

DATED

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(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]

CONTENTS

1. DEFINITIONS AND INTERPRETATIONS	1
2. COMMENCEMENT, TERM AND CONDITIONS PRECEDENT	13
3. FACILITATION OBLIGATIONS	17
4. TRANSMISSION LINE.....	18
5. CAPACITY, ELECTRICITY AND GENERATION ATTRIBUTES	19
6. CONSTRUCTION AND COMMISSIONING	20
7. GENERAL MONITORING AND SUPERVISION.....	22
8. REPRESENTATIONS AND WARRANTIES.....	23
9. TRANSFER RESTRICTIONS	24
10. DEVELOPER UNDERTAKINGS.....	25
11. TERMINATION	26
12. CONSEQUENCES OF EARLY TERMINATION OF THE AGREEMENT	28
13. SUBCONTRACTING.....	29
14. CONTRACT SECURITY	29
15. INSURANCES	30
16. FORCE MAJEURE.....	30
17. MATERIAL ADVERSE GOVERNMENT ACTION	31
18. CHANGE IN LAW	33
19. TRANSFER OF THE PROJECT UPON ELECTION	34
20. MARKET READINESS ASSESSMENT AND CFD APPLICATION	35
21. NOTICES	35
22. CONFIDENTIALITY AND PUBLICITY	36
23. GOVERNING LAW AND DISPUTE RESOLUTION	37
24. MISCELLANEOUS PROVISIONS	38
SCHEDULE 1: FACILITY AND SITE.....	41
SCHEDULE 2: CONTRACT SECURITY	42
SCHEDULE 3: BID	43
SCHEDULE 4: SUPPORT AGREEMENT	44
SCHEDULE 5: COMMISSIONING TESTS.....	45
SCHEDULE 6: CONNECTION AGREEMENT.....	46

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 fiteen (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 (fifteenths) 15th 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;¹

"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

¹ [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 1st 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 [];²

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,

² 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), 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

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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