social security obligations
  - viii. A document evidencing the organizational structure of the Bidder

If the attestations / certificates listed ii-vii may not be issued in the jurisdiction where the Bidder has its place of registration or the main place of business, it will be sufficient for the bidder to execute an Affidavit in the form of an Affidavit as per Appendix 9 (*Affidavit for Foreign Bidders*) under the bidding instructions. Bidders with their place of registration in Albania may execute a Statement of Clear Criminal Record in the form of an Appendix 8 (*Statement of Clear Criminal Record*) attached to these Bidding Procedure Documents to satisfy requirements provided in sub-paragraph iii) and vi) above.

- ix. The bidder should not be listed as an entity which cannot carry out commercial activity in Albania or EU states and should not be blacklisted in International Financial Institutions' (IFIs') lists.
- x. The bidder must not appear on any UN list of persons suspected of involvement in terrorist activities or any other relevant national or international blacklists.
- xi. The bidder and any shareholder in its ownership chain, including its ultimate beneficial owner, or any of its subsidiaries or principals, must not reside, have activities in, trade with or have links to the countries embargoed by OFAC or subject to EU or UN sanctions or is in a country that is [blacklisted](#) by the EU.
- xii. a written statement from the Bidder (or a written statement from each member of the Consortium) as detailed in Appendix 7 (*Statement on Conflict of Interest*) on the conflict of interest; in case the Bidder is a Consortium, Appendix 7 (*Statement on Conflict of Interest Form*) must be signed also by the Authorized Representative of the Consortium;
- xiii. basic information on the Bidder (or each member of a Consortium) as detailed in Appendix 3 (*Corporate Information on the Bidders*), including an up to date list of shareholders and information on ultimate beneficiaries of the Bidder, i.e. natural person(s) who ultimately own or control a company (SPV) and/or the natural persons on whose behalf a transaction or project is being conducted, and/or those persons who exercise ultimate effective control over a legal person or arrangement, have substantial economic interest in or receives substantial economic benefit

from a company.

These should encompass in particular individuals who meet one or more of the following five conditions:

- directly or indirectly holds more than 10% of shares in the Bidder;
- directly or indirectly holds more than 10% of voting rights in the Bidder;
- directly or indirectly holds the right to appoint or remove a majority of the directors of the Bidder;
- has the right to exercise, or actually exercises, significant influence or control over the Bidder; and/or
- where a trust or firm would satisfy one of the first four conditions if it were an individual, any individual holding the right to exercise, or actually exercising, significant influence or control over the activities of that trust or firm.

Information for each beneficial owner must include:

- the present full name and any former name;
- nationality and national identity number;
- country of residence;
- the date and place of birth;
- level of beneficial ownership; and
- details of how ownership, control or economic interest is exerted. If all such details have been filed on a centralized beneficial ownership register in the country of registration, the application may fulfill this requirement by cross-referencing and attaching such filing. Each member of a Consortium should disclose beneficial ownership information. A Bidder shall give written notice to the Special Commission, as soon as reasonably practicable, of any material change, including changes in beneficial ownership from that originally reported.

(b) A Proposal Declaration Form in the form of Appendix 5 (*Proposal Declaration Form*), which includes, among other things, a statement confirming that they accept the terms of the Project Development Agreement, Support Agreement (as amended in accordance with the Bidding Procedure Documents, if applicable) as drafted. If the Bidder is a Consortium, Appendix 5 (*Proposal Declaration Form*) must be signed by the authorized representative of each Consortium member.

(c) The Bid Security of 7,500 EUR per MW of Supported Capacity in the form set out in Appendix 2 (*Form of Bid Security*). If the Bidder is a Consortium, one Bid Security shall be provided for the entire Consortium for a specific Project.

**Certificates and extracts required under this section, should be updated and not be older than 90 calendar days prior to the Submission Deadline.**

The Contracting Authority reserves the right to request Bidders to provide updated versions of the extracts, certificates or corporate documents under this section during the evaluation phase, in accordance with the procedure under Section 7.4. of the Bidding Documents.

### 1.1.2 Part II – Other Pre-Qualification Criteria

In Part II of the Proposal Submission relating to other Pre-Qualification Criteria, the Bidder shall submit proof that it meets the Pre-Qualification Criteria set out in Appendix 11 demonstrating it has the technical and financial resources (*Specific Qualification Criteria*).

#### 1.1.2.1 Recognition of experience in respect of a group companies

A Bidder, in respect of the Qualification Criteria QC1 and QC2 in Appendix 11, may submit relevant information and documents of the Bidder's Group Companies proving however that the Bidder's Group Companies meet the Qualification Criteria QC1 and QC2 in Appendix 11. "Bidder's Group Companies", herein, is considered every entity which is directly or indirectly Controlled by the Bidder.

The definition "Control" shall refer to the possibility of exercising decisive influence on an undertaking, natural or legal person, on the basis of shareholding or voting rights, contracts or any other means, either separately or in combination, and having regard to the considerations of fact and law involved.

If a Bidder shall use the credentials of Bidder's Group Companies, as per paragraph above, then the Bidder shall be obliged to present for the Bidder's Group Companies all the documents listed in 1.1.1. Part 1 – Qualification Criteria (a) in this Appendix 11.

In addition, the Bidder shall provide certified legal evidence of its relation with the Bidder's Group Companies, evidencing ownership and Control.

### 1.1.3 Part III – Consortium Documents and Requirements

A Bidder wishing to qualify as a Consortium must submit a declaration attesting the Contracting Authority that no material change has occurred to the following:

- (a) A Power of Attorney, duly notarized evidencing the appointment of the person who is duly authorized by all the Consortium members to act on their behalf;
- (b) A Consortium Agreement, in notarized form, as submitted during the Bidding stage, entered into between and executed by the legal representatives of its members which, inter alia, maintains confirmation that each member's commitment to, and interest held, in the Consortium, which comply with the following requirements:

- For a consortium member to contribute towards satisfaction of the Technical and Financial Criteria, it must have a minimum shareholding of 20% in the consortium.
- Minimum Lock-in-period in the SPV for the consortium member that contributes towards satisfaction of the Technical and Financial Criteria- of 3 years from the commencement operation date (COD), during which these members may not exit their role in the Consortium. This would in particular provide adequate timing for the Technical Member to transfer its know-how to other members (e.g. locals). After expiry of the lock-in-period with the SPV, these members would be entitled to exit the SPV, in accordance with the terms and conditions of the PDA. If they exit before, the Albanian authorities would be entitled to disqualify or terminate PDA seeking



compensation thereunder.

- Consortia members joint liability - under the Consortium Agreement, all members would be jointly liable from signing of the Project Development Agreement until registration of the SPV. Upon registration of SPV, even though the liability is transferred to SPV, all members would remain jointly liable alongside with the SPV, at least until COD.
- The Consortia members should clearly identify the percentages of each member's participation in the Consortium, and subsequently the participation in the SPV.
- The Consortia members must identify and elect the Lead Member of the Consortium, which shall be irrevocably authorized to represent all the members of the Consortia in the Bidding Procedure.
- Consortium Agreement must clearly indicate the detailed contributions, scope of work and duties and responsibilities of each of the members in the Consortium in the Project

#### **1.1.4 Part IV – Power of Attorney**

Each Bidder (or if the Bidder is a Consortium, each member) shall provide as Part IV of the Qualification Documents a written power of attorney in the form of Appendix 6 (*Form of Power of Attorney*) duly notarized, indicating that the person(s) signing the Bid has the authority to sign.

#### **1.1.5 Part V – Pre-Printed Literature**

If the Bidder wishes to provide pre-printed literature (e.g. brochures) about the Bidder or the Consortium members, that pre-printed literature shall be contained in Part V of the Qualification Documents and shall be separately bound. Pre-Printed Literature may be submitted in Albanian or English version. The Contracting Authority reserves the right to request the Bidder to submit Albanian language translated version in a form satisfactory to the Contracting Authority, by a given deadline as instructed by it in accordance with paragraph 7.4..

## APPENDIX 11

### SPECIFIC QUALIFICATION CRITERIA

Qualification Criteria - Technical	Required Documents / Forms
<p>These criteria are assessed on a Pass / Fail basis.</p>	<p>Supporting documents to justify the bidder's capacity For a consortium member to contribute towards satisfaction of the Technical and Financial Criteria, it must have a minimum shareholding of 20% in the consortium.</p>
<p><b>QC1: Technical Criteria 1 – Past Experience 1</b></p> <p>Experience with the development and operation of a solar photovoltaic (PV) electricity generation plant in installed capacity equal <b>at least with the greater of:</b></p> <p style="margin-left: 20px;">(a) <b>2 (two) (MW/AC) of the installed capacity;</b> (b) <b>15 (fifteen) % (percent) of the installed capacity (MW/AC) of the proposed Project.</b></p> <p>For example, if the proposed project will have an installed capacity of 20 MW/AC, the bidder must demonstrate experience developing and operating at least 1 plant of 3 MW/AC. For example, if the proposed project will have an installed capacity of 10 MW/AC, the bidder must demonstrate experience developing and operating at least 1 plant of 2 MW/AC.</p>	<p><b>DQC1:</b></p> <ul style="list-style-type: none"> <li>• Valid certificates of commissioning or any other similar document</li> <li>• Form A2, as per this Appendix</li> <li>• Each experience criterion must be met by (at least) one Consortium member (subject to meeting the minimum shareholding).</li> </ul>

For each plant presented, to demonstrate experience of **development** for the purposes of QC1, the Bidder must provide at least one of the following documents showing the Prospective Bidder in the role of developer:

- Development contract for the plant, and/or
- Preliminary or final land agreement for the sale and/or surface rights acquisition of land parcels related to the construction of the plant, and/or
- Permit issued by a relevant public body for the construction of the plant, and/or
- Grid connection agreement related to the electric grid connection of the plant, and/or
- Proof of winning bids related to the development and construction of the plant and/or.
- Generation license.

For each plant presented to demonstrate experience of **operation** for the purposes of QC1, the Bidder must provide:

- O&M contract, asset management contract or other types of operation contracts for the plant, showing the Prospective Bidder either as the service provider or as the buyer of the service.
  - In the case where the Prospective Bidder was the main O&M contractor to a project company but outsourced the O&M services to a third party, the Prospective Bidder should provide the main O&M contract between itself and the project company.
  - If the Prospective Bidder operates his own power plants with his own resources, labor contracts

and proof of latest payments to the assigned personnel must be provided.

For the avoidance of doubt, and as explained above in relation to reliance on experience attributed to group of companies, any documents nominated to an SPV (Special Purpose Vehicle) or Project Company, must be accompanied with proof of the Bidder that it exercises effective Control over that SPV or Project Company.

Please note that the above documents must be submitted complete of all their sections, including any attachments.

<b>Qualification Criteria – Economic</b>  These criteria are assessed on a Pass / Fail basis.	<b>Required Documents / Forms</b>  Supporting documents to justify the bidder’s capacity For a consortium member to contribute towards satisfaction of the Technical and Financial Criteria, it must have a minimum shareholding of 20% in the consortium.
<b>QC2: Economic Criteria</b>  At the end of the most recent fully audited financial year:  (i) Audited Balance Sheets and/or Financial Audit Reports of the last 3 financial years, which certify the net worth of the company, calculated as the difference between total assets and total liabilities, <b>to be at least the greater of: (a) EUR 0.3 million per MW of the Supported Capacity and (b) EUR 5 million in each of the last 3 years.</b>	<b>DQC2:</b> For (i) and (ii): <ul style="list-style-type: none"> <li>• Fully audited financial statements for the last 3 years<sup>9</sup></li> </ul> The financial statements shall: <ul style="list-style-type: none"> <li>- be audited by an independent auditor;</li> <li>- be complete, including all notes to the accounting/financial statements; and</li> <li>- correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).</li> </ul> <ul style="list-style-type: none"> <li>• the Bidder shall provide an auditor’s certificate specifying the Net Worth of the Bidder.</li> <li>• Form A1 attached hereto.</li> <li>• Consortium’s net worth can be calculated as the sum of all members (subject to meeting the minimum shareholding).</li> </ul>

<sup>8</sup> If the financial statements are expressed in another currency, they shall be converted into EUR using the exchange rate published by the Central European Bank on the date of publication of this Bidding Procedure. The amounts in LEK can be converted in EUR using the exchange rate of the Bank of Albania on the date of the publication of the Bidding Procedure Documents.

<sup>9</sup> Bidders who are not subject to auditing by law, should submit statements which are presented to the relevant authorities.

**FORM A1**

BIDDER: [•]

**GENERAL INFORMATION**

1.	Name:		
2.	Registration no / VAT or fiscal ID:		
3.	Address of headquarters:		
4.	Phone:		
	Fax:		
	Telex:		
	E-mail:		
5.	Registration/matriculation certificate		<p>.....</p> <p><i>(number, date and place of registration/ matriculation)</i></p>
6.	Scope of activities:		<p>.....</p> <p><i>(in accordance with the articles of association, acts of incorporation or similar )</i></p>
7.	Net worth of the company for the last 3 years of the Bidder		
		Year	Annual net worth of the company as of December 31st [•]
	<i>([in original currency])</i>		
	1.		
2.			
3.			
8.	Name of the person who can be contacted by the Contracting Authority in view of obtaining clarifications, with the indication of the address and telephone number, email address, where this person can be contacted, if different from the above.		

Bidder,

.....  
(authorized signature)

**FORM A2**

BIDDER: [•]

**SIMILAR EXPERIENCE<sup>10</sup>**

1.	Name and size of the plant:	
2.	COD Date:	
3.	Offtaker:	
4.	Offtaker Address	
5.	Type of contract <sup>9</sup> :	
6.	Country:	
7.	Were there any litigations regarding the execution of contract, in which the Bidder was the defendant, their nature and manner of settlement	
8.	Technology of Solar Photovoltaic System (tracking or static one)	
9.	Total Installed capacity (MVA) based on the output of the main transform	
10.	Activities performed by the Bidder	<input type="checkbox"/> Development <input type="checkbox"/> EPC/construction <input type="checkbox"/> Operation

Bidder,

.....  
 (authorized signature)

<sup>10</sup>Separate sheets shall be filled in for each particular contract, which shall be confirmed at the request of the Special Commission.

<sup>11</sup> Convert in EUR using the exchange rate published by the Central European Bank on the date of publication of this Biding Documents. The amounts in LEK can be converted in EUR using the exchange rate of the Bank of Albania on the date of the publication of the Bidding Documents

<sup>9</sup> See Appendix 4/1

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<sup>10</sup>Separate sheets shall be filled in for each particular contract, which shall be confirmed at the request of the Special Commission.

<sup>11</sup> Convert in EUR using the exchange rate published by the Central European Bank on the date of publication of this Bidding Documents. The amounts in LEK can be converted in EUR using the exchange rate of the Bank of Albania on the date of the publication of the Bidding Procedure Documents.

## APPENDIX 12

### SITE AND PROJECT QUALIFICATION CRITERIA

Each Bidder must demonstrate the viability of its Proposed Site by submitting a Technical Proposal comprising the documents and meeting the requirements below.

- (1) Evidence that the Proposed Site is not located in areas defined as “constraints” or “no go areas” in the Solar Siting Study in Appendix 16 (*Solar Siting Study*).
  - This may include without limitation cadastral maps or, if such cadastral maps are not available, maps drawn by licenced experts, evidencing the location of the proposed Site and the location within the proposed Site of each of the parcels of land or other equivalent maps with clearly visible coordinates for the Proposed Site.
  
- (2) Development permit or evidence that all documents are sufficiently satisfactory to obtain a development permit by the competent authority (including timeline for obtaining such development permit), in accordance with Law No. 107/2014 "On Territorial Planning and Development", as amended ("Law 107/2014"), and the decision of the Council of Ministers No. 408, dated 13 May 2015 "On the approval of the Regulation of the Territory Development", as may be amended ("DCM 408"), or any equivalent binding decision issued by a competent authority in this respect attesting to a potential issuance of a development permit in accordance with the Applicable Laws
  - The development permit is defined by Law 107/2014 as a document which sets out the development conditions regarding a certain property. The development permit serves as a basis for the issuance of a construction permit and is valid until the obtention of the latter.
  - The development permit is required regarding any cadastral parcel and it has to be granted in compliance with the general regional plan or detailed regional plan, as the case may be.
  - The application for the development permit is done online through the e-permit portal which may be found on the website e-albania.al. Depending on the location of the Proposed Site, the development permit may be issued by the National Territory Council, or the mayor of the relevant municipality.
  - The procedure and documents<sup>6</sup> required for the obtention of the development permit are laid out under DCM 408. The duration of the procedure for the obtention of the development permit may be between 25 (twenty-five) to 35 (thirty-five) Business Days, from the submission of the application. An additional period of 30 (thirty) Business Days is required if there is a need to perform an archaeological inspection of the area or if the opinion of cultural heritage institutions, or of other relevant public institutions, is required.
  
- (3) If the Project is proposed to be connected to the TSO network, grid connection offer issued by the TSO, in accordance with the Transmission Code, approved by decision No. 186, dated 11 November 2017, as may be amended ("Transmission Code") of the Albanian Energy



Regulatory Entity and the Rules of Procedures for New Connections and Modification of Existing Connections to the Transmission Network, approved by decision No. 87, dated 20 April 2018 of the Albanian Energy Regulatory Entity`, as may be amended ("Regulation on New Connections") or, if the Project is proposed to be connected to the DSO network, a connection offer issued by the DSO, in accordance with the DSO network code, approved by decision no. 100, dated 26 August 2008 and the Regulation on New Connections to the Distribution Network, approved by decision no. 166, dated 10 October 2016 of the Albanian Energy Regulatory Entity, as amended ("Regulation on New Connections to the Distribution Network")..

3.1. In order to apply for a connection offer, the Bidder shall submit to the TSO or DSO, as relevant for the Proposed Project, an application form, as set out under the Regulation on New Connections, accompanied by a set of legal and technical documents<sup>7</sup>.

3.2. For the application process before the TSO or DSO depending on the Proposed Project, upon payment of a fee as per paragraph 1.17 of these Bidding Documents the prospective Bidder is deemed to be automatically issued **an expression of interest confirmation**<sup>2</sup> thereby confirming interest of the Bidder to make a Proposal according to these Bidding Rules. Without prejudice to this process, the Contracting Authority may outline and communicate a different process to be followed by the Bidder in this respect.

3.3. The Bidder shall submit an application to either the TSO or DSO as relevant for its Project and present the proof of payment equivalent to an expression of interest confirmation.

3.4. For the sake of clarity, if the Project Supported Capacity is linked to or is technically part of a larger project that includes a Merchant Capacity (which is not subject to support under the Support Agreement), the Bidder is permitted (but not obliged to) submit application for a grid connection to either the TSO or DSO as relevant that includes request for connecting the Merchant Capacity. To this effect and subject to technical conditions, a single grid connection may be issued for a project that includes a Supported Capacity and a Merchant Capacity.

3.5. Upon receiving the application and the confirmation of expression of interest, the TSO or DSO as relevant for the Proposed Project, conducts a study on the receivability of the application and afterwards submits to the Bidder a "connection offer" which the latter may elect to accept within 60 (sixty) days from its reception, by signing the "acceptance declaration".

3.6. For the sake clarity, Bidders may submit applications to either the TSO or DSO as relevant, *on a rolling basis*, as required for the issuance of a grid connection until the latest the Submission Deadline.

3.7. It is worth noting that the connection offer, duly accepted by the Bidder does not constitute a grid connection agreement. The TSO or DSO as relevant for the Proposed

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<sup>2</sup> For the sake of clarity, in accordance with the relevant section 1.16 of the Bidding Documents, upon payment of the fee by the prospective Bidder, confirmation of payment of such fee is deemed to also constitute a confirmation of an expression of that prospective Bidder to submit a Proposal.

Project, and the Bidder may sign the grid connection agreement within 18 months from the reception of the grid connection offer by the Selected Bidder.

3.8. In the event that a prospective Bidder has obtained a connection offer by the OST or DSO as relevant for the Proposed Project, upon submission of an attestation or confirmation of expression of interest issued by the Contracting Authority in accordance with point 3.2. above, that connection offer for a Project will expire with immediate effect if upon the assessment of the Qualification Criteria by the Special Commission that prospective Bidder results **not** being a Qualified or Selected Bidder in accordance with these Bidding Rules

[i.e. For the sake of clarity the grid connection notice for a Project shall be considered as expired upon the Bidder being served by the Special Commission a Non-Qualified Bidder Notice (i.e. stating that Project has not passed the Qualification phase) or upon being served a Non-Successful Bidder Notice (stating that the Project has unsuccessful in the Evaluation phase)]

3.9. If a Selected Project that is retained as successful following the Evaluation phase, is linked to or is part of a larger project containing a Merchant Capacity and if the grid connection issued as per the above covers that Merchant Capacity, the Contracting Authority will employ best efforts to support and facilitate the application of that Selected Bidder for an authorisation under the DCM 822 in connection to the Merchant Capacity.

(4) Preliminary Environmental and Social Impact Assessment (ESIA) prepared in accordance with Appendix 14 (*Terms of Reference for Preliminary ESIA*).

- For the avoidance of doubt, this stage does not require a Bidder to complete the formal procedure to obtain formal approval by the potential lenders or the Albanian competent authorities of a full ESIA study; it only requires preparation of a **Preliminary ESIA** in Accordance with Appendix 14 and in accordance with the EBRD’s “Environment and Social Policy” and their related Performance Requirements. The assessment will also be aligned with the relevant requirements of the Environmental Impact Assessment (EIA) Directive 2011/92/EU of 31 December 2011, as amended by Directive 2014/52/EU; and good industry practice for the development of solar PV facilities such as for example the World Bank Group (WBG) ~~Environmental or equivalent standards~~; as well as environmental and social standards and requirements applicable by potential lenders, such as the International Financial Institutions (IFIs), and standards applicable by commercial banks adhering to the Equator Principles available at: <https://equator-principles.com>.
- Within 12 (twelve) months after the Award Decision on the Selected Bidder(s) (which period may be extended for or by, a) the duration of a Force Majeure Event, b) Governmental Material Adverse Act, c) requirements of Albanian competent authorities,<sup>8</sup> d) requirements for additional environmental and social surveys (required to collect seasonal data)), and building on the Preliminary ESIA submitted as a part of the Proposals, Selected Bidder(s) must complete the formal procedures for the formal issuance of the environmental permit under the Albanian law and for obtaining formal approval of a full ESIA by the potential lenders. For more details please refer to

Appendix 15 (*Terms of Reference for full Environmental and Social Impact Assessment Study (post-Award)*)

- ~~For more details on the full ESIA, please refer to Appendix 15 (*Terms of Reference for full Environmental and Social Impact Assessment Study (post-Award)*)~~
  - For the avoidance of doubt, performance of the Preliminary ESIA and the ESIA requires a Bidder to arrange for the consultation of the affected public, relevant stakeholders and communities in accordance with the Applicable Laws, provide them access to the relevant environmental information and allow them to submit comments. This is without prejudice to the right of the affected parties to challenge a decision of the Contracting Authority before the relevant bodies pursuant to the Applicable Laws.
- (5) Energy yield report for P50 (based on the multi-year solar radiation (according to the multi-year average values of the solar radiation based on the data of the ex-Hydrometeorology Institute (actually - Department of Meteorology of Institute of Geosciences (IGEO) for the area or at least a year of onsite measurements (if they are carried out) as required by good industry practice.
- For the measurement campaign it is required:
    - Average Multi-Year Hourly Solar Radiation GHI (Global Horizontal).
    - TPI (Optimal Angle of Tilted Plane).
    - Soiling and suspended particles.
    - Reflectance.
    - Minimum and Maximum Multi Year Temperatures of cell, ambient and shadowed ambient.
    - Humidity.
    - Rainfall.
- (6) Evidence that the Bidder has right of ownership or exclusive real right to occupy, use and enjoy the proposed site, with a view to design, construct, install, operate and maintain the project, submitted in a form satisfactory for a potential future issuance of a construction permit, where available duly registered with the relevant local directorate(s) of the State Cadastre Agency, and where cadastral registration or cadastral maps are not available, provide maps drawn by licenced experts, evidencing the location of the proposed Site and the location within the proposed Site of each of the parcels of land. The Bidder shall ensure that parcels of land over which the Bidder claims real rights and where the transmission line will be located are duly identified in the relevant maps.
- For the avoidance of doubt, formal issuance of the construction permit is not required at the Bidding stage; it must be completed by the Selected Bidder after an award decision.
  - Demonstration of title of ownership or use may, without limitation, include, ownership certificates, contracts for the transfer of ownership right over the site or right to use and enjoy the site; lease, emphyteusis or usufruct contracts, authorisations for use of a public site issued by the competent public bodies or municipalities.
  - Regardless of the process for acquiring the necessary land rights or property, the developer should in any case maintain compliance with the Applicable requirements

**for ESIA as outlined in Appendix 15, including the preparation of a Resettlement Plan for the proposed site, transmission line and any other associated facilities.**

(7) Evidence that sufficiently demonstrates availability of land for right of way as required for the construction and operation of the transmission line for connecting the Project to the grid by TSO approval and in accordance with the applicable laws No. 43/2015 as amended “On Power Sector”, and no 7/2017 “On promotion of energy from Renewable sources”.

- Each Bidder shall be required to identify the parcels of land (either private or publicly owned) upon which shall be constructed the transmission line. The Bidders shall be required to submit contractual arrangements/promises or letters of agreement “in principle” issued by the owners or users of the relevant parcels of land which demonstrate that the Bidders shall be granted the right of way over each parcel of land for the construction, operation and maintenance of the transmission line.
- Regardless of the process for acquiring the necessary land rights or property, the developer should in any case maintain compliance with the Applicable requirements for ESIA as outlined in Appendix 14, including the preparation of a Resettlement Plan for the proposed site, transmission line and any other associated facilities.
- Where cadastral registration or cadastral maps are not available, the Bidder shall provide maps drawn by licenced experts, evidencing the location of the proposed transmission line against the location within the proposed Site of each of the parcels of land. The Bidder shall ensure that parcels of land over which the Bidder claims real rights and where the transmission line will be located are duly identified in the relevant maps.

(8) Binding statement issued by a Bidder attesting compliance of the equipment and of the design, construction, commissioning, and operation of the Project with the international standards and technical specifications.

- All the relevant and applicable international and local standards shall be applied. The following list of minimum relevant standards shall be considered as a non-exhaustive reference:
- **Solar PV Panels**

The PV modules should be in the following compliance with the following standards:

- IEC61215/IEC61730/IEC61701/IEC62716/UL61730.
- ISO 9001: Quality Management System.
- ISO 14001: Environmental Management System.
- ISO14064: Greenhouse Gases Emissions Verification.
- ISO45001: Occupational Health and Safety Management System.
- Certification CE.
- Certification TÜV SÜD.
- Certification TÜV Rheinland.
- PV CYCLE

- **Invertors**

The **Invertors** should be in the following compliance with the following standards:

- IEC 61683: Efficient measures
- IEC 62109, IEC 61727 and IEC 62116.

- ISO 9001: Quality Management System.
- IEC 60068-2 / IEC 62093: Environmental analysis
- ISO 14001: Environmental Management System.
- ISO14064: Greenhouse Gases Emissions Verification.
- IEC 62103/ 62109-1&2: Electric safety
- IEC 61000-6-2, IEC 61000-6-4 and other binding parts IEC 61000: Electromagnetic compliance (EMC)
- IEEE1547/IEC 62116/ UL1741 or the equivalent of the BIS Standards: Network isolation
- ISO45001: Occupational Health and Safety Management System
- Certification CE.
- Certification TÜV SÜD.

- **Supporters**

The **Supporters** should be in compliance with the following standards:

- ISO 9001: Quality Management System.
- ISO 14001: Environmental Management System.
- ISO14064: Greenhouse Gases Emissions Verification.
- ISO45001: Occupational Health and Safety Management System
- Certification CE.
- Certification TÜV SÜD.

- **Cables**

The **Cables** should be in the following compliance with the following standards:

- DIN VDE 0295 class 5 and IEC 60228 cl. 5
- IEC 60754-1 or DIN EN 60754-1
- VDE 0482 Part 332-1-2, IEC 60332-1-2
- EN 50262
- EN 60947, ROHS, UL, CE
- ISO 9001: Quality Management System.
- ISO 14001: Environmental Management System.
- ISO14064: Greenhouse Gases Emissions Verification.
- ISO45001: Occupational Health and Safety Management System
- Certification CE.
- Certification TÜV SÜD.

- **Transformers and all other electrical parts**

The **Transformers and all other electrical parts** should be in the following compliance with the following standards:

- IEEE1547/IEC 62116/ UL1741 or the equivalent of the BIS Standards: Network isolation
- Certification CE 1035.
- Certification UL LISTED E508730
- Certification Cere IEC 62817:2014+A1:2017
- Certification Bureau Veritas ISO 9001, ISO 14001, ISO 45001.
- Certification DNV-GL
- 60269 CE, UL, RoHS
- ISO 9001: Quality Management System.
- ISO 14001: Environmental Management System.

- ISO14064: Greenhouse Gases Emissions Verification.
- ISO45001: Occupational Health and Safety Management System Certification CE.
- Certification TÜV SÜD.

**Other standards to be considered**

- IEC 61400-40 Electromagnetic Compatibility (EMC),
- IEC 61400-415 Terminology.
- The PV modu IEC 61400-01 Design requirement;
- IEC 61400-12-1 Power performance measurements;
- IEC 61400-13 Measurement of mechanical loads;
- IEC 61400-14 Declaration of sound power level and tonality;
- IEC 61400-15 Assessment of site specific wind conditions for wind power stations;
- IEC 61400-24 TR Lightning protection;

(9) A Pre-Feasibility Study covering:

- (a) Technical aspects
- (b) Summary of Environmental and social aspects based on the preliminary ESIA (as specified above and in detailed Annex 14 below).
- (c) Financial aspects
  - A financial plan showing for each year throughout the project life:
    - P50 Energy yield (based on item 5 above and any expected degradation over time);
    - Project development costs (“devex”);
    - Capital costs (“capex”);
    - Funding of development and capital costs (equity and debt contributions to total annual funding requirement in each case);
    - Operations and maintenance costs;
    - Decommissioning costs.

(10) Evidence of trustworthy and verifiable funding to cover the total value of the proposed Project investment in the form of either:

- (a) Letter(s) of "in principle" support issued by financing institution(s) with a minimum credit rating of A3 by Moody's (or equivalent); or
- (b) Authorisation from the company's Board, or similar highest decision-making authority of the Bidder, to provide funding from internal sources
- (c) A combination of (a) and (b) above.

**(11) In case of Projects that have obtained pre-authorisation in accordance with Council of Ministers Decision 822, evidence that sufficiently demonstrates that Construction has not started for that Project and that a final investment decision has not been taken or final financial close has not been reached.** This may include without limitation:

- (a) Shareholders` decision or management board decision or any other equivalent decision from a high level corporate body which is competent in accordance with the statutes or articles of association of the relevant Bidder, attesting that an

investment decision or financial close will **not** be reached based on the existing market conditions, and/or

- (b) on-site expert evaluation attesting that Construction has not started. For the purpose of this point, “**Construction**” refers to commencement of construction works based on a duly obtained construction permit in accordance with the Applicable Laws, and start of construction works pertaining to the Project that can be attested by an authorised expert in accordance with the Applicable Laws. Where relevant, the Contracting Authority reserves the right to seek a further attestation from a licensed Expert verifying that Construction has not started for a relevant Project in the Submission.

For the avoidance of doubt, if a Project submitted by a prospective Bidder, is part of a larger project that includes a Merchant Capacity part, proceedings to obtain an authorisation under DCM 822 must be followed independently from this process. However, as mentioned in point 3 above, if the Selected Project resulting successful in accordance with these Bidding Rules, is part of a larger project that includes a Merchant Capacity part, the Contracting Authority shall employ best efforts to facilitate or expediate the authorisation process of that Merchant Capacity in accordance with the DCM 822. Whilst the Contracting Authority will employ its best efforts to this effect, this provision should not be interpreted in any way as imposing a binding or result obligation under the Contracting Authority.

## APPENDIX 13

### MINIMUM TECHNICAL SPECIFICATIONS

#### A. Technical specifications of Photovoltaic Plant

##### 1. Project magnitude

The Project is comprised of an installed capacity to be determined by the bidders, of which up to 100 MW of Supported Capacity, shall benefit from the support measures, for the promotion of use of electricity from renewable sources of solar energy. The Total Auctioned Capacity of 300 MW is in line with the provisions of the National Energy and Climate Action Plan for 2021-2030 (approved by Council of Ministers Decision no. ... Dec. 2021).

##### 2. Quality specifications of the PV technology

There is no restriction on deploying the most advanced technologies in moving single-axis and/or bifacial modules. At the following table are presented the main minimum specific quality requirements for PV Panels:

1	Efficiency higher than	20.00%
2	Temperature	-40 degrees Celcius to +45 degrees Celcius
3	Impact Resistance	32 mm diameter hail at 23 m/s
4	Tempered Glass	High-transmission tempered anti-reflective
5	Junction Box	IP-68, Rehne ZJRH 05-8 or Zerun Z4S or Staubli Evo2, 3 bypass diodes
6	Weight lower than	35 kg
7	Reduction of efficiency of solar PV after 25 years not to lower than	20% for 25 years
8	Performance panels expected useful life higher than	25 years
9	Measured at Standard Test Conditions (STC):	Irradiance of 1000 W/m <sup>2</sup> , AM 1.5, and cell temperature 25 degrees Celcius.

- b. **Module efficiency.**  $\geq 20\%$  as by factory datasheet.
- c. **Quality of the surface of the Modules.** Bankable guarantees from manufacturer, Mechanical guarantee  $\geq 10$  years. LID/PID immune. Yield degradation  $\leq 20\%$  in year 25. salt corrosion & ammonia test certificate (IEC 61701 & 62716). Mechanical testing by 61730 and degradation testing by 61250.

**Quality of bearing structures.** The structure of the PV modules should withstand atmospheric conditions and maximum wind and snow values as per site conditions. Both the structure above and below ground, must withstand intense oxidation conditions Foundation piles in in-factory pre-cut HDG with  $> 90$  mc coating. Rafters and beams supporting the panels in AL 6005T5. Nuts and bolts in 316L self-locking. Galvanic insulator between bimetal joints.

##### 1. Inverters



PV plants inverters must comply with the latest versions of the IEC Standards, and meet the requirements for safety, health and environmental protection according to CE requirements, as follows:

Parameters	Standards
Efficiency	higher than 96%
Degree of protection	IP 66
Cooling	Regulated air cooling
Ambient temperature range	-25 °C up to +45 °C
Permitted humidity	0 to 100 %
WLAN / Ethernet LAN	Yes
Datalogger and Webserver	Yes
Compliance with LVRT	According to the instructions/ manuals/ regulations of CERC
Connection to the network	Respective CERC manuals (including compliance with LVRT) and the Network Code, amended and reviewed periodically
Assesed capacity	The nominal / assesed power output of the inverter (if different power values are mentioned at different temperatures, then the power rating will be taken at 50 ° C) in kW will be considered as the rated capacity of the inverter.

Inverters with transformers (central power blocks) must be galvanically insulated and used for grounding solar PV modules if required.

The lifetime of the Inverter(s) should be at least higher than 5 years and should be predicted in relation to the life of the plant.

## 2. Transformers

The Power Transformers shall comply with the relevant distribution (if the Pv plant will be connected to distribution OSHEE system) or with relevant transmission (if the Pv plant will be connected to transmission OST system) national grid code(s).

## 3. Balance of Plant

The DC cables should not be exposed to direct sunlight at any point during the day.

Switchgear: Shall comply with the requirements set forward in the PPA, GCA and the OST technical specifications.

## 4. Authorized testing centers

PV modules and inverters located in photovoltaic parks must have a valid certificate of their qualification according to the above IEC Standards issued by one of the serious Testing Centers in Albania. In the case of module types / equipments for which such testing equipment does not exist in Albania, certificates will be accepted from the International Accreditation Laboratory (ILAC)

## 5. Warranty

- PV modules used in grid-connected solar power plants should be guaranteed for the maximum output point, which should not be less than 90% at the end of 10 years and 80% at the end of 25 years.
- Modules must be guaranteed for at least 10 years for failures due to defects in materials and craftsmanship.

- Mechanical structures, electrical work and general solar power network mastery must be guaranteed for a minimum of 5 years.
- The inverters / PCUs installed in the solar plant must have a 5 year warranty.

## 6. Identification and Traceability

Every PV module used in any solar power project must use a Radio Frequency Identification Tag (RFID). The following information should be mentioned in the RFID used in each module (This may be inside or outside the laminate but must be able to withstand harsh environmental conditions):

- a) Name of the manufacturer of the PV Module
  - b) Name of the manufacturer of the Solar Cells
  - c) Month and year of production (separately for the solar cell and the module)
  - d) Country of origin (separately for the solar cell and the module)
  - e) I-V Curve for the module in the standard testing condition (1000 W / m<sup>2</sup>, AM 1.5, 25°C)
  - f) Power, I<sub>m</sub>, V<sub>m</sub> and FF for the module
  - g) Unique Serial Number and Model Number for the Module
  - h) Date and year of receiving of PV IEC module qualification certificate
  - i) The name of the testing laboratory issuing the IEC certificate
  - j) Other relevant information on solar cell and module traceability according to ISO 9000
- Developers and site owners will be required to maintain a list of RFID Modules along with the above parametric data for each module.

## 7. Monitoring the Performance

The following will be done in order to monitor the performance:

- The developer should keep the ID Module list along with the performance data specific to each module. These data shall be submitted to the Authority upon request.
- Developers need to install the equipment needed to continuously measure solar radiation in module layout, ambient temperature, wind speed and other weather parameters and simultaneously measure DC power generation as well as power generated by plant. They will be required to submit these data to the Authority online and / or through a report on a regular basis each month for the entire duration of the PPA.
- The developer should provide access to the Authorized Representative of the Authority for the installation of any additional monitoring equipment to facilitate the on-line transfer of data.
- All of the above mentioned data will be made available for the entire PPA duration.
- The SCADA plant should be an Open Communication Platform (OPC) compliant with DNP3 standards and Modbus control interfaces over TCP / IP that have the provision to add protocol converters to implement the secure communication protocol standard for securing online data in real time (including but not limited to radiation, plant generation (instant / daily / monthly / yearly), day peak generation, wind speed, temperature, etc.) to the Authority.
- Fiber Optic Ethernet network (Ethernet management switches in each control room) must be provided between the main control room and the inverter control rooms.
- Internet monitoring should be available and it should not be machine dependent. Web-based monitoring should provide the same on the screens as in the factory. It should also be possible to download reports from a remote client (online) in PDF or Excel format.

## 8. Safe Disposal of Solar PV Modules

The solar power developer will ensure that all solar PV modules and other electrical and electronic equipment from their plant after the "end of life" (when they become damaged / non-operational / non-repairable) are disposed of/ discarded in accordance with relevant laws / regulations of the Albanian Government and EU Directive 2012/19/EU on waste electrical and electronic equipment

(WEEE).

\* NOTE: Appropriate standards of IEC are included in:  
<http://www.solarabcs.org/codes-standards/IEC/index.html>

#### A. Terms of reference of the Pre-feasibility Study

The pre-feasibility study, will address the following areas according to Good Industry Practice to ensure: adequacy of the design, quality of equipment and materials, reliability of technical and economical assumptions and suitability of the site.

Doc. N.	TECHNICAL DATA
<b>Section A - Resource Solar Energy Assessment</b>	
A.1	Independent Producible Energy Report for P50, P25, P75, P90, P99
A.2	Second Independent Producible Energy Report - (Optional)
<b>Section B - Datasheet and track record for equipment</b>	
B.1.1	PV Modules – Datasheet presenting minimum criterias presented above
B.1.2	PV Modules - Supplier letter about PV module conformity to tender requirements
B.1.3	PV Modules - Warranties and certificates
B.2.1	Inverter – Datasheets presenting minimum criterias presented above
B.2.2	Inverter - Supplier letter about PV module conformity to tender requirements
B.2.3	Inverter - Warranties and certificates
B.3.1	Mounting structure- Datasheet presenting minimum criterias presented above
B.3.2	Mounting structure - Supplier letter about PV module conformity to tender requirements
B.3.3	Mounting structure - Warranties and certificates
B.4	Electrical equipment - HV XXXkV/YYYYkV Cable – Datasheet presenting minimum criterias presented above
B.5.1	Electrical equipment - XXXkV/YYYYkV Circuit Breaker - Datasheet
B.5.2	Electrical equipment - XXXkV/YYYYkV Circuit Breaker - Test report
B.5.3	Electrical equipment - XXXkV/YYYYkV Circuit Breaker - Certificates of satisfactory execution
B.6.1	Electrical equipment - XXXkV/YYYYkV Isolator – Datasheet
B.6.2	Electrical equipment - XXXkV/YYYYkV Isolator - Test report
B.6.3	Electrical equipment - XXXkV/YYYYkV Isolator - Certificates of satisfactory execution
B.7	Electrical equipment - Lightning – Datasheet presenting minimum criterias presented above
B.8	Electrical equipment - HV Trafo – Datasheet presenting minimum criterias presented above
B.9	Electrical equipment - MV Trafo – Datasheet presenting minimum criterias presented above
B.10	Electrical equipment - Auxiliary transformer (PV plant) - Datasheet
B.11	Electrical equipment - Auxiliary transformer (Delivery point) - Datasheet
B.12	Electrical equipment - Emergency Diesel generator - Datasheet
B.13	Electrical equipment - HV Cable protection – Datasheets
B.14	Electrical equipment - DC wiring – Datasheets
B.15	I&C Systems - SCS/SCADA – Datasheets
B.16	I&C Systems - Data Logger – Datasheets
B.17	I&C Systems - HMI in the driving room – Datasheets
B.18	I&C Systems - Weather Station – Datasheets

Doc. N.	TECHNICAL DATA
B.19	<i>I&amp;C Systems - Control Platform – Datasheets</i>
B.20	<i>I&amp;C Systems - Data Transfer – Datasheets</i>
B.21	<i>I&amp;C Systems - Measuring System – Datasheets</i>
<b>Section C - Qualification of Contractors, Suppliers and Subcontractors</b>	
C.1	<i>EPC Supplier - General information and list of references</i>
C.2	<i>O&amp;M Supplier - General information and list of references</i>
C.3	<i>PV Modules Supplier- General information and list of references</i>
C.4	<i>Inverter Supplier- General information and list of references</i>
C.5	<i>Other main equipment Supplier- General information and list of references</i>
C.6	<i>Independent engineer - General information and list of references</i>
C.7	<i>Sub-contractors - General information</i>
<b>Section D – Additional Technical Information</b>	
D.1	<i>PV Plant general description</i>
	a. Description of the conceptual design of the PV plant: Main technical characteristics of PV panels, invertors, supporters, low, medium and high voltage transformers, power connections and other systems.
	b. Description of PV central management
	c. Main components: HV cables, Trafo MV/HV, PV Modules, Inverters, CUs, MV Table, Trafo LV/MV and mounting structures
	d. Description of interfaces
	e. Equipment and electrical system (conceptual design of electrical system, design of reactive power balance and main electrical equipment including auxiliary systems)
	f. Control and instrumentation systems (general description of control system, description and layout of control rooms, description of STEG interconnection, telecommunication equipment, measuring system, description of meteorological stations and sensors, description of fire detection, description of control and protection system)
	g. Civil Engineering (Site preparation, access road, internal roads, fence, parking area, buildings, foundations, ventilation and air conditioning, drainage system and protection against concrete and steel structure corrosion)
	h. List of Standards, Codes and Regulations considered for the PV plant design
D.2	<i>General overview of PV plant with temporary areas</i>
D.3	<i>General layout of PV plant</i>
D.4	<i>General arrangement of PV plant</i>
D.5	<i>Structure of control system</i>
D.6	<i>Structure of alarm system and fire protection</i>
D.7	<i>Structure of telecommunication system</i>
D.8	<i>Structure of measuring system</i>
D.9	<i>General diagram of protection</i>
D.10	<i>SLD (Global, LV, MV, HV)</i>

Doc. N.	TECHNICAL DATA
D.11	<i>Layout of technical buildings</i>
D.12	<i>PV plant construction report</i>
	<p>a. General description of construction and hand-over phases (including description of HSE measures, description of required equipment, etc.)</p> <p>b. Planning of human resources for construction and hand-over phases (including the number and qualification of workers, the on-site minimum period expected, the total number of local workers required, the manhours estimation, the qualification and experience of local and foreign workers, the name and CVs of the Project Manager, Site Manager and Works Director )</p>
D.13	<i>PV Plant O&amp;M report</i>
	c. O&M PV plant general description (including activities program and an organizational structure)
	d. System conceptual description/ PV module cleaning procedure
	e. Personnel list (including the number of O&M teams, a weekly schedule, the number and qualification of technical and administrative staff, the number of foreign staff and CVS of key personnel)
	f. General overview of the approach to follow for backup material and inspection activities
D14	<p>Main energy, investment and financial parameters</p> <ul style="list-style-type: none"> <li>• Multi Year Energy yield (P50) as well as for P25, P75, P90, P99</li> <li>• Land area needed</li> <li>• Preliminary power connection with Distribution or Transmission System Operators and the respective investment needed.</li> <li>• Capital costs up to commercial commissioning</li> <li>• Operations and maintenance costs</li> <li>•</li> </ul>
D.15	<i>Draft of HSE management plan (during construction and O&amp;M phase)</i>
D.16	<i>Administrative procedure plan</i>
<b>Section E – Summary of Preliminary Environmental and Social Evaluation</b>	
E.1	<i>Topography (general description and maps)</i>
E.2	<i>Hydrology and hydrogeology (general description and maps)</i>
E.3	<i>Flooding Risk including events related to possible sea level rise</i>
E.4	<i>Flora, fauna and ecosystems</i>
E.5	<i>Natural Habitat, Priority Biodiversity Features and Critical Habitat</i>
E.6	<i>Protected Areas (general description and maps)</i>
E.7	<i>Land use and ecosystem services</i>
E.8	<i>Cultural resources</i>

## APPENDIX 14

### TERMS OF REFERENCE FOR PRELIMINARY ESIA

The purpose of the Preliminary ESIA is to carry out an **initial high-level assessment** of impacts based on existing information, supplemented with additional surveys where the bidder feels they will complement the assessment. However, any survey must be completed within the Bidding timeframe. The Preliminary ESIA will also identify the type and extend of further studies required to be completed as part of the full ESIA.

The key objectives of the Preliminary ESIA include (but are not limited to) the following:

- Identify relevant national environmental, health and safety laws and regulations, European Union environmental and social standards and EBRD's "Environment and Social Policy", taking into consideration any international conventions applicable to the Project;
- Describe the project and any associated facilities. Identify and assess alternative options to the proposed Project;
- Assess the current environmental and social ~~status~~-baseline of the planned Project area and its surroundings, including environmental and social issues associated with any previous use of the areas planned to be occupied by the Project;
- Summarise the key ~~the~~ potential environmental and social impacts (both positive and negative) associated with the Project, and the associated risk of accidents;
- Conducting preliminary public consultation process in accordance with national requirements based on the law no. 10440, dated 07.07.2011 for EIA, as well as DCM no. 686, dated 29.07.2015 "On the approval of the rules, responsibilities and deadlines for the development of the procedure of environmental impact assessment and the procedure of transfer of the decision of the environmental declaration".

#### **Report Structure – The preliminary ESIA will include the following elements:**

**1. Introduction** - An overview of the Project, purpose and structure of the ESIA report, ~~and the Project team.~~

**2. Project description** – The Project description will summarise: the Project area of influence and specific location(s) at which Project activities will take place; Project design, size, lifespan; and other relevant features of the Project as well as associated facilities and activities – this must include any relevant transmission (or distribution) lines for power evacuation and the connection points to the grid. Maps will be included as relevant in order to illustrate the geographic location of the project and its key components especially related to topography, cadastral, settlement areas, monuments of nature, protected zones, culture and archaeological sites. The pre-feasibility study for the project will be conducted in parallel to the preliminary ESIA study. The data provided by pre-feasibility study Consultant will be used for preliminary ESIA (when they become available).

**3. Legal and Policy Framework** - Summary of the key applicable local, regional and national environmental and social laws and regulatory requirements of the jurisdictions in which the Project operates, including those laws implementing host country obligations under international law. Outline local/national assessment and permitting requirements and include a description of the status of permitting requirements for the project. The consultant will also comment on whether the national environmental permitting process aligns with the EU EIA directive or any other relevant EU directives.

**4. Environmental and Social Baseline** – Description of the current state of the physical, biological and socio-economic environments present in the Project impact area – including transmission (or distribution) line routings. The environmental and social baseline for the Preliminary ESIA will be based on recent data (within the last 5 years) and will consist of a combination of already gathered and available studies through

local governmental and possibly non-governmental organisations as well as additional field studies as required. Consistent with requirements of the EU Habitats Directive and Birds Directive, the assessment will also identify any nature protection areas that could be affected by the Project. This will include protected areas equivalent to the Natura 2000 network / Emerald sites and other similar sites such as Key Biodiversity Areas and Important Bird Areas. The baseline will also include the findings of initial biodiversity screening using the Integrated Biodiversity Assessment Tool (IBAT).

**5. Initial Impact Assessment** - In accordance with the Applicable Requirements, the Consultant will screen the project for potential environmental and social impacts and risks of the Project across its lifecycle (preconstruction, construction, operations, decommissioning/closure, reinstatement)—Included in the impact assessment scope will be any associated facilities. The preliminary EISA will include an ~~analysis~~ identification of the likely significant impacts of the proposed Project and associated facilities on the physical, biological and socio-economic environment. The preliminary ESIA will include a significance rating for each residual impact (without and with application of mitigation measures). The impact study will also identify potential improvement opportunities and define technically and financially feasible measures to avoid, or where avoidance is not possible, minimise, mitigate or compensate adverse impacts (as per the Mitigation Hierarchy). Measures to enhance Project benefits will also be identified.

This initial assessment shall identify the red flags, i.e. the most significant issues that may a) require further detailed assessment at the full ESIA stage, and b) result in significant environmental and social costs.

**6. Mitigation and Enhancement Measures** – Summarise mitigation measures to be implemented for the identified significant impacts. An environmental and social management plan is not part of the preliminary ESIA.

**7. Summary and Recommendations** - Overall summary of the preliminary ESIA and any confirmed key impacts or mitigation to be implemented, including their costs. The preliminary ESIA should also identify any potential ‘red-flag’ issues that may result in significant costs, but would need to be confirmed in the full ESIA. **The recommendations will also include a scope of work for full ESIA and clearly outline the timeframe for completion of the ESIA and all associated studies, including any further seasonal surveys. The scope of work must include at least the elements of a full ESIA per Appendix 15 (Terms of Reference for full Environmental and Social Impact Assessment Study (post-Award))**

## APPENDIX 15

### **TERMS OF REFERENCE FOR FULL ESIA (Environmental and Social Impact Assessment Study) – to be completed post-Award**

*[N.B. For the sake of clarity, this Appendix is provided for information purpose and to allow Bidders to anticipate implementation requirements post-award. This is to be completed after an Award Decision by the Special Commission, and which is a CP under the Project Agreements]*

A full ESIA compliant to Albanian legislation (law no. 10440, dated 07.07.2011 for EIA, as well as DCM no. 686, dated 29.07.2015 "On the approval of the rules, responsibilities and deadlines for the development of the procedure of environmental impact assessment and the procedure of transfer of the decision of the environmental declaration") and in accordance with Good Industry Practices, will be prepared after the Award Decision and will follow the same structure as the preliminary ESIA but will also include an assessment of residual impacts, a detailed Environmental and Social Management Plan (and its associated plans, such as Resettlement Action Plan). Further site surveys will be carried out if identified by the preliminary ESIA. The final ESIA, mitigation protocols and Environmental and Social Management Plan (ESMP) will be prepared following the completion of all additional studies.

#### **1. APPLICABLE REQUIREMENTS**

The ESIA will be conducted in line with the following requirements:

- Albanian National legislation (law no. 10440, dated 07.07.2011 for EIA, as well as DCM no. 686, dated 29.07.2015) as well as relevant EU substantive environmental standards, including (but not limited to) the pertinent requirements of the Environmental Impact Assessment (EIA Directive 2011/92/EU of 31 December 2011, as amended by Directive 2014/52/EU) (as updated in 2014), and Birds and Habitat Directives 2009/147/EC, 93/43/EEC. To the extent Albanian regulations differ from EU Substantive environmental standards, the Project will meet whichever is the more stringent. National legislation will also cover the topics of safety zones and clearances around project infrastructure, e.g., right of ways, and electromagnetic field.
- Good international industry practice for the development of utility scale photo voltaic solar facilities and transmission lines for example World Bank Group General Environmental, Health, and Safety (EHS) Guidelines (2007), IFC Utility-Scale Solar Photovoltaic Power Plants: A Project Developer's Guide (2015), IFC Environmental, Health and Safety Guideline for Electric Power Transmission and Distribution and IUCNs Mitigating biodiversity impacts associated with solar and wind energy development - Guidelines for project developers (2021).
- Environmental and social standards and requirements of potential lenders, such as International Financial Institutions (IFIs) and commercial banks adhering to the Equator Principles<sup>3</sup> (if applicable); and
- All relevant national and international requirements for the protection of the health and safety of the public and workers.

#### **2. Scope of the ESIA**

<sup>3</sup> Available at: <https://equator-principles.com/>



The ESIA will build on the preliminary ESIA and will include the following components.

### **3.1 Executive Summary**

A concise summary description of the Project, its rationale, the existing operations and overall setting, significant environmental and social impacts. The Executive Summary will also include all mitigation and enhancement measures, monitoring proposals, and document the Company's commitment to implementing these.

### **3.2 Project Description**

Updated precise description of the Project within its geographical, environmental and socio-economic context. This will include information on whether and how the Project is part of a wider development plan/programme. The Project description will include but is not limited to information on:

- The Project footprint and land acquisition needs for the Project;
- Layout of the plant and transmission lines and grid connection;
- Detailed description of technologies involved in the successive steps of the construction process – this will include details of the solar PV plant equipment and specifications of transmission towers, their designs and conductor layouts;
- Vehicular traffic associated with the plant during construction;
- Workforce and accommodation requirements during construction and operations phase;
- Identification of the sources of equipment and construction materials (including water for both construction and operational phases).
- Summary of O&M activities
- Summary of decommissioning procedures. A systematic comparison of feasible alternatives to the Project in terms of location, Project technology or design in terms of potential environmental and social impacts. This will include the 'do-nothing' option.

### **3.3 Legal Requirements**

Detailed description of the policy, legal and administrative context of the ESIA, identifying relevant national environmental and social legislation (including legislation relating to energy and climate, environment protection, air quality, land acquisition, health and safety, workers rights, etc) as well as the environmental and social requirements of the lenders and applicable regional/global conventions or agreements. The legal requirements and timeframe for public consultation (including relevant EU requirements), Project appraisal and implementation will be outlined. The applicable project environmental standards for air quality, noise, water discharge, vibration, etc will also be described, taking into account national standards and international guidelines, whichever is the most stringent.

A detail analysis shall be done also related to compliance of projects with the EBRD Performance Requirements (PR) on Environmental and Social Impact Assessment. Through its environmental and social appraisal and monitoring processes, EBRD seeks to ensure that projects being financed: i) are designed and operated in compliance with applicable regulatory requirements and good international practice; ii) are socially and environmentally sustainable; and iii) respect the rights of affected workers and communities. EBRD has adopted a comprehensive set of specific Performance Requirements (PR) that clients are expected to meet, covering key areas of environmental and social impacts and issues. EBRD's document "Environment and Social Policy" and related Performance Requirements detail the commitments of the Bank to promote in the full range of its activities, environmentally sound and sustainable development.

### 3.4 Baseline Conditions

A description of relevant aspects of the physical and natural environment and socio-economic conditions in areas affected by all project components (including PV plant and transmission lines as well as any 'associated facilities' to include, inter alia:

- Air quality and noise;
- Topography
- Soils and Geology
- Geohazards
- Biological and ecological resources (fauna, flora, biodiversity, protected species, critical habitats, ecosystems);
- Biological environmental trends including loss of habitat; invasive alien species; overexploitation; nutrient loading and pollution; and topics relevant to climate change adaptation.
- Climatic factors and climate change (e.g. greenhouse gas emissions, including from land use, land use change & forestry, sectors of population more affected by climate change);
- Cultural heritage, including tangible and intangible cultural heritage as well as monument of nature, protection zones and archaeological heritage;
- Health & safety (public and worker) & healthcare infrastructure;
- Land (past and current use, legacy land acquisition issues);
- Landscape (including cultural landscapes) and visual aspects;
- Socio-economic status and livelihoods of the population, and ecosystem services;
- Vulnerable groups & Gender aspects;
- Water (infrastructure & accessibility, quantity and quality, surface and groundwater);
- Traffic and transportation infrastructure (public and site); and

In depth studies are expected to be conducted on biodiversity if identified as part of the preliminary ESIA.

### 3.5 Stakeholder Consultation

Details of the stakeholder engagement programme as part of the ESIA and results of engagement including:

- Analysis of key stakeholder groups potentially affected by the Project and other interested parties;
- Detail on the specific stakeholder engagement activities carried out with these stakeholder groups throughout the study including figures on participation in these activities;
- Details and analysis of the specific concerns, questions and opportunities for improvement of the Project raised by stakeholders throughout the process of engagement;
- Details on retroaction to consulted stakeholders in relation to Project impacts and mitigation measures.
- Plans for consultations during the construction and operational phases of the Project

### 3.6 Impact Assessment

Identification and characterisation of positive and negative environmental and social impacts (direct, indirect & cumulative) in terms of the magnitude, likelihood, duration, extent, reversibility of the impact

and the sensitivity of the resource or receptor. Quantitative data must be employed to the greatest extent possible. The chapter will also identify opportunities for environmental and social enhancement and identify key uncertainties and data gaps. The following Project stages must be considered in this evaluation where appropriate:

- Design Phase
- Pre-construction and construction phase
- Operation and maintenance
- Closure and decommissioning
- Residual environmental and social impacts

Impacts, for example, could be related to the following (but not limited to):

- Construction impacts such as noise, dust, waste and wastewater management and disposal, use of hazardous materials, contractor / labor camp management, impacts to water sources, etc.
- Occupational health and safety risks and issues during construction and operation.
- Labor management issues, including grievance management, recruitment, child and forced labor, etc.
- Impacts on population (e.g., physical resettlement, economic displacement, right of way etc., including differential impacts on women and men, and differential impacts on vulnerable households and people).
- Traffic safety during construction.
- Impacts to natural habitats and wildlife (including aquatic and terrestrial species, migratory species known to exist/move in the project's area of influence).
- Deforestation.
- Slope stability and erosion.
- Cumulative environmental and social impacts, if any, taking into account current and proposed activities in and near the project's Area of Influence (e.g., other energy facilities, transmission lines, substations, other land uses, etc.)
- Summary of impacts in terms of gender equality and women's empowerment issues in the region.
- Summary of community health, and safety concerns, particularly those related to labor influx including introduction of HIV and other sexually transmitted diseases, gender-based violence and the sexual exploitation of children.
- Any additional environmental and social impacts, if any.
- *Quantitative Modelling* studies may be prepared when data are sufficient to support such modeling and such modeling results are critical to conclusions regarding potential impacts and/or the identification of required mitigation and monitoring measures.

**3.8 Management and of Impacts** An outline of the feasible cost-effective measures to avoid, minimise, mitigate or compensate for environmental and social impacts to acceptable levels and address other environmental and social issues; such as the need for worker health and safety improvements, inter-agency

coordination, community involvement, institutional strengthening or training within the executing agency/ governmental agencies/Client or at the community level. Additionally, an outline of any measures that would enhance environmental and social aspects within the area affected by the Project and the existing operations and characterisation of the nature of any residual environmental and social impacts or issues that have not been addressed. A description of the financial provisions for potential risks (for example escrow accounts and insurance cover to provide for *inter alia* abandonment and decommissioning, site remediation and oil spills and other emergencies). Both the existing operations and the following Project stages must be considered where appropriate:

- Design
- Construction
- Implementation and maintenance
- Closure and decommissioning
- Residual environmental and social impacts

### **3.9 Monitoring and Implementation**

A description of how environmental and social impacts and issues will be monitored and managed in practice; including an indication of how the Project will be monitored by the Contractor and supervised by lenders and governmental agencies. Instrumental monitoring requirements shall be clearly described along with their schedule and costs. Estimates will be provided for capital expenditure and operation and maintenance costs where possible. The following stages must be considered where appropriate:

- Design Phase
- Pre-construction and construction phase
- Operation and maintenance
- Closure and decommissioning
- Residual environmental and social impacts

### **3.10 Environmental and Social Management Plan**

A record of all measures required to address environmental and social impacts and issues as well as monitoring and supervisory activities associated with these should be consolidated in tabular form. This should also indicate institutional responsibilities, timeframes and associated costs.

The level of detail and complexity of the ESMP will be commensurate with the project's impacts and issues addressing risks, impacts and opportunities specific to the project. The ESMP will define desired outcomes as measurable events to the extent possible with elements such as targets and performance indicators that can be tracked over defined time periods. Recognizing the dynamic nature of the project development and implementation process, the ESMPs will be responsive to changes in project circumstances, unforeseen events, regulatory changes and the results of monitoring and review, and will be updated from time to time.

ESMP shall describe and prioritise the actions needed to implement mitigation measures, corrective actions, and monitoring measures necessary to manage the impacts and risks identified in the Assessment. In addition, maintenance or establishing of a Social and Environmental Management System will need to be assured, that addresses the management of these impacts, risks, and corrective actions required to comply with applicable host country social and environmental laws and regulations, and requirements of the applicable Performance Standards and EHS Guidelines, as defined in the ESMP. The management plan identifies the specific environmental or social aspect of the project being addressed, the potential impacts of concern, the measures or actions that need to be taken to avoid or reduce the impacts, the basis of the requirement (national or local standard, EU & EBRD or other international standard, best management practice, etc.), an indicator that can be used to monitor implementation, and the party

responsible for the action.

**Environmental and Social Management Plan for the xxxx PvPP**

No .	Issue or Aspect	Gaps or potential impacts/concerns	Mitigation/Enhancement measures or Best management practices	Legislative requirements/best practice	Verifiable Indicator	Responsibility
<b>1.</b>	<b>Project Design and Planning</b>					
1.1	Enhancing Environmental Management System					
1.2	Company-community interaction					
1.3	Water quality planning					
1.4	Traffic planning					
1.6	Waste management planning					
1.7	Safety planning					
<b>2</b>	<b>Construction</b>					
2.1	Air quality					
2.2	Water quality					
2.3	Waste management					
2.4	Noise					
2.5	Soil erosion/contamination					
2.6	Traffic					
2.7	Occupational and					

	public health and safety					
2.8	Public consultation					
3	<b>Operation</b>					
3.1	Air emissions and ambient air quality					
3.2	Surface water quality					
3.3	Noise					
3.4	Waste management					
3.5	Health and safety					
3.6	Public consultation					





### **3.10 Conclusions and Recommendations**

Under this sub-chapter will be summarizing the main conclusions and recommendations of the ESIA

### **3.11 Additional Plans**

It is expected that the ESIA will include at least the following management plans:

- Resettlement Action Plan;
- Labour Management Plan
- Stakeholder Engagement Plan
- Contractor Management Plan;
- Community Health and Safety Plan;
- Occupational Health and Safety Plan;
- Traffic Management Plan.
- Biodiversity Management Plan
- Pollution Prevention Plan (including waste management)

#### 3.11 Appendices

- Names of those responsible for preparing the E&S Assessment
- References and sources of information
- Records of public meetings and consultations held
- Supporting technical data

**APPENDIX 16**  
**SOLAR SITING STUDY**

**APPENDIX 17**  
**DRAFT PROJECT AGREEMENTS**

## APPENDIX 18

### EVALUATION CRITERIA AND SCORING METHODOLOGY

	<b>Scoring</b>  The Financial Bids will be scored based on the parameters below.	Maximum points	<b>Calculation of Points</b>
<b>1.</b>	<p>Each Bidder must provide a 15-year levelized tariff in Euro per MWh for its proposed Supported Capacity of the Solar PV Project.</p> <p>Financial Bids which exceed the Ceiling Price will not be considered for selection.</p> <p>Qualified Bids are ranked in ascending order of the Bid Price. If necessary, the Tie-Breaker Rule will be applied to break ties.</p> <p>Bidder(s) with the lowest proposed Financial Bids, subject to the Tie-Breaker Rule and the Marginal Bid Rule, will be declared as Preferred Bidder(s).</p> <p>The Contracting Authority reserves the right to seek additional information on the Financial Bid(s) and subsequently disqualify in accordance with provisions on the abnormally low bid.</p>	<b>100 points</b>	[Lowest tariff proposed by all bidders / tariff quoted by the bidder] * 100
<b>2.</b>	<p><b>Tie-Breaker Rule</b></p> <p>In the event that there are two or more proposed Projects with an identical Bid Price (“Tied Bids”) which, if all awarded, would cause the Total Auctioned Capacity to be exceeded, the Special Commission will apply a Tie-Breaking Rule:</p> <p>(A) Firstly, the Special Commission shall rank the Tied Bids in descending order of proposed capacity (i.e. larger capacity has higher priority).</p> <p>(B) If (A) above does not break the tie, the Special Commission shall rank the Tied Bids in descending order of P50 Annual Energy Production as estimated in the energy yield assessments (i.e. higher energy yield has higher priority).</p> <p>(C) If (A) and (B) above do not break the tie, the Special Commission shall rank the Tied Bids in ascending order of Project land area as specified in the Financial Bid Form (i.e. smaller land area has higher priority).</p> <p>(D) If (A), (B) and (C) above do not break the tie, the Special Commission shall draw lots to determine the ranking order.</p>		

	<p><b>N.B.</b> In case first selected Bidders fail to conclude or to reach effectiveness of the Project Agreements, next/next ranked Bidders can be called, applying <i>mutatis mutandis</i> the Tie-Breaker Rules hereunder.</p>
<p><b>3.</b></p>	<p><b>Marginal Bid Rule</b></p> <p>After the ranking of the Financial Bids (subject to the Tie-Breaker Rule where necessary), there may be a “Marginal Bid” by a “Marginal Bidder” which, if awarded, would cause the Total Auctioned Capacity to be exceeded. In this event, the Special Commission shall proceed as follows:</p> <p>(A) If awarding the Marginal Bid would cause the Total Auctioned Capacity to be exceeded by no more than 50 MW, then the Special Commission shall award the Marginal Bidder’s proposed capacity in full, thereby exceeding the Total Auctioned Capacity.</p> <p>(B) If awarding the Marginal Bid would cause the Total Auctioned Capacity to be exceeded by more than 50 MW, then the Special Commission reserves the right to (but is not obliged to) award the Marginal Bidder’s proposed capacity in full, thereby exceeding the Total Auctioned Capacity.</p> <p><b>N.B.</b> In case first selected Bidders fail to conclude or to reach effectiveness of the Project Agreements, next/next ranked Bidders can be called, applying where relevant, <i>mutatis mutandis</i> the Marginal Bids Rules hereunder.</p>

**APPENDIX 19**

**NON-QUALIFIED BIDDER NOTIFICATION FORM**

[Location and date]

[Name and address of contracting authority]

[Bidder's address]

Honorable Mr./Mrs. <name of contact person>

We thank you for the participation in the above-mentioned procedure, which is executed in compliance with Law no. [7/2017] and Decision of Council of Ministers no. [349/2018], dated [●], as amended.

Your Proposal Submission was accurately evaluated according to the criteria and requirements stipulated in the Bidding Documents and the Bidding Submission's dossier.

We regretfully inform you that you have been [disqualified], due to the following reason (s)

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If you believe that the Contracting Authority has infringed Council of Ministers Decision no. 349/2018 during the competing procedure, you have the right to make a formal complaint to the Contracting Authority within 10 days from receiving this notice.

Although we could not use your services in this case, we hope that you will continue to be interested in our bidding initiatives.

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(CONTRACTING AUTHORITY)

**APPENDIX 20**

**SELECTED BIDDER NOTICE FORM**  
*(form to be completed from the Contracting Authority)*

Date: [•]

To: (Name and the address of the Bidder)

Short Description of the Qualification Procedure:

We hereby inform, that the following Bidders participated in the tender:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_ 4.....

The following Bidders are disqualified:

1. \_\_\_\_\_
2. \_\_\_\_\_

Reasons of Disqualification: \_\_\_\_\_

Referring to the abovementioned procedure, the Ministry of Infrastructure and Energy of the Republic of Albania notifies [*name and address of Bidder(s)*] that the Proposal Submission submitted on [*date*] in respect of the Project has been qualified and evaluated as Selected Bid

shall notify the Ministry of Infrastructure and Energy of the Republic of Albania in writing.

Notification of Selected Bidder is made on \_\_\_\_\_ Complaints: Yes/No \_\_\_\_

If yes, answer received on \_\_\_\_\_

**Contracting Authority**

[*name, signature and stamp*]

**APPENDIX 21**

**CONTRACTING AUTHORITY COMPLAINT FORM**

***Complaint to: Contracting Authority***

**Section I. Complainant Identification**

*The complainant can be a Bidder or a Bidder (e.g. individual, partnership, corporation, joint venture, and consortium).*

\_\_\_\_\_  
Complainant's full name (please type)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Postal code/ Zip Code

\_\_\_\_\_  
Telephone No. (including area code)

\_\_\_\_\_  
Fax No. (including area code)

\_\_\_\_\_  
E-mail

\_\_\_\_\_  
Name and title of authorized official filing the complaint (please type)

\_\_\_\_\_  
Signature of authorized official

\_\_\_\_\_  
Date (year/month/day)

\_\_\_\_\_  
Telephone No. (including area code)

\_\_\_\_\_  
Fax No. (including area code)

**Section II. Information about the Procedure**

- ✓ **1. Identification Number**



*Fill the contract number provided in the contract notification or Bidding Documents including the **type of procedure used** for the disputed competitive procedure.*

---

✓ **2. Contracting Authority**

**Name of the contracting authority administering the process**

---

**2. Value of Project**

**Estimate of the contract value (amount in number and letters)**

---

**3. Object of the Contract**

**Short description of the Project**

---

**4. Deadline for Submission of the Qualification Application**

**Deadline for submission of Qualification Application**

---

Date (year/month/day)

**5. Date of receipt of Notification**

---

**Date (year/month/day)**

**Section III. Description of the complaint**

**1. Complaint's Legal Ground**

(Describe the violations with regard to decisions, acts, documents etc.)

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**2. Detailed statement of facts and argument**

*Give a detailed statement of the facts and arguments that support your complaint. For each reason of your complaint specify the date when you were informed on the facts related with the reasons of your complaint. Also mention the relevant sections of the Qualification Application documents, if applicable. Use additional sheets if necessary.*

### **3. List of Annexes**

*In order for a complaint to be considered as duly filed, it shall be complete. Attach a legible copy of all documents that are relevant to your complaint and a list of all documents attached thereto. The documents must include **any published notification, Bidding Documents, with all amendments and attachments as well as your proposal**. Indicate which information, if any, is confidential. Explain why the information is confidential or provide either a version of the relevant documents with confidential parts removed or a summary of the contents.*

Note: Send the completed complaint form, all the necessary appendices and additional copies, to the  
**Contracting Authority.**

### **4. Preliminary Objections to the Contracting Authority**

*Objections is considered a complaint which is directly addressed to the Contracting Authority. Please attach copy of any written complain including the answers, if any*

#### **1. Have you done any objection? If yes, please specify how this is being made (in written form, or fax etc.);**

Q Yes

QNo

#### **2. Name of the Contracting Authority where the Objection has been filed**

\_\_\_\_\_

(Name and the position of the Official/Person against whom the objections has been made)\_

#### **3. The Remedy Sought**

(State in writing the Remedy Sought)\_\_\_\_\_

#### **4. List**

In order for a complaint to be considered as duly filed, it shall be complete. Attach a legible copy of all documents that are relevant to your complaint and a list of all documents attached thereto. The documents must include **any published notification, Bidding Documents, with all amendments and attachments as well as your proposal; All the Correspondence and the necessary written information relevant to the objection**. Indicate which information, if any, is confidential. Explain why the information is confidential or provide either a version of the relevant documents with confidential parts removed or a summary of the contents.

Send the completed complaint form, all the necessary appendices and some additional copies, to the  
**Contracting Authority.**

Tel / Fax No:

E-mail

Signature and seal of the complainant

**APPENDIX 22**  
**ESTIMATED TIMETABLE**

*The Estimated Timetable is presented for indicative purposes only. This Estimated Timetable may be amended by Contracting Authority if necessary.*

<b>Step</b>	<b>Milestone</b>	<b>Date</b>
I	Bidding Documents publication	15 January 2024
II	Bidders Conference	14 March 2024
	Last date for accepting Bidders' clarification requests on the Bidding Documents	5 April 2024
IV	Deadline for proposed amendments to Bid Documents	15 April 2024
V	Bid Submission Deadline	17 May 2024
VI	Announcement of Qualified Bids	21 June 2024 (which can be challenged within a 10 days deadline)
VII	Opening of Financial Bids and announcement of Selected Bidders and respective Selected Projects	10 July 2024
VIII	Deadline to sign Project Agreements	31 August 2024