



REPUBLIC OF ALBANIA
ENERGY REGULATOR AUTHORITY
BOARD

DECISION
No. 136, Dated 10.07.2024

ON

**APPROVING THE GENERAL CONDITIONS OF THE ‘STANDARD CONTRACT
FOR SUPPORT’**

Based on article 16 of Law no.43/2015 “*On Power Sector*” as amended; article 14 of Law no. 24/2023 “*On promoting the use of energy from renewable sources*”; as well as article 19 and 15 of the *Regulation for ERE Organization, Operation and Procedures*, approved with ERE Board Decision no. 96, dated 17.06.2016; article 11 of the “*Regulation on the procedures of public notification and consultation of the by-legal act approved by the Energy Regulator Authority*” approved with ERE Board decision no.162,dated 20.10.2020; ERE Board on their meeting dated 10.07.2024 after reviewing the report Protocol no.1611, dated 08.07.2024 prepared by the Technical Directories “*On the approval of the General Conditions of the Standard Contract for Support*”

Observed that:

- The Energy Regulator Authority, pursuant to Article 14, point 2 of Law no. 24/2023 "On promoting the use of energy from renewable sources", is the authority responsible for approving the "General conditions of the standard contract for support".
- ERE with decision no. 45, dated 29.03.2024, opened the procedure for reviewing and approving the general conditions of the Standard Contract for Support;
- With official letter Protocol no. 823/1 dated 27.05.2024, ERE informed the interested parties about ERE Board decision no. 45, dated 29.03.2024, as follows; Ministry of Infrastructure and Energy (MIE); Albanian Power Exchange (ALPEX) company; Electricity Distribution System Operator (DSO) company; Free Market Supplier (FTL) company.; Transmission System Operator (TSO) company; Albanian Power Corporation (KESH) company; Albanian Renewable Energy Association (AREA); Foreign Investors Association of Albania (FIAA).

- The draft contract for support was published on the official website of ERE on 09.04.2024 pursuant to Article 15 of Law no. 146/2014 "On Notification and Public Consultation" as well as Article 12 of the "Regulation on the procedures of public notification and consultation of the by-legal act approved by the Energy Regulator Authority" approved with ERE Board decision no.162,dated 20.10.2020". Following the termination of the deadlines for the public consultation process, there were no comments from the interested parties.
- The agreement provides for the responsibilities and obligations of the parties such as:
 - A) **GENERAL TERMS** where clauses such as: *commencement and term; conditions; construction and commissioning; operation, availability guarantee; market restructuring and readiness assessment*, are provided.
 - B) **TRADING PERIOD I – PPA TERMS** where clauses such as: *forecasts, nominations, outages, balancing; sale and purchase of electricity and transfer of generation attributes; metering and data*, are provided.
 - C) **TRADING PERIOD II – CFD TERMS** where clauses such as: *conditions; financial settlement; negative pricing; market disruption; delivery and acceptance of generation attributes; route-to-market arrangements*, are provided.
 - D) **OTHER GENERAL TERMS** where clauses such as: *price and payment; termination; compensation on termination; liability; force majeure; credit support; insurance; subcontracting and assignment; change in law; representations, warranties and undertakings; notices; confidentiality and publicity; governing law and dispute resolution; miscellaneous provisions*, are provided.
- Finally, the agreement also provides for the following Annexes: ANNEX 1: Facility, site plan and metering device location; ANNEX 2: Form of bank guarantee; ANNEX 3: Seasonal profile and targets; ANNEX 4: Formula for energetic availability liquidated damages; ANNEX 5: Determination of contract quantity for trading period II
- The procedure for approving general conditions is a legal obligation defined in Article 14 of Law no. 24/2023 "On promoting the use of energy from renewable sources" which provides that: (1). *Contracts for support include: a) general conditions, which consist of standardized contractual conditions and terms, which are similar with all comparable projects. b) individual conditions, which consist of specific conditions applicable to individual projects and/or choices between options available under general conditions.* (2). *The general conditions of the standard contract for support are approved by the Energy Regulator Authority.* (3) *In a competitive process, the minister may publish in advance as part of the documents of the competitive procedure the general and individual conditions of the relevant contract for support. Finally, point 4, the same article of the law on Renewable Energy Sources¹ (RES), provides that: (4). Contracts for support generally have a duration of 15 years.*

¹ Law no.24/2023 "On promoting the use of energy from renewable sources"

- Whereas in Article 12 of Law no. 24/2023 "On promoting the use of energy from renewable sources", support schemes are also provided for, (1) Support for the production of electricity from renewable sources can be in one of the following forms: a) Power Purchase Agreement; b) contract for difference; c) contract for premium. (2) Before the creation of a competitive day-ahead electricity in accordance with Article 30 of this law, support may be provided in the form of an agreement for the purchase of energy, which must be subject to a conversion into a contract for difference after the creation of a competitive day-ahead electricity market, in accordance with Article 30, points 4, 5 and 6, of this law. (3) The form of the support scheme is determined before the initiation of any competitive process by the ministry.
- The Law on Renewable Energy Sources (RES)² has provided in Article 3 "Definitions" in points 17,18,19, and the meaning of "Contract for difference", "Contract for support" and "Contract for Premium" as follows: (i) point 17 "Contract for difference" (CfD) is a financially regulated support contract where the Renewable Energy Operator pays the priority producer the difference between the guaranteed price and the reference price when the reference price is lower than the guaranteed price and the priority producer pays the difference to the Renewable Energy Operator when the reference price is higher than the guaranteed price. (ii) point 18. "Contract for support" is a contract through which the priority producer is given support according to this law. (iii) point 19. "Contract for Premium" is a type of support contract where a fixed premium is paid (which can be positive or negative depending on the outcome of the competitive process) or a sliding premium (as the difference between the guaranteed price and reference price) from the Renewable Energy Operator for priority producers over the market price.
- Taking into consideration the clarifications of MIE on 08.07.2024, but also at the end of the legal analysis, it is evaluated that;
 - i) *It results that in the introductory text of the agreement, section (E) which provides inter alia that: (...)For Trading Period II, this Support Agreement shall be implemented in the form of a financially settled Contract for Difference.*

It is also evaluated to add the following clarification and explanation to the last sentence of this paragraph; (...) ***For Trading Period II, this Support Agreement shall be implemented in the form of a Financially Settled Contract for Difference, which becomes enforceable according to the provisions of the electricity market model and if the parties have not defined a from other forms provided for in the supporting scheme of law no. 24/2023 "On promoting the use of Energy from Renewable Sources".***

²Law no.24/2023 "On promoting the use of energy from renewable sources"

- (ii) It results that in the published draft of the Support Agreement, the terminology (in the definitions part) regarding the Balancing Market Rules is not clearly specified. Therefore, it is evaluated that the terminology used should be changed by replacing everywhere in the document where the term "Temporary Balancing Market Rules" is mentioned, it should be replaced by the following: "Albanian Electricity Balancing Market Rules", approved with ERE board decision no. 106, dated 02.07.2020.
- (iii) It results that in the published draft of the agreement (mentioned above), in the definitions section where the meaning of the terms is provided: Service provider (...), capacity(...) and supported capacity (...); it is evaluated that the presented values regarding the quantities per MW should be undefined in the corresponding values (xx /MW), since we are in the case of approving the general terms of the agreement;
- (iiii) It results that in the published draft of the agreement in section (B) article 7 point 7.9, among others, it is foreseen that; ()*The fee for Balancing Services shall not be higher than limit of [5 EUR / MWh], until a Positive Liquidity Assessment of the Intra-Day Market is reached. Taking into consideration the aforementioned clarifications that the general conditions of the agreement should not specify values or quantities since the latter are subject to negotiations and therefore should be part of the special conditions of the contract. As a result, it is evaluated that this clause should be clarified as follows: ()The fee for Balancing Services should not be higher than the limit of [xxxx EUR / MWh], defined in the special conditions of the agreement, until a Positive Liquidity Assessment of the Intra-Day Market has been achieved.*
- (ivi) It results that the agreement in article 28 "Governing law and dispute resolution" provides, among other things, that the agreement shall be governed by and interpreted in accordance with the laws of Albania. Law no. 43/2015 as amended, provides that ERE has the competence to resolve disputes between licensees. In the following, it is evaluated adding the following sentence to the provisions of Article 28.1. with the following specification: ***The parties may turn to ERE for the resolution of disputes unless otherwise provided in the special conditions of the support agreement. In any case, the special conditions must be based on the general provisions in article 28.2 below.***
- (vi) It results that Article 28 "Governing law and dispute resolution", point 28.5, among other things, also provides that: (...) The seat of arbitration shall be Vienna, Austria. Taking into consideration what has been argued above, it is evaluated that in the general conditions of the contract the place of arbitration should be undefined, leaving the possibility to the parties to determine in its special conditions the seat of the arbitration. In the following, it is evaluated that the (penultimate sentence) of Article 28.5 should be clarified as follows; (.) ***The seat of arbitration shall be determined by the parties in the special conditions of the agreement.***
- (vii) It results that in the Annexes of the support agreement named as follows: Annex 1: facility; site plan and metering device location, Annex 2: form of bank guarantee; Annex 3: seasonal profiles and targets; Annex 4: formula for energetic availability and damages; Annex 5: determination of the contract quantity for the trading period tii; apart from denominations, the completed format is not defined in the content, but only the relevant denominations. For the above, it is evaluated to be added with the exception of Annex 2 " form of bank guarantee " which is complete and shall be considered an integral part of the support agreement. Meanwhile, the title of Annex 5 should be corrected in *the content of the agreement*, as it is evaluated that

the designation defined in the content of the agreement is a material error. (same as the name of annex 4.)

(viii) In Article 29 "*Miscellaneous Provisions*" point 29.10, shall be followed by point 29.11, *the parties to this agreement may decide to add annexes related to: plant, location, metering device, seasonal profiles and targets; formula for energetic availability and damages; determination of the contract quantity for the trading period tii. After this change, point 29.11 becomes point 29.12 and remains unchanged in content.*

- The corrections and clarifications recently submitted by MIE and ERE comments are mainly of the same nature and are reflected in this agreement and are in accordance with the requirements of law no. 24/2023 "On promoting the use of energy from renewable sources".

For all of the above mentioned, ERE Board

Decided:

1. To approve the "General Conditions of the Standard Contract for Support" including the General Conditions of the Contract for Difference (CFD)
2. The General Conditions of the CFD shall become applicable upon approval according to the Market Model.
3. The Legal Directory shall inform the Ministry of Infrastructure and Energy as well as the interested parties about ERE Board decision.

This decision enters immediately into force.

Any party involved in this procedure may request from ERE, - within 7 calendar days from the date of the decision, to review the board decision if it has provided new evidence that could lead the board to obtain a decision different from the previous one or for material errors ascertained. This decision can be appealed in the Administrative Court of Tirana, within 30 calendar days from the day of publication in the Official Gazette.

This decision shall be published on the Official Gazette.

ERE CHAIRMAN

Petrit AHMETI

DATED []

(1) [SUPPORT COUNTERPARTY]

- and -

(2) [SPV PARTY]

SUPPORT AGREEMENT

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THIS AGREEMENT signed on,

BETWEEN:

- (1) **[CONTRACTING PARTIES FOR SUPPORT]**, a shareholder entity established in Albania Registration no. [■] and headquarters in [■], Tirana, Albania ("**The Contracting Party for Support**"); and
- (2) **[SPV PARTY]**, limited liabilities entity established in Albania with Registration no. [■] and headquarters in [■] Tirana, Albania ("**the Seller**");

(The Contracting Party for Support and the Seller as a "**Party**", together as the "**Parties**").

BEING THAT:

- A According to Renewable Resources Law 24/2023, and Council of Minister Decision no. 349, dated 12.6.2018 "On approving the supporting measures for the promotion of using electricity from renewable resources of solar and wind, as well as the procedures for the selection of the projects for their benefit", as amended. ("**Decision no. 349**"), the Contracting Authority invited the bidders to submit their respective bids for the design, financing, construction, operation and maintenance of one/some Power Plant/Plants ____, for an installed capacity up to ____MW (including) ("**The Project**"), (part of the installed capacity that is supported referring as "**Supporting Capacity**").
- B [The Bidder/Consortium] connected with the Seller, is selected as the winning bidder and deals with the Development Agreement of the Project.
- C The Seller aims to construct and operate the Plant in a Location for the implementation of the Project according to the obligations of the Bidder according to the Development Agreement Project.
- D After the construction, the seller shall maintain, repair and operate the Plant to perform its business at the Location and shall ensure that the electricity supply at the Metering Point throughout the Term.
- E The Parties have signed this Agreement to document the terms of the relation according to the Development Agreement of the Project. Throughout the I Trading Period, this Agreement for Support shall be implemented in the form of Electricity Purchase Agreement that is physically liquidated that regulates the electricity sale and purchase produced from the Supporting Capacity with a fix price of about [] ([]) Eur per MWh, until it is performed the Positive Readiness Assessment of the Market that is acknowledged from a Common Declaration. For the II Trading Period, This Support Agreement shall be implemented in the form of the Contract for Difference that is financially liquidated and becomes applicable according to the definitions of the electricity market model and if the parties have not defined one of the other forms provided on the supporting scheme of *Law 24/2023*,

IT IS AGREED THAT:

1. DEFINITIONS

1.1 The terms and expressions below shall have the respective meanings as follows:

“Related Company” shall mean, regarding to a Party, a company or corporation or another legal entity that is:

- (a) Directly or indirectly under the control of that Party (for the purpose of this definition, a **“Mother Company”**);
- (b) Directly or indirectly under the control of a Mother Company; or
- (c) Directly or indirectly under the joint control with a Mother Company,

On the condition that "the control" shall require the ability to exercise decisive influence over an enterprise, corporation, or any other legal unit according to ownership rights of the share, the contracts, equivalent founding documents, or any other instrument considered specifically or in a combination to each other, and considering the respective considerations of the law and the fact.

"Agreement" or **"Electricity Purchase Agreement"** shall mean this Agreement and the specific part of it, that are considered as constitutive parts of it, with the necessary changes and/or re-declarations from time to time;

"Albanian Transmission Network Code" shall mean the document for the operation of the national Transmission Network, operated by the TSO company;

"Albanian Distribution Network Code" shall mean the document for the operation of the national Distribution Network, operated by the DSO company;

"ALPEX Rules" shall mean the rules approved by a Competent Authority regarding the operation and functioning of ALPEX in accordance with the Applicable Legislation, including, without limitation, the general rules, trading procedures, settlement and clearing rules, as approved and as may be amended as follows from ALPEX operator and/or ERE."

"ALL" shall mean the Albanian Currency;

"Annual Financial Statements" shall mean the financial statements audited from one party from [■] and for the final closed financial year, including the balance, the accounts of the recognised incomes and the losses, the statement of the currency flow and the reports and notes of the Directors and the Auditors regarding them.

“Applicable legislation” shall mean regarding each Party, any international obligatory

act, any constitutional provision, Law, statute, rule, regulation, order, treaty, decree, decision certification, act, registration, license, exclusivity, permission, authorization, instruction, Government Approval, approval or request from any Competent Authority that has a jurisdiction over the Party or its property, applicable by the law or the statute, including its interpretation and administration from the Competent Authority;

"Available Generation" shall mean (1) the current electricity generated (in MWh) during the Session for the Generation Plants as it is registered from [■], as well as (2) expected generation (in MWh) calculated from the Reference Measure that is applicable during each Period that is Considered Available;

"Availability Guarantee" shall have the meaning issued on Article 5.2;

"Balancing" shall mean all the actions and processes, according to the *"Albanian Electricity Market Rules"*, approved with ERE Board Decision no. 106, dated 02.07.2020, for all the time-frames, defined from the TSO to continuously ensure the maintenance of system frequency within a pre-defined range of stability according to the Applicable Legislation, and this shall be in conformity with all actions, requirements and other responsibilities regarding the Measured Production and the Plant, according to the Applicable Legislation and the Albanian Transmission Network Code;

"Balancing Group" shall mean a group that is composed from two or more responsible parties for balancing on which one of the parties is defined to join the nominations, deliver and liquidate the group imbalances at the TSO, according to the Applicable Legislation, and specifically *"the Albanian Electricity Balancing Rules"*, approved with ERE Board Decision no. 106, of date 02.07.2020;

"Agreement of the Balancing Group" shall have the meaning issued on Article 7.8;

"Bank Guarantee" shall mean a bank guarantee according to the request, similar to the form attached on Annex 3, from the Loan/credit Support Bidder with at least the Official Assessment of the Credit equal to or higher than the Assessment Required from the Bank;

"Invoicing Statement" shall have the meaning issued on Article 16.1;

"Working Day" shall mean any other day except of Saturday and Sunday or any other day that the banks shall be closed according to the law:

- (a) the location of the Party that is required to execute these Payment ; and
- (b) the place of the Location;

"Capacity" shall mean an installed and tested capacity to the Plant on which they are set to a [location in the Republic of Albania selected from the Selected Bidder];

"Supporting Capacity" shall mean the Capacity for which it is required the supporting measure according to this Agreement.

"Capital Markets Law" shall mean Law no. 62/2020, "On the Capital Markets in the Republic of Albania, as may be amended from time to time, and as may be completed from any other by-legal or implemented legislation related to it;

"Amendment of the Law" shall mean:

- (a) the effectiveness of any Law (including any Law on Tax area) that is not applicable on the Effectiveness Date;
- (b) modification, abrogation or replacement of any Law (including the Law on Tax area) after the Effectiveness Date; and
- (c) an amendment after Effectiveness Date in the interpretation or application from any Competent Authority of any Law (including any Law in Tax area),

but shall not include any of the above mentioned issues as far they constitute:

- (a) correction measures or sanctions legally executed by the Competent Authority as result of any breach of the Law (including any Law in Tax area) from the Seller; or
- (b) direct implementation or the approval of Energy Community *acquis*;

"Comercial Operation Date" shall mean initially hour 00:00 (local hour) of the date that comes immediately after the date on which it is performed the Testing, or if agreed between the Parties in the written form, on the first day (I) of the month coming immediately after the month when it is performed the Testing and according to the amendments that may be performed according to this Agreement;

"Final Deadline Date of Commercial Operation" shall mean [twenty four (24)] months from the Final Deadline Date of the Conditions, or late date as agreed in the written form between the Parties;

"Aimed Deadline Date for Commercial Operation " shall mean [twenty four (24)] months from the Effective Date, or a late date as agreed in writing between the Parties;

"Testing" shall mean, regarding the Plant, the testing process and the testing of the Plant according to the definitions in Article 6.8 of the Agreement for the Development of the Project;

"Commencement Date for Testing " shall mean the informed date from the Developer to the Contracting Authority according to Article 6.3 (a) of the Agreement for the Development of the Project;

"Testing Period " shall mean the period from the Commencement Date for Testing to the Commercial Operation Date;

"Competent Authority" shall mean any authority such as the ministry, inspectorate, department, arbitration court, administrative agency or commission or any other government body, municipality, administrative or regulatory entity (on each case to the measure where each of the above mentioned has a jurisdiction over each or both Parties, this Agreement and/or the issues of this Agreement);

"Final Deadline Date of the Conditions" shall mean [six (6)] months from the Effective Date or another later date according to the written approval between the Parties;

"Connection Agreement" shall mean the Agreement that is connected between the Seller and the TSO or OSHEE for the connection of the Plant with the Transmission Network or the Agreement between the Independent Operator of the Transmission Line and the TSO

"Contracting Authority" shall mean the Ministry of Infrastructure and Energy of Albania, acting according to Council of Minister Decision no. 349, dated June 12, 2018, and represented by the General Secretary or its Successor;

"Credit Support" shall mean:

- (a) a Bank Guarantee; and
- (b) a guarantee similar to this Agreement as may be agreed in the written form between the Parties time after time;

"Amount of the Credit for Support " shall mean an amount at least equal to the Loss of the Seller;

"Provider of the Credit Support " shall mean the person that ensures the Credit Support (or a substitute provider according to the agreement in conformity with Article 21);

"Unavailability Compensation Event" shall have the meaning issued to Article 5.2;

"Contract for Difference" or "CfD" shall mean the contract financially liquidated for the differences between the Seller and the Contracting Party CfD, that shall be implemented for the II Trading Period after the termination of the Readiness Assessment of the Market according to the predefined conditions, for the payment of variable symmetric reward in report to the reference market price according to the terms defined on Session C of this Agreement.

"Amount of the Contract " shall mean the II Trading Period, the amount of electricity expressed in MWh and the respective GoO as defined as follows and defined on the respective Annex:

- a) Measured production throughout any settlement period; or
- b) Fix amounts of electricity according to a delivery schedule for any settlement period as defined on Annex 5 or as are nominated regarding the Expected Production measured for any settlement period, in conformity with the Applicable Market Rules; or
- c) The electricity amount generated from the Plant and nominated or sold to the Albanian Power Exchange in conformity to ALPEX Rules.

[*NOTE:* The Seller has the opportunity to select from the above options to define the Amount of the Contract to calculate the Financial Settlement Measure throughout the II Trading Period].

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

"Decision 349" shall have the meaning issued in the Introductory Part A;

"Delay Damages" shall mean the highest amount of the:

- a) The demonstrable losses, costs and damages that are caused to the Contracting Party for Support as consequence of the inability of the Seller to operate the Capacity in the Plant; or
- b) For any MWh of the Production that is unsold and/or undelivered of the Contracting Party for Support, twenty five percent (25%) of the Electricity Price;

On the condition that any circumstance shall not pass five percent (5%) of the Total Cost of the Project;

"Periods Observed as Available " shall mean the previous periods that shall not be taken into account for the calculation of Unavailable Production and as consequence shall be considered available as available production for the calculation Electricity Availability:

- a) interruption, termination or the closure of the Plant, caused by a Force Majeure or Governmental Nonfavourable Material Action;
- b) interruption, termination or closure of the Plant caused from a Law Amendment on the condition the Agreement is amended;
- c) non-compliance from the Contracting Party for Support of its obligations according to this Agreement not to negatively impede or affect to the performance or operation of the Plant;
- d) suspension, termination or closure of the Plant that is caused from a defect or damage of the transformer, the internal network, safety system, electricity supply, water supply and/or communication system;

- e) any planned or unplanned maintenance of electricity infrastructure equipments of the Plant (including, but not being limited to the high voltage equipments, network transformers, the foundations, cables, SCADA systems) causing unavailability;
- f) interruption, suspension, termination or devaluation of the Plant from:
 - (i) Network Operator due to the circumstances for which the Seller or the Service Provider is not responsible; or
 - (ii) any Competent Authority that due to the circumstances for which the Seller or the Service Provider is not responsible; or
 - (iii) interruption from the Network Operator or the inavailability in any other way of the Network that is not caused from the Seller;

"Delivery Point" shall mean the metering point to the TSO Network where the Supported Production is delivered and transferred to the Contracting Party for Support, as defined on the Agreement of the Balancing Group and the TSO Agreement with the Contracting Party for Support; or if the Plant is part of a Balancing Group of another party according to Article 6.13 and 6.14, the metering point of the TSO Network where the Supporting Production is delivered and transferred to the Contracting Party for Support, as defined on the Balancing Group Agreement between the Seller and the third Party and TSO Agreement and the Contracting Party for Support.

"Depreciated Capital Amount " shall mean the Capital Amount reduced in a straight line from the Commencement Operation Date to 30 (thirty) years from that date;

"Developer" shall have the meaning issued on Article 2.4 of the Development Agreement for the Project;

"Conditions of the Developer" shall have the meaning issued on Article 2.12 of the Development Agreement Project;

"Difference Payment" shall have the meaning issued on Article 11.1.

"Direct Agreement" shall have the meaning of a direct agreement between the Contracting Party for Support, the Seller, and the Financial Institutions which above all includes:

- a) the right of the Financial Institutions to interfere within a defined period to ensure that the obligations of the Seller shall be complied to prevent any circumstance according to which the Contracting Party for Support may require the solution of this Agreement and/or the right of the Financial Institutions to ensure the transfer or other transfer of the rights and obligations of the Seller according to this Agreement in defined circumstances;
- b) acceptance from the Contracting Party for Support of any encumbrance or

other guarantee (regarding this Agreement) that is submitted by the Seller for the Financial Institutions; and

- c) the obligation of the Contracting Party for Support not to take any action to close, appoint an administrator or sanction a vulnetary regulation (similar) regarding the Seller not giving an appropriate time of notification to the Financial Institutions

according to the acceptable conditions from the Seller acting in a reasonable way, and the Financial Institutions;

"**EBIT**" shall mean the earnings before interest and taxes;

"**EBIT to Interest**" shall mean EBIT percentage to the sum of all interest and any amount od tariffed interest for the expenses regarding the financial debt for borrowed funds (including the debts paid to Associated Companies as well as debt instruments of financial institutions) for any fiscal year;

"**Readiness Assessment of the Market subject to Disagreements**" shall have the meaning issued on Article 6.1.(a)(iv).

"**Effectiveness Date**" shall mean the date defined on Article 2 of this Agreement;

"**Electricity Payment**" shall have the meaning issued on Article (a);

"**Electricity Price**" shall have te meaning [●] expressed in Eur per MWh;

"**Electricity Availability**" shall mean the electricity availability for the Plant during the respective Session that is calculated as follows: $\text{Electricity Availabilitys [\%]} = 1 - \frac{(\text{Unavailable Generations})}{(\text{Available Generations} + \text{Unavailable Generations})} * 100\%$, where the plant is defined as follows;

"**Liquidated Damages of Energy Availability**" shall have the meaning issued to Article 5.3;

"**ERE**" shall mean the regulator authority for energy as defined on Power Sector Law and any other Applicable Legislation;

"**EUR**" shall mean the legal value of the European Union member states that have approved and use the same and sole value through the monetary union according to the European Union treaty, that is amended time after time;

"**Non-compliance Event**" shall mean a non compliance from the Seller or Non-compliance from the Contracting Party for Support (as required from the context);

"**Capital**" shall mean a sum equal to 70% of the total of (a) any capital paid from by or on the account of the Seller's shareholder or the related Companies for the shares and (b) the principle amount that is not paid under any loan from the Seller from the ~~shareholders of the Seller or the Related Companies regarding the Supporting Capacity,~~

which from their conditions are in terms of good faith and commercial equity and depend to any debt for the amounts borrowed from the Developer according to any financing document;

"Sum of the Capital" shall mean the sum of the capital that is currently paid from the Seller on the Commercial Operation Date;

"Expert" shall mean the appointed expert according to Article 21.4;

"Date for the Postponement of the Final Term of the Conditions " shall have the meaning issued on Article 3.5;

"Plant" shall mean the equipment that generates electricity and the respective infrastructure including the equipments installed on the ground that use photovoltaic energy and the transmission connection that is described in details on Annex 1 (but excluding the assets of the TSO set (or that shall be set) to the Location and the Transmission Connection);

"Metering Point to the Border of the Plant " shall mean the metering point defined on the Connection Agreement where the Seller may set into operation the Metering Equipment to show the Measured Production from the Plant that is injected/transmitted to the Transmission Connection;

"Final Nomination of Production " shall have the meaning issued on Article 7.5;

"Financial Institutions" shall mean any legal entity that ensures the debt financing or re-financing of the Seller for the design, procurement, construction, operation and maintenance of the Plant and to exercise its rights according to the Agreement for the Development of the Project and this Agreement, as well as their permitted successors, including every agent or administrator for any person or such persons and including a shareholder or affiliate of a shareholder;

"Event of a Force Majeure" shall mean any act or event that:

- (a) prevent the affected Party to perform its obligations according to the Agreement;
- (b) it is out of the reasonable control, and not as the result of the fault or the neglect, of the affected Party; and
- (c) the affected Party may not exceed such an act or event in exercising all the due cares and reasonable skills (including the expenses with reasonable amounts),

subject to the abovementioned conditions, **"Event of Force Majeure"** including but not being limited to the acts or events as follows:

- (i) non-operation of communications or computer systems of the TSO or the Party that impede the affected Party to comply the delivery or acceptance

- obligations;
- (ii) suspension of delivery or acceptance from the TSO or failure to comply from the TSO of the obligations of the affected Party regarding the Program;
 - (iii) natural phenomena, such as the storms, hurricanes, floods, earthquakes, volcanic eruptions, and tornadoes;
 - (iv) explosions or fires originating from storm [outside the parameters of the Plant's roof protection system] or other causes unrelated to the actions or inactions of the Party seeking to be excused from performance;
 - (v) acts of war, or public, civil disturbances, protests, riots, sabotage, epidemics, terrorist acts, rebellion;
 - (vi) strikes or labor disputes, (except of the strikes and labor disputes caused from the employee of one Party or as consequence of failure to respect from that Party of the collective labor contract).
 - (vii) partial or complete interruption of the operation of the Plant or a part of the Plant during the validity of the decision during a state of emergency to the territory of the Republic of Albania, or the local self-governing unit where the Plant is located; and
 - (viii) failure or inability to achieve positive results according to the detailed environmental impact assessment required by the Applicable Legislation and/or the requirements provided on Annex 21 of the Competitive Procedure Documents, which does not result from the Developer's failure to meet the legal requirements thereof and is not attributed to the illegal conduct or bad faith conduct from each Party.

on the condition that a Force Majeure Event does not include:

- (A) unavailability of labor force, equipment, materials, municipal services, or other resources (except in cases where unavailability arises as a consequence of Force Majeure Event);
- (B) economic or financial difficulties or lack of funds or inability to fulfill the obligation to pay in priority or on time or inability to obtain financing;
- (C) lack of materials necessary for the development, construction, or maintenance of the Plant (except in cases where the lack of materials arises as a consequence of Force Majeure Event);
- (D) strike, slowdown, or interruption of work affecting the employees of the Parties, their Affiliated Companies, or each of their respective agents or contractors caused solely by the employees of one Party or as a result of the failure of that Party to adhere to a collective negotiation agreement or applicable labor legislation; or
- (E) amendments of the respective market conditions for the sale of electricity or if any, the respective market of Generation Benefits;

"Funds from the Operation" shall mean the report of the funds from the operations

of the Plant to the Total Debt for the fiscal year;

"The Generation Benefits " shall mean all rights and benefits related to the issuance of origin guarantees and exemptions from all costs or Taxes, reimbursement rights, commercialized value or other rights of Production Supported on A and B as applicable, according to the Applicable Legislation.

"Best Industry Practice" shall mean the level of the skills and care that are expected in a reasonable and ordinary way from an experienced contractor with the same type of enterprises (design, engineering, construction, completion, testing, operation and maintenance) regarding the projects of the same size, scope, level, nature and complexity similar to the Plant;

"Governmental Approval" shall mean any approval, acceptance, consent, exclusivity, permission, certificate, decision, concession, license or authorization issued from or in behaviour of the respective Competent Authority;

"The Metering Point to the Connection to the Network" shall mean the point specified according to the Connection Agreement where the electricity flows and where the measurement takes place between the electricity infrastructure operated by the Seller to the Plant and the Transmission Network operated by the TSO, or the Distribution Network operated from the DSO;

"Transmission Network" shall mean the electricity transmission network that is owned and operated by the TSO to deliver electricity beyond the Metering Point;

"Distribution Network" shall mean the electricity distribution system that is owned and operated by the DSO to deliver electricity beyond the Metering Point;

"Independent Nominator" shall mean Resolution and Negotiation Center for the Disputes of Energy Community Secretariat, that acts in conformity with the Procedural Act 2018/5/EnC of Energy Community Secretariat;

"Non Effective" shall mean, regarding the Benefits of Generation, the event of one of the following cases or situation:

- (a)The Benefits of Generation have been, or is claimed to be, aligned from the lawful owner through illegal means, regardless of whether a good faith purchase would have been possible;"
- (b)The Benefit of Generation is cancelled for compliance purposes or is not accepted for compliance purposes according to the applicable system;
- (c)The Benefit of Generation is suspended or revoked from the Competent Authority, the Issuing Body or another competent body;
- (d)The certificate is not attributed for the Metered Production of the Plant,

and "Effectiveness" or other similar phrases shall be interpreted according to the case above;

"Internal Information" shall mean the information of accurate nature that is not public, that is directly or indirectly related with one or more products of wholesale electricity, and, if, shall be public, it may affect the prices of these electricity wholesale products as defined and according to the requirements of REMIT;

"The case of Payment Inability" shall mean regarding to a Party, that this Party:

- (a) has been dissolved (other than by way of consolidation, merger, or combination);
- (b) is not able to pay or to pay the debts or may damage, or accepts in the written form its inability in general to pay the due debts;
- (c) generally signs a transit agreement, an commitment or arrangement or to the benefit of its creditors;
- (d) initiates or has initiated against it a process requiring a decision for the declaration of the insolvency or its bankruptcy or any other relief under any law relating to insolvency or bankruptcy or any other similar law affecting the rights of creditors, or a petition is filed for its settlement or liquidation, and, if such a proceeding or petition is initiated, such process or request:
 - (i) results in a decision for the insolvency or bankruptcy or the issue of an order for a relief or the issue of the order for the closure or its liquidation; or;
 - (ii) is not withdrawn, dismissed, denied, suspended or limited in any case, within [thirty (30)] days from the initiation or the submission of this process or request;
- (e) there is a decision for its closure, management or obliged liquidation (other than a consolidation, merge or combination);
- (f) requests or is subject to the appointment of an administrator, provisional liquidator, maintenance person, receiver, trustee guardian, guardian, or similar official for it or for all or substantially all of its assets."
- (g) has a secured party to possess all the assets or the main ones or has limited measures, obligatory execution measure, seizure or another legal process under seizure, under implementation or it is filed a lawsuit to all the assets or the main assets and that the secured party owns or that process is not withdrawn, suspended, cancelled postponed, or limited, for each issue within thirty [(30) days] when; or
- (h) causes or is subject to any event with respect to it that, under the applicable legislation of any jurisdiction, has an effect similar to any of the events specified in points (a) through (g) (included);"

"Safety" shall have the meaning issued on Article 15;

"Invoice" shall have the meaning issued on Article 8.2;

"Invoice Date" shall have the meaning issued on Article 8.2;

"Issuing Authority" shall mean the respective Competent Authority, responsible for the issue of Generation Benefit;

"Intraday Market" shall have the meaning issued on the Market Rules and ALPEX Rules;

"Independent Provision" shall have the meaning issued on Article 7.17 (b); "Common Declaration" shall have the meaning issued on Article 6.1(a)(iii); "Law" shall mean (including the Tax):

- (a) any legislation (including common law system), statute, statute instrument, regulation, instruction, regulation or norm (on each case) of any Competent Authority (but for avoiding any doubt, only when having the force of the law);
- (b) any condition or other request for electricity license or any authorization, license, consent, permission or any other approval that is required from any Competent Authority (or any exclusion from such a request);

"Contracting Party for the Support of Last Resort" shall mean the company charged in conformity with the Applicable Legislation that shall issue the renewable energy producers the services for their road to the market with a reduced tariff in compare to the reference prices in the market for the II Trading Period;

"Licensed Supplier" shall mean the public operator charged with the public obligation for electricity purchase service and the capacity generated from renewable resources of wind and solar;

"Liquidity Assessment of the Intraday Market" shall mean the sufficient liquidity of Intra Day Market defined from ERE in conformity with the Best Industry Practices after performing the detailed assessment that verifies without restriction the compliance of at least the criteria as follows:

- (a) ability to nominate the amount at least one hour before delivery;
- (b) availability of a operational trading platform, that is providing auction based trading or continuous trading;
- (c) availability of intraday products that may be traded consistently with the settlement period of imbalances in the respective bidding zone;
- (d) the factor of the trading and consumed volumes, that is assessed considering and not not considering the quantities produced from the producer that used renewable resources (churn factor);
- (e) difference between the bidd-demand compared with similar markets of similar sizes and similar development level;
- (f) the number of active participants to the Intra day Market, specifically participation of local companies with a significant influence;
- (g) Intra-day Albanian Market Coupling with Intraday Markets of other states;

(h) any other criteria that ERE considers necessary to assess the Intra day Market liquidity.

"Market Readiness Assessment" shall mean;

(a) the establishment of the power exchange and the provision of balanced prices for the respective settlement period from the power exchange operator that are frequent and liquid as necessary to serve as reference variable prices to the Electricity Prices (Strike prices) to enable the financial settlement based to the difference between the variable and the fix price;

(b) readiness for the Day Ahead Market of Electricity shall be defined by the Competent Authority based on a detailed assessment of the Day Ahead Market, an assessment that shall not be later than [(12) calendar months after the establishment of the organized electricity market and is based on a number of main indicators, including, but not being limited to: (1) the volumes traded in the following commercial volumes regarding the physical size of the market (i.e churn factor); (2) delivery of the bids for the organized electricity market; (3) number and the part of the main market companies of electricity production in the Albanian market; (4) concentration of the electricity production market (e.x Herfindahl-Hirschman Index); (5) the number and the market part of the main retail suppliers of electricity; (6) market concetration in the supply sector (e.x Herfindahl-Hirschman Index); (7) availability of the purchasers, aggregators and dependent traders; and (8) market coupling with inter-related countries (referring on itself as "Criteria of Market Readiness Assessment" or "Criteria").

(c) (i) establishment of Renewable Energy Operator (OER) that shall be as a CfD party, according to the Applicable Legislation, as well as (ii) the condition for the regulation of organization issues for the companz and financial issues of OER, specifically the establishment of a operational mechanism for the definition and settlement of renewable energy obligation in conformitz with the Applicable Legislation or (iii) the condctions that ensure financial stability to be equal with the Safety Standards of Contracting Party Performance for Support [shall be effective for at least 3 months before CfD application].

"Market Event of the Market " shall mean each of the events as follows:

(a) failure of the Albanian Power Exchange (ALPEX) to announce or publish the necessary information to define the Respective Reference Price;

(b) unavailability of the temporary or permanent objects of the Reference Price;

(c) temporary or permanent closure of the Albanian Power Exchange (ALPEX);

(d) interruption or suspension or the set of an essential restriction over the future respective products or commodity products, provided by the Albanian Power Exchange (ALPEX) for the respective Reference Price;

(e) an essential amendment to the data or the composition or specifications of the Respective Reference Price (i) that are connected or involved to the futures or commodity contracts provided from the Albanian Power Exchange (ALPEX), or

- (ii) that are used from any respective financial institution to define the Reference Price to the collection of necessary information to define this variable price
- (f) an essential amendment to the approach of calculating the respective Reference Price in collecting the necessary information to define this variable price;
- (g) respective Reference price does not represent the real price of the wholesale market in the respective bidding area;
- (h) an essential decrease of Day Ahead Market liquidity on the Albanian Market Exchange (ALPEX);
- (i) the Albanian Power Exchange (ALPEX) ceases of being available for the Parties in the reasonable commercial terms; and/or
- (j) each of the above circumstances or events described at points (a) to (i) above the risk that may occur or be materialized.

"Measured Production " shall mean the electricity amount generated from the Plant for any measured hour and that is supplied to the Transmission Network as indicated from the Metering Device that is installed to the Metering Point according to the Applicable Legislation and the Connection Agreement;

"Metering Equipment" shall mean the certified metering equipments from the Competent Authority that are installed to a Plant to measure the produced energy from the Plant and that is delivered to the Metering Point at the location specified in details on Annex 1;

"Metering Point" shall mean the Metering Point to the Border of the Plant;

"MW" shall mean megawatt;

"MWh" shall mean megawatt per hour;

"Negative Differential Payment/Price" shall have the meaning issued on Article 16.1.(c);

"Negative Price Period" shall mean the period during which the Reference Price (the Hourly Price of Day Ahead Market) is less than 0.00 EUR /MWh;

"No-fault Settlement Event" shall have the meaning issued on Article 17.3;

"Nominated Production" shall have the meaning of the Supported Production that is nominated or considered to be nominated by the Seller for sale and delivery to the Contracting Party for Support that is nominated or considered from the Seller for sale and delivery to the Contracting Party for Support in conformity with Articles 7 and 8;

"Not accepted Amendment " shall have the meaning issued on article 17.2(i);

"Official Credit Rating" shall mean a credit rating (related to long-term, unsecured,

independent debt) from:

(a) Standard and Poor's;

(b) Moody's; or

(c) alternative or successor to one of the above rating agency, acknowledged by the industry, (agreed by the Parties where such an Agreement is not maintained or delayed without any reason);

"Financial Supervisory Authority" shall mean the regulatory authority of the financial markets in the Republic of Albania according to Law for Capital Markets;

"Condition of the Contracting Party for Support " shall have the meaning issued on Article 3.2;

"Non-compliance by the Contracting Party for Support" shall have the meaning issued on Article 17.1.;

"Loss of the Contracting Party for Support" shall mean the loss suffered by the Contracting Party for Support with the Settlement of this Agreement due to non-compliance of the Seller that covers:

(a) in case of settlement according to Article 17.2(a) or Article 17.2(b) the internal and external costs of the Contracting Party for Support connected with the engagement with the Seller in conformity with this Agreement according to the provision that shall comply the Conditions of the Seller; or

(b) in case of settlement according to Article 17.2.(c) up to 17.2(h)

(i) for the I Trading Period, the replacement costs connected to the performance of the replacement transactions for electricity that are not delivered (accompanied with the costs or expenses that relate to them); on the condition that these costs are demonstrated with reasonable evidences and sufficient documentation

(ii) for the II Trading Period, the loss from failure to pay the Differential Payments that the Supporting Party expected in a reasonable way that the Seller shall pay according to this undelivered Agreement (accompanied with the costs or expenses that relate to them), on the condition that these losses that are defined according to reasonable provisions and projections of the market reference prices and on the condition that they are demonstrated with reasonable evidences and sufficient documentation;

(c) on the condition that the Contracting Party for Support suffered a direct and demonstrative loss tghat is not fully compensated with the settlement compensation according to the Agreement for the Development of the Project, and;

(d) on the condition that total compensation to the Contracting Authority according to the Agreement for the Development of the Support and to the Contracting Party for Support according to this Agreement shall not exceed the maximum amount that corresponds to the amount of the Security Agreement.

"Operational Period" shall mean the period that initiates on 00:00 hour of the first day and immediately continues with the Commercial Operation Date and terminates with the closure of the Term or the settlement before the term of this Agreement according to its conditions;

"TSO" shall mean "[Transmission System Operator]", a company regulated and existing under the laws of the Republic of Albania, being the owner and operator of the Transmission Network, including its permitted general successors and permitted transferees;

"DSO" shall mean [Electricity Distribution Operator]", a company regulated and existing under the laws of the Republic of Albania, being the owner and operator of the Distribution Network including its permitted general successors and permitted transferees;

"Electricity Interruption" shall mean a continuous period of at least [two (2) hours] during which the Capacity of the Plant is reduced with ten percent (10%) or more;

"Owner's Guarantee" shall mean a guarantee, that is materially in the form guarantee specimen attached to Annex 2, that covers the maximum amount equal to the Credit Support Amount;

"Program/Schedule of the Planned Interruptions" shall have the meaning issued on Article 7.17 and as developed in details at the Albanian Transmission Network Code;

"Financial Criteria for the Performance Guarantee" shall mean the EBIT norms regarding the Interest, Funds from the Operations to the Total Capitalization, and the Net Material Value;

"Project" shall have the meaning issued to the Introductory Part A;

"Agreement for the Development of the Project" shall mean the agreement regarding the Development of the Project, that is signed between the Ministry of Infrastructure and Energy of the Republic of Albania and the [Bidder][Consortium] [■] and, the Seller, after its establishment;

"Balancing Rules" shall mean "Albanian Electricity Market Balancing Rules ", approved with ERE Board Decision no. 106, dated 02.07.2020;

"Price Differential" shall have the meaning issued to Article 11.1;

"Temporary Production Nomination" shall have the meaning issued on Article 7.4, implemented in combination with Article 7.6.

"Positive Differential of the Price" shall have the meaning issued on Article 16.1(b);

"Power Purchase Agreement" or "PPA" shall mean the Power Purchase Agreement between the Seller and the Contracting Party for Support, that shall be implemented during the I Trading Period, according to the respective implementation, until a Positive Readiness Assessment of the Market shall be performed, for the sale of electricity, produced from the Plant according to the terms and conditions in Session (B).

"Positive Readiness Assessment of the Market" shall mean the decision approved by ERE that defined the Market Readiness Criteria after the performance of Market Readiness Assessment, are complied and this decision is confirmed from a Common Declaration of the Parties according to Article 6.1.(a) (iii) or any disagreement of the Parties regarding this decision, it is settled according to the terms of Article 6.1.(a) (iv) of this Agreement.

"Return on Investment" shall mean an amount equal to Depreciated Capital Amount that is collected [] (%) for a period from the Final Term of Commercial Operation Date up to the first one from: i) Final Date or (ii) [] years from the Final Term of Commercial Operation Date; ¹

"Reference Measure" shall mean []²

"Reference Price" shall mean the hourly price of day ahead market for the respective settlement period, defined and published from the Albanian Power Exchange (ALPEX), or, in case of non-readiness of the Albanian Power Exchange (ALPEX), from the Replacement Index;

"Respective Production" shall mean:

- (a) in the event when the Plant is part of the Balancing Group of the Contracting Party for Support according to Article 7.8(a) and/or if the Contracting Party for Support ensures that a third party shall operate as a Balancing Group according to Article 7.8(b), Supported Production A;
- (b) in the event that the Seller selects the Balancing Group of another party according to Articles 7.13 up to 7.14, Supported Production B;

¹That shall be defined according to the data involved from the Selected Bidder at the Pre-Feasibility Study part of its KPP Proposal.

²That shall be defined according to the data involved from the Selected Bidder at the Pre-Feasibility Study part of its KPP Proposal.

“Required Bank Assessment” shall mean:

- (a) regarding Standard and Poor's assessment, an assessment at least A- or equal to it;
- (b) regarding Moody's assessment, an assessment of at least A3 or equal to it; or
- (c) regarding an assessment from any alternative assessment agency that is acknowledged to the industry or successor to one of the above, respective assessment equal to it (that is agreed from the Parties where such an agreement is not kept or delayed without justification);

"REMIT" shall mean the Applicable Legislation that is adopted by the Competent Authorities transposing and implementing EU Regulation no. 1227/2011 of the European Parliament and of the Council, dated 25 October 2011 on the electricity wholesale of market integrity and transparency and/or any EU other acquis related to its implementation;

“Renewable Energy Operator” shall mean the other party at the Contracts for Difference that is defined according to Law no. 4/2023 "On the promotion of using the renewable resources energy", as amended.

“Revocation” shall mean a case when:

- (a) the Benefit from Generation is issued, taken or collected before, and as consequence is revoked or declared in contrary with the Applicable Legislation from a Competent Authority or otherwise is abrogated;
- (b) any transfer of the Benefit from Generation is not valid or can not be implemented as Benefit from the Generation that is subject of the supposed transfer is object of a tariff, obligation, lien or is claimed from a third party;
- (c) the respective Issuing Authority, other Competent Authority or TSO refuse to issue or set available the Benefit of the Generation (or do not permit to be taken, accumulated or registered) when each Party in a reasonable way believes that the Plant, produced electricity from the plant, or each Party (according to the case) has the right of Generation Benefit (or that would have the right if each Party shall have respected the obligations according to this Agreement); or
- (d) the respective Competent Authority (including the Issuing Authority) or the TSO requires to the Beneficiant not to benefit, cancel or use the Benefit of Generation resulting that the Beneficiant has not benefited from the Generation Benefit on the date when the Generation Benefit could be benefited on reasonable ways;

"Session" shall mean a six (6) months period that terminates on 31 March or 30 September of each year;

"Seasonal Border" shall have the meaning issued on Article 5.2;

[SPV ENTITY FOR SPECIFIC PURPOSES] shall mean an entity [] established in Albania, registration no. [] and headquarters [] ;

"Programme" shall mean those necessary actions for a Party to perform the respective delivery or acceptance obligations, which may include nomination, program, notification, request and confirmation with the other Party, their respective defined agents and the authorized representatives, and the TSO according to the case, of Nominated Production, the Metering Point and any other definition of this Agreement in conformity with all applicable rules of the TSO and other applicable common practices and procedures of the industry, and "Programmed" and other similar expressions shall be respectively interpreted;

"Conditions of the Seller" shall have the meaning issued on Article 3.1;

"Non-compliance from the Seller" shall have the meaning issued on Article 17.2; "Loss of Seller no. 1" shall mean:

- (a) an amount equal to:
 - (i) all the debts and re-payment of applicable interests (including all the obligations for preliminary settlement, for the violations, penalties, rate exchange consequences) that the Seller shall pay to Financial Institutions (being them related to the old or the new debt, with or without a guarantee) for Capacity financing, plus
 - (ii) an amount equal to Investment Return for each year and the Depreciated Amount of the Capital [collected for a period equal to the lowest of: (i) 18 months or (ii) the remaining part of the original period of this Agreement, minus
 - (iii) any income from the ensurance issued from the Seller before the settlement date of this Agreement and is not spend yet for the restoration of the Plant; minus
 - (iv) the cash amount kept or on behalf of the Seller from the settlement date of this Agreement, including cash amount and the account balance for such a deposit, of securities, reserve amounts or guarantees;
- (b) that becomes payable if the Plant is not used to any other form in the free market.

"Loss of Seller no. 2" shall mean the loss suffered from the Seller in case of Settlement of this Agreement for Non-compliance from the Contracting Party for Support and the continuation of the Plant in the free market, covering:

- (a) for the I Trading period, the internal and external costs of the Seller related to the engagement of a contracting party for replacement support for the Supported Capacity, including the costs related to debt re-financing from the Financial Institutions, always according to the request that these costs shall be demonstrable, according to the evidences and the reasonable documentation, or
- (b) for the II Trading Period the internal and external costs of the Seller related to the engagement of a private party or other contracting party for the replacement of the financially settled agreement to replace the CfD support element for the Supporting Capacity, including the related costs to debt re-financing from the Financial Institutions, always according to the request that these costs shall be real, demonstrable directly related to the engagement of this contracting replacement party for the Supporting Capacity, and on the condition to be evidenced according to

reasonable evidences and documentation.

"Service Provider" shall mean a service provider that has an experience with (i) photovoltaic service of machineries that are installed on land, used to the Plant; (ii) the service of at least xxx MW installed capacity up to xxx MW. Supported Capacity, Installed Capacity; that has the necessary reliability to pay the availability guarantee according to the Availability Service Agreement;

"Availability Service Agreement" shall mean the availability and service agreement signed between the Seller and the Service Provider regarding the service, the operation or maintenance of the Plant;

"Location" shall mean the land that is selected from the Seller and is located in [] Albania and is described and which borders are further defined on [Annex 1] and where the Plant is located;

"Supply Period" shall mean the period initiating on the Testing First Date and closes with the finanization of the Term or pre settlement of this Agreement according to its definitions;

"Support Agreement" or "the Agreement" shall mean this agreement that includes the terms of the Electricity Purchase Agreement to physically settle the I Trading Period and the CfD Terms that are financially settled for the II Trading Period.

"Contracting Party for Support" shall mean the Contracting Party that is defined according to the Applicable Legislation and the Agreement for Support to act as a purchaser at the Electricity Purchase Agreement to physically liquidate the I Trading Period, or as the Contracting Party CfD at the Contract for Difference that is financially liquidated for the II Trading Period, and to which are implemented the general terms of this Agreement during the Term of the Agreement for Support, in combination with MB terms, for the I Trading Period or respective CfD conditions for the II Trading Period.

"Supported Production A" shall have the meaning issued to Article 8.2.(a)(i)(A);

"Supported Production B" shall have the meaning issued on Article 8.2 (a)(i)(B);

"Net Material Value" shall mean the amount of all cash contributions of the shareholders to the account of the share capital or any other capital account of the Contracting Party for Support or of other entity that is defined as substitute of the Contracting Party for Support regarding these purposes of the Contracting Party for Support and any other accumulated profit minus any accumulated loss that is kept and not material assets (including, but not being limited to the best name);

"Tax" shall mean any tax, levy, seizure, obligation, fee, or other similar nature payment

or withholding (including any penalty or interest to be paid in connection with any non-payment or delay in the payment of any such or similar item), including income tax and profit tax;

"Term" shall mean the period initiating from the Effectiveness Date and terminates fifteen [() years] after the Commercial Operation Date;

"Total Capitalization" shall mean regarding the respective period the amount of Total Debt and all the cash contributions of the shareholders that are paid to the capital account of the company or any other capital account of the Contracting Party for Support or any other entity that is defined as the substitute of the Contracting Party for Support for these purposes of the Contracting Party for Support;

"Total Debt" shall mean regarding the respective period the amount of financial debt for the loaned money (that includes payable debts to Associated Companies as well as the debt instruments to Financial Institutions) of the Contracting Party for Support or any other entity that is defined as a substitute of the Contracting Party for Support;

"Total Debt to Total Capitalization" shall mean the report of Total Debt to Total Capitalization for any fiscal year;

"Total Cost of the Project" shall mean []³;

"I Trading Period" shall have the meaning issued on Article 6.1(a);

"II Trading Period" shall have the meaning issued on Article 6.1(a);

"New Contracting Party for Support" ka kuptimin e dhënë në nenin 6.3;

"Transmission Line" shall have the meaning issued on KPP Documents;

"Unavailable Generation" shall mean the expected generation (in MWh) calculated according to the Reference Measure applicable during each Unavailable Period for Solar (solars) Plants during one Session;

"Unavailability Period" shall mean any period, except of the Period that is Considered Available, during which solar plants are not in operation or their power is reduced. To avoid any doubt, any maintenance that is scheduled to the Plant shall be considered as an Unavailable Period;

"Unplanned Interruption" shall have the meaning issued on Article 7.20 that is defined according to the Albanian Transmission Network Code;

³That is defined according to the data included by the Selected Bidder to the Pre-Feasibility Study, parts of its KPP Proposal.

"Wilful conduct" shall mean a willful action or non-action that deviates from a reasonable action or a provision of the agreement that is performed or is not performed knowing or neglecting or with the intention of causing harmful consequences that are avoidable and reasonably foreseeable; and

"Within Day Renewal GCT" shall have the meaning issued on Article 7.3(b);

"Year" shall mean a period of twelve (12) months that initiates on January 1 and terminates on December 31 of each year.

1.2 On this Agreement, only if the context requires otherwise:

- (a) the singular includes the plural or otherwise;
- (b) the reference for the gender shall not exclude the other genders;
- (c) the phrases for persons include natural persons, corporate bodies, associations and partnership (except when any of them has a specific legal personality);
- (d) the reference for any legal provision shall be considered to include any legal instrument, by-legal act, regulation, rule, effective legislation or delegated one or the instructuins, regulations and rules that are drafted according to it and any re-approval or further amendment;
- (e) the words shall "include", "others", "specifically", "for example" and similar words shall not limit in general the above words and shall be interpreted and shall be construed as if they were immediately followed by the words 'without limitation';"
- (f) the references for "writing" shall include the typing, printing, electronic transmission and fascimile and other ways of representation or re-production of the works in a visible form and expressions that deal with the writing that shall be interpreted in conformity with the circumstances;
- (g) the sections and the titles of the annexes, their content and the cover page are only for convenience of reference and shall not affect the interpretation or the draft of this Agreement;
- (h) unless said otherwise, references to articles and annexes are references to the articles and annexes of this Agreement, and references in any annex to paragraphs, sections, and schedules, unless otherwise specified, the references to the paragraphs, sections, and schedules of the annex or part of the annex in which such references appear;
- (i) the references of this Agreement are the references for this Agreement that are amended or changed time after time; and
- (j) the reference for any agreement, contract, document or act shall be interpreted as its reference according to the amendment that is completed or renewed time after time.

1.2 Annex 6 and any other additional annex are part of this Agreement.

(A) –GENERAL TERMS

2. COMMENCEMENT AND TERM

This Agreement becomes effective on the Effectiveness Date of the Project Development Agreement and remains effective to the termination of its Term except of the case when settled before the term according to the conditions of this Agreement.

3. CONDITIONS

3.1 The Seller shall:

- (a) sign the Project Development Agreement with the Contracting Party;
- (b) comply the Conditions of the Developer as defined on Article 2.12 of the Project Development Agreement as soon as possible in a reasonable way after the Effective Date and on each case not later than the Final Deadline Date of the Conditions.

(together with the "**Conditions of the Seller**").

3.2 The Contracting Party for Support shall ensure the Credit Support in favour of the Seller according to the requirements of Article 21 ("**The Condition of the Contracting Party for Support** ").

3.3 Each Party shall comply its respective conditions defined above as soon as practically possible after the Effectiveness Date and, on each case not later than the Final Deadline Date of the Conditions.

3.4 On the date on which the Seller is informed that one or more Conditions of the Seller are complied, the Seller shall inform in writing the Contracting Party for Support and shall submit to the Contracting Party for Support the evidence that shows this compliance as required from the Contracting Party for Support in a reasonable way.

3.5 The Parties accept and acknowledge that the Final Deadline Date of the Conditions shall be changed only in the circumstances as follows:

- (a) when the Seller and the Contracting Party for Support agree in the written form for another Final Deadline Date of the Conditions according to Project Development Agreement, or
- (b) when the Seller may not comply one or more of the Developer Conditions at the or before Final Deadline Date of the Conditions in case of or the circumstances defined on Article 2.15 of the Project Development Agreement,

where on these respective dates shall be agreed in the written form from the Developer and the

Contracting Authority or as it is postponed for a time-frame as the delay period to comply the respective Conditions of the Developer that are caused from these circumstances or events, that belong to the scope and according to Article 2.15 of the Project Development Agreement ("**Postpone Date of the Final Term of the Conditions**"). On these circumstances the references on this Agreement to the Date of Final Term of the Agreement Conditions shall be read as the reference to the Postpone Date of the Final Term of the Conditions. On the date on which the Developer is informed for the Postpone Date of the Final Term of the Conditions, he shall inform in the written form the Contracting Party for Support and shall submit to the Contracting Party for Support reasonable evidences according to the request of the Contracting Party for Support.

- 3.6 Any disagreement or conflict regarding the time-frame extension according to which shall be postponed the Final Deadline Date of the Condition according to Article 3.5. shall be handled in conformity with Article 21.

4. CONSTRUCTION AND COMMISSIONING

- 4.1 The Seller shall inform the Contracting Party for Support in the written form regarding:

- (a) the best possible provision when expected to occur the Date for the Initiation of Testing as soon as practically possible after the compliance of the Seller Conditions;
- (b) the best possible provision of the date when it is provided to occur the Commercial Operation Date as soon as practicably possible; and
- (c) the occurrence of the Commercial Operation Date, without delay when this happen.

- 4.2 The Seller shall inform the Contracting Party for Support in writing when is informed for the Commercial Operation Date can not be realized before the Targeted Commercial Operation Date, the notification that includes the reviewed Targeted Commercial Operation Date.

5. OPERATION, AVAILABILITY GUARANTEE

- 5.1 The Seller shall operate and maintain the Plant according to the Applicable Legislation, the respective Codes and Rules and the Best Industry Practices, to maximise the availability of the Plant and the Metered Production. On the condition that the Seller shall comply all the obligations in compliance with the Applicable Legislation, the respective Codes and Rules and the Best Industry Practices, the Seller shall met once (1) every six (6) months the Contracting Party for Support to discuss the commercial and operational issues regarding the Plant.

- 5.2 If, in every complete Year during the Supply Period, the Metered Production of the Plant is less than [] (%) ("**Availability Electricity Objective**") and the monthly Metered Production is less than [] of the provided production of the Plant for the respective

Session based on the monthly profiles defined on Annex 5 of this Agreement ("**Season Objective**") (both objectives referring together as the "**Availability Guarantee**") shall be considered as it occurred a compensation un-availability ("**Compensation Event for Unavailability**"). The Seller shall sign a Service and Availability Agreement within [] date. The Parties shall define the Energy Availability Target and the Season Objective, and to complete Annex 3 in conformity to the Service and Availability Agreement.

5.3 According to Article 5.2, in case of Compensation Event for Unavailability, the Seller shall pay to the Contracting Party for Support the liquidated compensations on the amount of [] for any MWh of Respective Production that is undelivered to the Availability Guarantee and according to the restrictions of Article 5.2 ("**Liquidated Damages of Energy Availability**"), as soon as practicably possible with the end of each Year. Upon occurrence of a Compensation Unavailability Event, the Seller shall provide written notice of such to the Support Counterparty. Parties shall complete Annex 4 in accordance with the Service and Availability Agreement.

5.4 Liquidated damages of Energy Availability regarding each Year:

- (a) shall have a maximum peak for each year in conformity with the formula and the table in Annex 4; and
- (b) shall be the only compensation for the Contracting Party for Support regarding the Compensation Case for Unavailability, excluding the other damages according to the contract, the legislation or any other basis.

6. MARKET RE- ORGANIZATION AND READINESS ASSESSMENT

6.1 The Parties accept and agree that the Albanian Electricity Market is on continuous restructuring process and as consequence:

(a) The Positive Market Readiness Assessment shall be concluded by ERE and is a preliminary condition for the implementation of the Conditions for the Contract for Difference in compliance to this Agreement. Initiating from the Effectiveness Date to the twenty (20) Date of Work (20 date is included) after the sign of the Common Declaration that accepts the result of a Positive Market Readiness Assessment, ("**I Trading Period**"), the Conditions and the Terms of MBE that shall be implemented. On the twenty one (21) day after the sign of the Common Agreement that accepts the result of a Positive Market Readiness Assessment to the termination of the Term ("**II Trading Period**"), the CfD Terms and Conditions shall be implemented. The Parties shall define the initiation of the **I Trading Period** and the transition from the implementation of **MBE Terms** to the implementation of CfD Terms in compliance with the procedure defined on this Article and the Common Declaration.

- (i) ERE shall perform the Market Readiness Assessment based on at least the criteria predefined on this Agreement, the Applicable Legislation and in conformity with the Best Industry Practices.

- (ii) The Contracting Party for Support shall submit the notification to the Seller to inform the initiation of the procedures by ERE for the Market Readiness Assessment and shall make the best efforts to ensure that the Seller is invited to submit its opinion regarding the Market Readiness Assessment, in the written form and a hearing session at ERE.
 - (iii) The Contracting Party for Support shall send the notification to the Seller to inform any positive decision approved by ERE, that defines the Market Readiness Assessment Criteria after the completed procedure of the Market Readiness Assessment, within five (5) Working Days from being informed regarding this Decision. The Parties shall, in good faith, discuss and agree if the results of Market Readiness Assessment are acceptable for them in conformity with the Best Industry Practices and the Applicable Legislation. For this purpose, the Parties shall draft a written report evidencing their attitude regarding Market Readiness Assessment. In case of a positive Decision by ERE regarding Market Readiness Assessment, the Parties shall sign a common declaration accepting the result (“**Common Declaration**”) (such a positive decision issued by ERE on this context, and confirmed from the Common Declaration referring as the “**Possitive Market Readiness Assessment**”).
 - (iv) Any disagreement between the Parties regarding the criteria and the results of Market Readiness Assessment (“Disagreement regarding Market Readiness Assessment”) shall be settled by the Expert and then implementing Article 28. In case of disagreements to ERE shall be the good faith efforts to reach an agreement regarding the common position, and then when possible, object ERE decision to the competent courts and international organizations according to the Applicable Legislation.
 - (v) For clarification, for the time the Disagreement regarding Market Readiness Assessment exists and is not settled in conformity with this Agreement, shall be considered the I Trading Period and continues even the Agreement for Support that shall be implemented as the Electricity Purchase Agreement.
 - (vi) Within twenty (20) Working Days after signing the Common Declaration, the Parties undertake all the steps and necessary measures to transpose I Trading Period to the II Trading Period, and as consequence, from the implementation of MBE Terms implementing CfD Terms.
- (b) The Supporting Party, may define a contracting party to transfer according to this Article and the Applicable Legislation.

6.2 The Contracting Party for Support may transfer this Agreement with or without the consent of the Seller to the Licensed Supplier, the Renewable Energy Operator or another

entity that is defined from the Competent Authority to act as the other party in this Agreement ("**The New Contracting Party for Support**"). The Contracting Party for Support shall inform the Seller for the date and the time of the entry into force of the transition of this Agreement to the New Contracting Party for Support. After this date and time, (a) according to Articles 6.3 and 5.8 as may be implemented, the Contracted Party for Support shall be charged of its obligations according to this Agreement, and (b) the New Contracting Party for Support shall consider all the obligations of the Contracting Party for Support according to this Agreement (all the references regarding "**the Contracting Party for Support**" on this Agreement shall be interpreted as references regarding "**the New Contracting Party for Support**").

6.3 In the event of transferring according to Article 6.2 above:

- a) The transferring Contracting Party for Support shall comply all obligations according to this Agreement until the New Purchasers becomes effective to this Agreement as the Purchaser;
- b) The transferring Contracting Party for Support and the New Contracting Party for Support shall jointly and individually respond to the Seller regarding the obligations of the Contracting Party for Support that have occurred prior to the transferring;
- c) In case and for the time that the New Contracting Party for Support do not comply the same Financial Criteria of the Performance Guarantee as the transferring Contracting Party for Support or has an Official Credit Assessment that is lower than the Official Credit Assessment than the transferring Contracting Party for Support at the time that this Agreement is transferred, the transferring Contracting Party for Support and the New Contracting Party for Support shall jointly and individually respond to the Seller regarding the obligations of the Contracting Party for Support according to this Agreement, except when the Seller agrees otherwise in the written form.

6.4 Any disagreement between the Parties regarding the Official Credit Assessment or the Financial Criteria of the Guarantee Performance of the New Contracting Party for Support shall be settled according to Article 28.

6.5 According to Articles 6.3 and 6.4, the Contracting Party for Support may sign an agreement with one or more Licensed Suppliers according to which the Licensed Supplier shall have the right that without the Approval of the Seller, to comply some or more of the obligations of the Contracting Party for Support according to this Agreement for part or whole I Trading Period.

6.6 Except of the agreement between the Contracting Party for Support and the Licensed Supplier referred to on this Article, the Contracting Party for Support shall remain the sole respondent to the Seller regarding all:

- a) obligations of the Contracting Party for Support according to this Agreement; and
- b) complied obligations or that shall be complied from the Licensed Supplier (including the violations of these agreements) on behalf of the Contracting Party for Support according to this Agreement as the Contracting Party for Support shall had complied or required to comply itself these obligations.

- 6.7 The Contracting Party for Support may define to replace the Licensed Supplier at any time, on the condition that:
- (a) The Licensed Supplier is financially (in case of transferring in conformity with Article 6.3 shall comply the Official Credit Assessment or the Financial Criteria of the Performance Guarantee) and technically capable to perform the role of the Licensed Supplier;
 - (b) The Contracting Party for Support shall submit to the Seller the prior notification in the written form to the appointment or replacement of the Licensed Supplier as soon as practicably possible;
 - (c) If required from the TSO or the Applicable Application, the Licensed Supplier becomes the registrar regarding the Metering Party.

(B)- TRADING PERIOD I – PPA TERMS

7. FORECASTS, NOMINATIONS, OUTAGES, BALANCING AND AVAILABILITY GUARANTEE

- 7.1 During the I Trading Period, the Seller shall ensure that all provisions and nominations made in accordance with this Article 7 shall be prepared according to Good Industry Practice and Applicable Legislation. In accordance with the provisions of Applicable Law, the following provisions of this Article 7 shall apply.
- 7.2 Not less than [fiveteen (15) Working Days] from the initiation of the Operational Period and every next year, the Seller shall submit to the Contracting Party for Support a non obligatory calculation of the Measured Production that is provided for the next year. The Seller shall make all the possible efforts to ensure that this provision shall be as accurate as possible. When the Seller review the provision to reflect an amendment to the expected Mettered Production, the Seller shall deliver to the Contracting Party for Support the reviewed provision as soon as practicably possible in a reasonable way.
- 7.3 According to the Applicable Legislation (including the Temporary Balancing Rules), the Parties acknowledge and accept that the term for:

- (a) the nominations performed according to Article 7.4 to the TSO is time from 10:37 to 14:00 for the D-1 ("Day Ahead -GCT"); and
- (b) the performed re-nominations according to Article 7.5 to the TSO from hour 18:00 to D-1 until 23:00 to D, sixty (60) minutes before the Delivery for each respective settlement period D ("Intraday re-nomination GCT").

7.4 No later than sixty (60) minutes before the Day-Ahead GCT, the Seller, in accordance with Good Industry Practice, shall submit to the Contracting Party for Support a nomination of its provided Current Production for each relevant settlement period on Day D ("Interim Production Nomination").

7.5 No later than sixty (60) minutes before the relevant Within -Day Renomination GCT, if the Seller provides a material change between the Interim Production Nomination and the current production of the Plant, the Seller shall submit to the Contracting Party for Support a renomination of its new provided Current Production for the relevant settlement period or any number of such periods on Day D ("Final Production Nomination").

7.6 Despite of Article 7.5, if the Seller:

- (a) does not perform the right according to Article 7.5; or
- (b) performs its right according to Article 7.5, but after the Intraday GCT Renomination,

Interim Nomination of Production shall be considered as Final Nomination of Production for the settlement period in D.

All settlement periods in Articles 7.3 to 7.6. are defined according to the effective market rules and the balancing rules. If these periods change, the the nomination terms and the respective settlement period shall be amended according to the new rules, maintaining the general principles according to the following articles.

7.7 The Responsible Party Balancing Group, shall perform or enable to be performed the nominations and re-nominations for the TSO for the Supported Production according to the nominations and re-nominations submitted from the Seller according to Articles 7.3 up to 7.6, on the condition that they may be amended from the Contracting Party for Support according to the Good Practice of the Industry.

7.8 During the I Trading Period, the Contracting Party for Support:

- (a) shall operate the Balancing Group where the Seller may participate; or
- (b) shall ensure that a third party shall operate the Balancing Group that complies the criteria of Article 7.9 where the Seller may participate.

(each Responsible Party of the Balancing Group"). The Responsible Party of the Balancing Group shall settle any imbalance between the Respective Production and the Final Nomination of Production. The Responsible Party of the Balancing Group shall not have the right to charge the Seller (and/or any third party) in a retroactive approach for any imbalance of the respective month, except when the imbalance is caused from the increased negligence or unlawful actions on his purpose regarding the submission of nominations and/or renominations.

7.9 The Responsible Party of the Balancing Group and the Seller shall reach an agreement regarding the balancing services in conformity with the Good Industry Practices defining above all, the tariffs and prices that the Responsible Party for the Balancing Group may be charged to the Seller according to the reasonable costs to provide the balancing services in conformity with Article 7.8 the tariff for the balancing services ("Tariff for the Balancing Services.) The tariff for the Balancing Services shall not be higher than the limit of [xxx EUR / MWh] provided at the special conditions of the Agreement, to the reachment of the Possitive Assessment of Intraday Market Liquidity.

7.10 If the Contracting Party for Support performs the right according to Article 7.8(b), it shall ensure that the Responsible Party of the Balancing Group shall transpose the costs for the balancing Services of the Seller transparently and according to open accounts in a measure equal to the limit of the Tariff for the Balancing Services according to Article 7.9.

7.11 When defined that a third party shall lead the Balancing Group according to Article 7.8(b), the Contracting Party for Support at any time shall make its reasonable efforts to ensure the Balancing Services in an efficient approach for the cost.

7.12 During I Trading Period, if the Supporting Contracting Party fails to ensure the Balancing services from a third party as a Responsible Party Balancing Group with the same or lower cost than the Balancing Services Cost Cap/Limit, the Parties agree to bidd the Balancing services. The Parties shall agree on any bidd conditions deemed necessary, and shall jointly agree on the selection of a third party based on the best competitive bid. The bidding price shall replace the agreed price, on the condition not to exceed the Balancing Services Cost Cap.

7.13 Without prejudice to the provisions in Articles 7.3 to 7.12, the Contracting Party for Support shall have the right to request the Seller to partially or fully reduce the production of the Plant for certain periods, including but not limited to cases of Network restrictions, periods of negative market prices, or periods of Force Majeure. Upon the request of the Contracting Party for Support, the Seller shall, as soon as practicably possible, provide the Contracting Party for Support virtual access to the Metering Device and any other installation at the Plant as may be reasonably considered by the Supporting Contracting Party to enable it to perform its own provisions regarding the potential production of the Plant.

7.14 The Seller shall have the right to ensure that the Plant becomes part of a Balancing Group operated by another party in accordance with Applicable Law. In the event that the Seller intends to exercise its rights under this Article 6.13, the Seller shall submit a written request to the Contracting Party for Support regarding this no later than sixty (60) Working Days prior to the Seller's exit date from the Balancing Group of the Purchaser as indicated in the request, accompanied by a Balancing Group Agreement with the other third party and the necessary agreements (if any) with the Purchaser and the TSO, which shall be signed by the Purchaser in accordance with Applicable Law to ensure the delivery obligations in accordance with Articles 8.2 (a) (i), (A) and 8.2 (a) (i), (B).

7.15 The Seller may at any time request to reintegrate the Plant into the Balancing Group of the Contracting Party for Support. To exercise this right, the Seller shall submit a written request to the Contracting Party for Support requesting re-entry no less than 180 (one hundred and eighty) days prior to the requested date for the reintegration of the Plant into the Balancing Group of the Contracting Party for Support.

7.16 From the date of approval of the exit request until the approval of a new request for the inclusion of the Plant in the Balancing Group of the Contracting Party for Support, the Plant shall be considered to have exited from the Balancing Group of the Purchaser, and Articles 7.8 to 7.12 shall not apply during this period.

7.17 In the event that the Plant is part of a Balancing Group operated by a third party selected by the Seller in accordance with Articles 7.13 to 7.14, the following provisions shall apply regarding the accuracy of the provision:

(a) Within one (1) month after the end of each calendar half-year of I Trading Period, the Seller shall make available to the Supporting Party the following data recorded by the Seller related to the accuracy of the Final Nominated Productions for the relevant settlement periods concerning the previous calendar half-year of I Trading Period:

(A) The current Mettered Production, mettered at the Metering Point for any settlement period, and

(B) Final Nominated Respective Production/Productions for any settlement period.

(b) Within one (1) month after the end of each calendar half-year of I Trading Period, and regarding this previous calendar half-year of I Trading Period, the Seller shall provide the Supporting Party with the provided production of the Plant for the same settlement periods from an independent industry expert who meets the criteria set forth in the paragraph below ("Independent Provision"). The Independent Provision shall follow the principles for preparing a provision in accordance with Market Rules and Applicable Law. The Independent Provision shall follow the principles for preparing a provision in accordance with Articles 7.4, 7.5, and 7.6, whereby both the Independent Provision provided by the independent industry expert and the Final Production Nomination provided by the Seller shall reflect power outages in the same approach in accordance with the Network Connection Agreement (but only to the extent that these

apply to directed outages).

(c) The criteria for the selection of the independent expert of the industry that the individual shall be:

(i) available and ready to act according to the conditions of this Article 7.17, within twenty (20) working days from the appointment;

(ii) the independent natural person to evidence the provisions for day ahead production of the market;

(iii) speaks sufficiently fluent the english language to perform the provision of the day ahead and to submit it on the english language; and

(iv) may be settled from a group of experts regularly engaged from the Seller, on the condition that such an engagement may not establish any conflict of interest to act as the Foreseen/ Provided Bidder of Day Ahead production.

(d) If regarding any calendar year, the variable between the Final Nomination of Independent Production and Provisions is higher than the [] % in percentage, but lower the Non-acceptable Variance, the Seller shall pay to the Supporting Party as the only and final compensation [] EUR / MWh] pfor this variable.]

7.18 No less than fifteen (15) Working Days prior to the commencement of the Operational Period and any subsequent anniversary, the Seller shall submit to the Contracting Party for Support the program specifying each proposed Interruption for the following year, including details regarding the amount by which the Plant's Capacity shall be reduced and the nominated times and dates of these Interruptions (the 'Planned Interruption Program').

7.19 The Planned Interruption Program shall include information regarding each Interruption:

(a) brief details of the reason for the Interruption;

(b) the expected initiation day and expected duration of the Interruption;

(c) partial or reduced operation during the Interruption and any expected reduction in electricity generation (lower than normal levels) following the completion of the Interruption and the duration of this reduction; and

(d) ndryshimet për çdonjerën nga Ndërprerjet e njoftuara më parë lidhur me sa më sipër.

changes to any previously notified Interruptions related to the above."

7.20 The Seller may modify the Planned Interruption Program for each year, before or during the year, provided that it does so as much as reasonably possible in advance of the planned Interruption included in the Planned Interruption Program that shall be reviewed according to the change and submit it to the Contracting Party for Support, and if required by the Applicable Legislation, simultaneously notify other market participants of the change as early as reasonably possible, taking into account any reasonable statements made by the Contracting Party for Support (provided that the Parties agree that any decision regarding the scheduling of the Planned Interruption solely belongs to the Seller)."

7.21 The Seller shall make reasonable efforts to minimize the number and duration of any Interruption not included in the Planned Interruption Program ('Unplanned Interruption') occurring during the Operational Period. The Seller, as soon as practically possible after the occurrence of an Unplanned Interruption during the Operational Period, shall notify the Contracting Party for Support and, if required by the Applicable Legislation, simultaneously notify other market participants regarding the Unplanned Interruption and shall use all reasonable efforts to correct the Unplanned Interruption in accordance with Good Industry Practice. When notifying the Contracting Party for Support regarding the Unplanned Interruption, the Seller shall also inform the Contracting Party for Support of its best provision for the potential duration of the Unplanned Interruption."

8. SALE AND PURCHASE OF ELECTRICITY AND TRANSFER OF GENERATION BENEFITS

8.1 During the Testing Period, the Contracting Party for Support, by notifying the Seller, may choose to purchase and accept any Supported Production generated by the Plant at the Electricity Price. If the Contracting Party for Support does not choose to purchase the Measured Production during the Testing Period, the Seller may offer the Measured Production in the free energy market in accordance with the electricity market rules and Applicable Legislation. This may include, without being limited, the Seller's right to participate in auctions for the sale of electricity to cover Transmission Network losses in accordance with Applicable Legislation.

8.2 During the Operational Period:

(a) The Seller:

(i) operates the Plant in conformity with the Good Industry Package to maximise the Respective Production from the Plant; and

(A) if the Plant is part of a Balancing Group operated by the Contracting Party for Support or a third party selected by the Contracting Party for Support in accordance with Articles 7.8 (a) or 7.8(b) and Articles 7.9 to 7.13, it sells, schedules, and delivers, at the Measuring Point, the Measured Production for each measured settlement period ("Supported Production A");

(B) if the Plant is part of a Balancing Group operated by a third party selected by the Seller in accordance with Articles 7.13 to 7.14, it sells, schedules, and ensures that the TSO delivers at the Delivery Point, up to and including (but not exceeding) the Final Nomination of Production in relation to the provided Measured Production for each settlement period (“Supported Production B”);

(b) Contracting Party for Support:

(i) If the Plant is part of a Balancing Group operated by the Contracting Party for Support or a third party selected by the Contracting Party for Support according to Articles 7.8 to 7.13, it accepts at the Metering Point the Supported Production A and pays the Electricity Price for each MWh of the delivered amount;

(ii) If the Plant is part of a Balancing Group operated by a third party selected by the Seller in accordance to Articles 7.14 to 7.18, it accepts at the Delivery Point the Supported Production B and pays the Electricity Price for each MWh of the delivered amount.

8.3 The ownership rights and all associated rights, as well as the risk of losses related to Supported Production A or Supported Production B, as applicable, shall transfer to the Contracting Party for Support after delivery at the Metering Point or the Delivery Point, as applicable. According to Article 7.20 and the Connection Agreement:

(a) The Seller is responsible for any cost or payment charged or associated with the Program, the transmission, and the delivery of Supported Production A or Supported Production B, as applicable, up to the Measurement Point or the Delivery Point, as applicable; and

(b) The Contracting Party for Support is responsible for any cost and payment charged or associated with the acceptance and transmission of Supported Production A to and from the Measurement Point. In accordance with Article 8, the Seller agrees to transfer or make available to the Contracting Party for Support all Generation Benefits collected during or related to Supported Production during 1 Trading Period.

8.4 The Seller undertakes that the Supported Production and Generation Benefits delivered, transferred, or set available to the Contracting Party for Support according to this Agreement shall be sold without charge (for free), obligation, encumbrance, or from the claims of any third party. In the event of a breach of this obligation by the Seller, without prejudice to any protective remedy of the Seller under this Agreement or Applicable Legislation and the rights of the Contracting Party for Support under this Agreement or Applicable Legislation, the Contracting Party for Support may determine its direct, actual, reasonable, and evidenced loss related to it and notify the Seller thereof. The notification shall include details of the calculation of this loss and any relevant supporting document. Within five (5) Business Days from the receipt of such notice (accompanied by a valid Invoice) by the Contracting Party for Support, the Seller shall compensate the Contracting Party for Support for the notified loss.

8.5 If the Generation Benefit is or becomes Ineffective or is no longer valid, the following shall apply:

(a) when the Generation Benefit is or becomes Ineffective or is no longer valid as a result of an action or inaction by the Contracting Party for Support, then the Contracting Party for Support shall have no claim to the Seller regarding this;

(b) when the Generation Benefit is or becomes Ineffective or is no longer valid as a result of an action or inaction by the Seller, then the Seller shall either:

(i) replaces this Generation Benefit within twenty (20) Working Days; or

(ii) pays to the Contracting Party for Support an amount equal to the direct, actual, reasonable, and evidenced loss incurred by the Contracting Party for Support as a result of the Seller's failure to deliver the effective Generation Benefit.

8.6 The Purchaser accepts that the Metered Production and some of the Generation Benefits may change depending on the prevailing climatic conditions at or near the Plant and that nothing in this Agreement is intended to create liability for the Seller to the Contracting Party for Support as result of the Plant's failure to generate the Nominated Production.

9. METERING AND THE DATA

9.1 According to Article 9.2, the readings of the Metering Equipment are final regarding the production amount delivered at the Metering Point and the TSO, according to the Connection Agreement, responsible to take the measures of delivered production at the Metering Point in conformity with the Good Industry Practices. Each Party shall have the right to participate at the reading of the Metering Point. [Clarification Note: For clarification shall be installed a specific metering equipment for the Supporting Capacity. When the Project includes existing or additional parts of installed capacity that exceeds the Supporting Capacity, a specific metering equipment shall be installed for that other part.]

9.2 According to Article 9.1, if the Metering Equipment is not operational, or it is observed not accurate according to Article 9.4, or it is agreed that it registers not-accurate Metering Production, the Seller shall define that the Metering Production in a reasonable commercial approach in conformity with the Good Industry Practices, referring to the amount delivered during the periods with similar sun conditions when the Metering Equipment registered accurate Metering Production.

9.3 Each Party and its Consultants and representatives have the right to participate at any test that shall be performed by or under the monitoring of the TSO or other testing authorities that are certified to verify the accuracy of the measures and the registration of the Metering Equipment. The Seller shall issue to the Contracting Party for Support the prior notification in the written form in a reasonable way before the date when such a test is performed.

9.4 According to the provisions of the Connection Agreement of the Albanian Transmission Network Code, the Parties shall acknowledge and accept that they shall undertake the steps as follows for the settlement of the disputes regarding the accuracy of the Metering Equipment or to define the Metered Production in Conformity with Article 9.2:

(a) if any of the Parties objects the accuracy or the status of the Metering Equipment, this Party advises the other Party in the written form, providing in reasonable details the basis regarding this disagreement;

(b) The non-objection party, within ten (10) Working Days from receiving this notification from the objection Party, shall advise this Party in the written form regarding its position for the accuracy of the Metering Equipment and provides the reasons to maintain this position;

(c) If the Parties are not able to agree regarding the accuracy of the situation of the Metering Equipment or to define the Seller, each Party may require additional testings of the Metering Equipment from the TSO or other testing authorities that are authorized or certified from it;

(d) if the Metering Equipment is observed to be within the accuracy thresholds provided by the Applicable Legislation, any previous registration of the Metering Equipment is considered valid, and the Party requesting the measurement testing pursuant to Article 9.4(c) bears the costs of the inspection and testing of the Metering Equipment as described in Article 9.4(c); and

(e) if the Metering Equipment is found to be out of the the accuracy thresholds provided by the Applicable Legislation or if this Metering Equipment for any reason does not operate or register, then:"

- (i) the seller immediately requires that the Metering Equipments are found inaccurate shall be substituted from the TSO, repaired or to be adjusted from the company to correct this inaccuracy;
- (ii) The Parties shall estimate the accurate amounts of production delivered at the Mettering Equipment during the periods affected by this inaccuracy, service interruption, or no -registration according to Article 9.2; and
- (iii) The Seller shall bear the cost of the inspection and testing of the Metering Device performed according to Article 9.4(c).

9.5 If, as result of the adjustments according to Article 9.4, the Billing Statement for any period decreases, the resulting amounts shall be included in the subsequent Billing Statement issued according to Article 8, through compensation or reduction of these amounts from the payment obligations of the Contracting Party for Support under this Agreement."

9.6 If, as result of any adjustment according to Article 9.4, the Billing Statement for any period is increased, the resulting amounts shall be involved in the subsequent Billing Statement issued according to Article 8 as an additional cost item."

(B)- TRADING PERIOD II – CFD TERMS

8. CONDITIONS

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

9. FINANCIAL SETTLEMENT

- 9.1 During the Trading Period II,
- (a) if the Electricity Price is higher than the Reference Price, the Support Counterparty shall pay to the Seller for each settlement period the product of:
- (i) an amount equal to the financial difference between the Electricity Price and Reference Price (**positive "Price Differential"**), calculated for the relevant settlement period, and
 - (ii) the Contract Quantity for the relevant settlement period.
- (b) if the Electricity Price is lower than the Reference Price, the Seller shall pay to the Support Counterparty for each settlement period the product of:

- (i) an amount equal to the financial difference between the Reference Price and the Electricity Price (**negative "Price Differential"**), calculated for the relevant settlement period, and
- (ii) the Contract Quantity for that relevant settlement period.

9.2 The Price Differential shall be calculated by the Seller for the relevant settlement period and promptly notified to the Support Counterparty by written notice not later than 3 (three) Business Days from such calculation.

9.3 When option (b) is chosen based on nominations for determining the Contract Quantity at the request of Support Counterparty articles 7.17 regarding the Independent Forecast, *mutandis mutandis*.

10. NEGATIVE PRICING

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

10.2 Any Curtailment during a Negative Price Period shall be included in excused hours for the purposes of the Availability Guarantee, and allowed production for the purposes of the Performance Guarantee.

11. MARKET DISRUPTION

11.1 If at any time, either Party reasonably believes that a Market Disruption Event has occurred, that Party shall promptly notify the other Party and the Parties shall promptly meet and endeavour to agree upon an appropriate amendment to or replacement of the applicable Reference Price necessary to ensure that the amended or replacement index reflects, as closely as possible, the methodology, basis of calculation and liquidity of such Reference Price (a "**Replacement Index**").

11.2 Any Replacement Index must meet the following criteria:

- (a) in case of electricity, it must publish price information for the bidding zone to which the Facility belongs and have due regard to the extent to which the physical location of the Facility and constraints on the delivery of electricity into the market thereby imposed may have on the price for the sale of electricity delivered in that bidding area;
- (b) in case of GoO, if applicable, it must publish price information for the same generation type as the Facility, and if such information is not available, the same country as the Facility;

- (c) the underlying data used to compile or prepare such index: (i) must be subject to reasonable procedures to ensure its accuracy and completeness; (ii) must be retained by the administrator of such index for a minimum period of two (2) years following its publication such that it is capable of audit; and (iii) consist only of verifiable transaction data and exclude data which is the product of subjective judgement; (d) the methodology used by the administrator to prepare such an index is appropriately documented; (e) it must reflect a sufficient volume of trades from a sufficient number and diverse range of market participants; and (f) it must be available to the Support Counterparty on commercially reasonable terms.

11.3 If at the expiry of three (3) months following the date of notice under article 13.1, no agreement has been reached in relation to the necessary amendments to the Reference Price or the Replacement Index, either Party shall be entitled to refer the matter for Expert Determination in accordance with point 28.

12. DELIVERY AND ACCEPTANCE OF GENERATION ATTRIBUTES

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

13. PROVISIONS FOR ROUTE-TO-MARKET ARRANGEMENTS

- 13.1 In Trading Period II, the Seller shall be offered the option of entering into a route-to-

market services agreement with a Last Resort Support Counterparty in accordance with the Applicable Laws, and which provides services for routing the Contract Quantity on the market for a discounted price equal to [eighty (70-80)%] of the Reference Price for the relevant settlement periods.

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

(D) – GENERAL TERMS

14. PRICE AND PAYMENT

- 14.1 In respect of each month in the Supply Period, the Seller shall prepare and issue to the Support Counterparty within [ten (10)] Business Days of each month a monthly statement ("**Billing Statement**") setting out:

- (a) In Trading Period I, the sum of Relevant Output for the relevant month multiplied by the Electricity Price ("**Electricity Payment**") due from the Support Counterparty to the Seller;
- (b) The product of the Price Differential and the Contract Quantity calculated in accordance with article 9.2(a) for the relevant month ("**Positive Differential Payment**") due from the Support Counterparty to the Seller;
- (c) The product of the Price Differential and the Contract Quantity calculated in accordance with article 9.2(b) for the relevant month ("**Negative Differential Payment**") due from the the Seller to the Support Counterparty;
- (d) any payment due from the Seller to the Support Counterparty as a consequence of the transfer of Generation Attributes in accordance with article 8;
- (e) any payment to be made in accordance with point 9.6;
- (f) the Balancing Services Charge from the Seller to the Support Counterparty, if applicable;
- (g) Energetic Availability Liquidated Damages from the Seller to the Support Counterparty;
- (h) any other amounts accruing to either Party under any other provision of this Agreement;
- (i) any aggregate of the amounts payable by the Support Counterparty to the Seller less any amounts payable by the Seller to the Support Counterparty as set out under article (a) (i)(inclusive).

- 14.2 The Seller shall provide the Support Counterparty with an invoice in respect of each Billing Statement (each an "**Invoice**") not later than [ten (10)] Business Days after the issue of the relevant Billing Statement (each, an "**Invoice Date**"), commencing on the first Invoice Date to occur after the commencement of the Supply Period.

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

15. TERMINATION

- 15.1 The Seller may terminate this Agreement immediately by written notice to the Support Counterparty if any one or more of the following has occurred or is continuing:
- (a) the Support Counterparty has not met the Support Counterparty Condition by the Condition Longstop Date or Extended Condition Longstop Date (the latter only if applicable);
 - (b) the Support Counterparty has failed to pay any undisputed amount due and payable under this Agreement which exceeds the Credit Support Amount within [thirty (30)] days of receiving notice requiring payment of such overdue amount from the Seller;
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- (c) the Support Counterparty is involved in Wilful Misconduct, or commits a material breach of any of its obligations under this Agreement, which material breach is incapable of remedy;
- (d) without prejudice to articles 17.1(a) and 17.1(c), the Support Counterparty is in material breach of any undertaking under article 25, or is otherwise in breach of any of its material obligations under this Agreement, which breach is capable of remedy and which the Support Counterparty has failed to remedy within [sixty (60)] Business Days of having been required in writing by the Seller to remedy such breach;
- (e) the Support Counterparty has failed to provide or to maintain any necessary Credit Support, or any Credit Support provided ceases to be in full force and effect pursuant to article 21;
- (f) the Support Counterparty suffers an Insolvency Event or takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any Insolvency Event;
- (g) the Support Counterparty transferred this Agreement to another subject in accordance with articles 6.3 and 6.4, but such subject does not fulfil the Official Credit Rating and the Performance Assurance Financial Requirements or otherwise is in breach of article 6.4;
- (h) the Support Counterparty is not complying with material terms of an arbitration award rendered pursuant to article 28,

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

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

- (a) subject to approval by the Contracting Authority, the Seller has not met the Seller Conditions or has not achieved Commissioning by the Commercial Operations Longstop Date as required under the conditions of this Agreement;
- (b) the Seller has failed to pay any undisputed amount due and payable under this Agreement within [thirty (30)] Business Days of receiving notice requiring payment of such overdue amount from the Support Counterparty;
- (c) the Seller is involved in Wilful Misconduct or commits a material breach of any of its obligations under this Agreement, which material breach is incapable of remedy;
- (d) without prejudice to articles 17.2(a) and 17.2(c), the Seller is in material breach of an undertaking, warranty or representation under article 25, or is otherwise in material breach of any of its obligations under this Agreement, which material breach is capable of remedy (disregarding time of performance) and which the Seller has failed to remedy within [sixty (60)] Business Days of having been required in writing by the Support Counterparty to remedy the relevant material breach;
- (e) the Seller suffers an Insolvency Event or takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any Insolvency Event;

- (f) the Project Development Agreement is terminated in accordance with point 11.4(a) of the Project Development Agreement;
- (g) Seller is not complying with the material terms of an arbitration award rendered pursuant to article 23;
- (h) If, in two (2) consecutive [six (6)] month periods on a rolling basis, the following occurs:
 - (i) the aggregate Energetic Availability of the Facility is below seventy per cent (70%); and
 - (ii) the Metered Output at the Delivery Point is below seventy per cent ([70]%) of the estimated Facility output for that [twelve (12)] months period based on the Seasonal Target profile set out in Annex 5 of this Agreement,
- (i) If, in case of the Facility being party to a Balancing Group operated by a third party selected by the Seller in accordance with articles 7.13 to 7.14, in respect of any calendar year the aggregated variance between the Final Nominated Outputs and the Independent Forecasts are higher than [] per cent ([]%) (the "**NonAccepted Variance**").

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

- 15.3 A Party may terminate this Agreement immediately by written notice to the other Party if it is entitled to do so for an extended event of Force Majeure (as determined under article 20.3) ("**No-Fault Termination Event**").
- 15.4 All amounts outstanding under the Agreement but not yet due and payable at the time of receipt of a notice of termination shall become due and payable within [ten (10)] Business Days of receipt of a notice of termination. During the period (if any) between written notice of termination being given and termination occurring, the delivery obligations of the Seller under the Agreement and the Support Counterparty's payment obligations in respect of such delivery shall be unaffected.
- 15.5 Termination of this Agreement by either Party shall not affect any of the rights, remedies or obligations of either Party that have accrued prior to such termination or any of the provisions of this Agreement that are expressly or by implication intended to survive termination, including without limitation any indemnities given under this Agreement to the extent the same relate to a liability accrued prior to termination of the Agreement, this article 17 and each of articles 8, 10, 19, 26, 27, 28 and 29.
- 15.6 The rights of the Support Counterparty to terminate this Agreement shall be subject to the deferral and other rights in favour of the Financing Institutions set out in the Direct Agreement as may apply in respect of the Facility.
- 15.7 The Support Counterparty's shall notify the Financing Institutions in writing should it reasonably anticipate taking action pursuant to this article 17 by providing such details as may be required pursuant to the terms of the Direct Agreement.

16. COMPENSATION ON TERMINATION

- 16.1 Where this Agreement is terminated by the Seller for a Support Counterparty's Default in accordance with article 17.1, then
- (a) as soon as reasonably practicable after termination the Seller shall calculate the Seller Loss 1 or 2, as relevant, that it has suffered as a result of such termination, and shall send the Support Counterparty an invoice for the amount so calculated;
 - (b) the Support Counterparty shall pay to the Seller an amount equal to such Seller Loss 1 or 2, as relevant, within [sixty (60)] Business Days of receiving the invoice;
 - (c) any late payment shall bear interest in accordance with Applicable Laws (save in respect of sums which are the subject of a bona fide dispute, in which case the undisputed amount shall be paid, and any adjustment payment following resolution under article 28 in respect of the disputed amount only shall bear interest);
 - (d) the right to receive such payment (if any) shall (without prejudice to article 19.1) be the Seller's exclusive remedy for losses caused to it by such termination.
- 16.2 Where this Agreement is terminated by the Support Counterparty for a Seller Default in accordance with article 17.2:
- (a) as soon as reasonably practicable after termination, the Support Counterparty shall calculate the Support Counterparty Loss it has suffered as a result of such termination, and shall send the Seller an invoice for the amount so calculated;
 - (b) the Seller shall pay to the Support Counterparty an amount equal to the Support Counterparty Loss within [sixty (60)] Business Days of receiving the invoice;
 - (c) any late payment shall bear interest in accordance with Applicable Laws (save in respect of sums which are the subject of a bona fide dispute, in which case the undisputed amount shall be paid, and any adjustment payment following resolution under article 28 in respect of the disputed amount only shall bear interest);
 - (d) the right to receive such payment (if any) shall (without prejudice to article 19.1) be the Support Counterparty's exclusive remedy for losses caused to it by such termination.
- 16.3 In the event that the Seller Loss or the Support Counterparty Loss shall be contested or disputed, article 28 shall apply.
- 16.4 Each Party shall bear its own losses in the event that this Agreement is terminated for a NoFault Termination Event.

17. LIABILITY

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

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

18. FORCE MAJEURE

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

- 18.3 Subject to article 6, either Party may immediately terminate this Agreement at any time by written notice to the other Party if a Force Majeure Event prevents the affected Party from fulfilling its obligations under this Agreement for a consecutive period exceeding [twelve (12)] months. Such termination shall be effected in accordance with article 17.3.
- 18.4 Subject to articles 20.3 the Term shall be extended on a day-for-day basis where any Party suspends their obligations under this Agreement due to a Force Majeure Event under this article 20.
- 18.5 The Term shall not be extended in case the Seller receives from the Contracting Authority an amount equal to the Availability Payment in accordance with article 17 of the Project Development Agreement.
- 18.6 Where the Seller is the Party affected by the Force Majeure Event and the relevant Force Majeure Event reduces the Capacity of the Facility, the Support Counterparty may only terminate this Agreement if the Seller, in accordance with Good Industry Practice, fails to reinstate the Facility over the continuous [twelve (12)] months period immediately following the occurrence of the Force Majeure Event.
- 18.7 No obligation to pay damages pursuant to this Agreement will accrue to the affected Party with respect to those Nominated Quantities and Generation Attributes not delivered or accepted due to the occurrence of Force Majeure Event.

19. CREDIT SUPPORT

- 19.1 Notwithstanding any transfer of this Agreement or any right or benefit provided to a New Support Counterparty according to article 5 of this Agreement, the Support Counterparty shall ensure, from the Conditions Longstop Date (or, as it may be, the Extended Conditions Longstop Date) until the end of the Term, that valid Credit Support is maintained in favour of the Seller in an amount not less than the Credit Support Amount.
- 19.2 The Parties understand that:
- (a) the form of a Bank Guarantee will ultimately depend on the form requested by the issuing bank, as agreed to by the Seller;
 - (b) the duration of a Bank Guarantee is usually up to [two (2)] years of the date of its issuance and, consequently, the Support Counterparty undertakes, on a rolling basis until the date specified in article 21.3 and no later than [fifteen (15)] Business Days of the date of expiry of the then existing Bank Guarantee, to obtain a replacement Bank Guarantee.
- 19.3 Where either:
- (a) an Insolvency Event occurs in respect of the Support Counterparty;
 - (b) any Credit Support is provided in the form of a Bank Guarantee and the Credit

- Support Provider of the Bank Guarantee ceases to hold at least one Official Credit Rating equivalent to or higher than the Required Bank Rating; or
- (c) Credit Support is provided in a form agreed between the Parties other than a Bank Guarantee or Owner Guarantee and any on-going conditions or assumptions agreed between the Parties in respect of such Credit Support are breached or are no longer applicable.

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

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

20. INSURANCE

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

21. SUBCONTRACTING AND ASSIGNMENT

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

22. CHANGE IN LAW

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

- a) renders it impossible or unlawful to give effect to this Agreement;
- b) renders any material matter required to be ascertained under this Agreement impossible to ascertain;
- c) causes the provisions of this Agreement to become inconsistent with Applicable Laws (including where any word or expression defined in this Agreement is defined by reference to its meaning in any Applicable Laws);
- d) introduces, replaces, modifies or extinguishes Generation Attribute or otherwise the Revocation Event has occurred as a consequence of a Change in Law; or
- e) (without prejudice to articles 24.1(a) to 24.1(d) inclusive above) severely and adversely affects the benefit of this Agreement to either or both of the Parties, then that Party may serve a notice on the other Party requesting that the Parties shall meet to discuss such circumstances and shall, in good faith, seek to agree the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the Effective Date. If an event may be determined as both an Ineffectiveness and a Change in Law, it shall only constitute a Change in Law.

22.2 If the Parties are unable to agree pursuant to article 24.1, then either Party may refer the issue to the Energy Community Secretariat's Dispute Resolution and Negotiation Centre for determination of the amendments which should be made to this Agreement as are necessary to achieve (in so far as possible) the same balance of benefits, liabilities, risks and rewards between the Parties in respect of the subject matter of this Agreement as applied at the Effective Date. Where a matter has not been settled within [sixty (60)] Business Days (or such other time as the Parties may agree) of its referral to mediation by the Energy Community Secretariat's Dispute Resolution and Negotiation Centre, either Party may initiate international arbitration in accordance with article 28.5.

22.3 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 article 24.

22.4 Where an agreement or determination under article 24.1 or 24.1 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.

22.5 Without prejudice to the other provisions of this article 24, the Parties agree that:

- (a) neither Party shall be liable to the other Party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law (and such circumstance shall constitute a Force Majeure Event);

- (b) subject to article 24.5(a) the occurrence of a Change in Law will not of itself constitute a Force Majeure Event or otherwise entitle either Party to suspend or terminate its obligations under this Agreement;

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

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

23. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

- 23.1 Each Party undertakes that (for the duration of this Agreement) it will:

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

- 23.2 The Seller represents and warrants to the Support Counterparty that, as at the Effective Date (which representations and warranties are deemed to be repeated by each Party on commencement of the Supply Period):

- (a) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
- (b) it has the power:
 - (i) to execute this Agreement and any other documentation relating to this Agreement to which it is a party (including the Direct Agreement);
 - (ii) to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver; and

- (iii) to perform its obligations under this Agreement and has taken all necessary action to authorise that execution, delivery and performance;
- (c) the execution, delivery and performance referred to in article 25.2(b)(iii) do not violate or conflict with any Applicable Laws, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally;
- (e) no Event of Default (or event which with notice and/or lapse of time would constitute an Event of Default) has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under this Agreement;
- (f) no litigation, arbitration or administrative suit or proceeding before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in such Party's financial condition or its ability to perform its obligations under this Agreement, or that is likely to affect the legality, validity or enforceability against it of this Agreement; and
- (g) it is not relying upon any representations of the other Party other than those expressly set out in this Agreement.

24. NOTICES

24.1 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 article 26); *provided that*, where no postal address, email address and/or facsimile number is given in respect of particular notices, no such notices may validly be served by such method of communication.

24.2 For the purposes of article 26, the initial notice details of the Parties are as follows:

- (a) For the Seller:
 - (i) Address:
 - (ii) Email address:
- (b) For the Support Counterparty:
 - (i) Address:
 - (ii) Email address:

- 24.3 Subject to article 26.4, any notice shall be deemed to have been received:
- (a) in the case of delivery by hand, on delivery;
 - (b) in the case of prepaid registered post, on the second day following the date of posting;
 - (c) in the case of facsimile, on acknowledgement of the addressee's facsimile machine; provided that a copy is also sent by first class pre-paid post within [one (1)] Business Day; and
 - (d) in the case of email, on delivery to the recipient's server and provided no error message is received by the sender.
- 24.4 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.

25. CONFIDENTIALITY AND PUBLICITY

- 25.1 Subject to the exceptions provided in articles 27.2 and 27.3, neither of the Parties shall, from the Effective Date until the expiry or termination of this Agreement or within the period of [two (2)] years following such expiry or termination of this Agreement, without the consent of the other Party, divulge or allow or permit its officers, employees, agents or contractors to divulge, to any person or entity any of the contents of this Agreement or any commercially confidential information relating to the negotiations concerning this Agreement or any commercially confidential information relating to this Agreement which may come to a Party's knowledge in the course of such negotiations or otherwise concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party.
- 25.2 The restrictions imposed by article 27.1 shall not apply to the disclosure of any information:
- (a) which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtainable from sources other than the Parties;
 - (b) where and to the extent it is required under Applicable Laws to be disclosed to any person who is authorised by such Applicable Laws to receive the same;
 - (c) where and to the extent it is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the Party making the disclosure is or is proposed to be from time to time listed or dealt in;
 - (d) where and to the extent it is required to be given to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is party;
 - (e) which is given by a Party to any of its officers or employees or to any of its Affiliates or such Affiliate's officers or employees who require the same to enable them properly to carry out their duties, *provided that* such persons are bound by obligations of confidentiality equivalent to those in this article 27;
 - (f) which is given by a Party to any of its consultants, banks, financiers, insurers or advisors or to any of its Affiliate or such Affiliate's consultants, banks, financiers, insurers or advisors, *provided that* such persons are bound by obligations of confidentiality equivalent to those in this article 27;
 - (g) which is given by the Seller to a *bona fide* potential investor in, or purchaser of the shares in, the Seller or the assets comprising the Facility (or their professional consultants, banks, financiers, or advisors), provided that such persons are bound by obligations of confidentiality equivalent to those in this article 27;
- 25.3 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 article 27 and the remedies of injunction, specific performance and other equitable relief are appropriate for any threatened or actual breach of any such provision.

26. GOVERNING LAW AND DISPUTE RESOLUTION

26.1 This Agreement and any dispute or claim arising out of or related to it (including non-contractual claims) shall be governed by and construed in accordance with the laws of Albania. The parties may refer to ERE for dispute resolution unless otherwise provided in the special terms of the agreement for support. In any case, in the special conditions of the agreement, the parties must rely on the general provisions in article 28.2 and following.

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

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

- (a) the parties may mutually agree to request the non-binding opinion of the [Albanian Energy Regulator Authority];
- (b) if the dispute relates to a matter expressly provided in this Agreement to be determined by the [Energy Community Secretariat's Dispute Resolution and Negotiation Centre] (or if the Parties mutually agree that the matter should be resolved by the Energy Community Secretariat's Dispute Resolution and Negotiation Centre), request a determination in accordance with Procedural Act 2018/5/EnC of Energy Community Secretariat;
- (c) if the dispute relates to:
 - i. the determination of Metered Output;
 - ii. the calculation of the Electricity Payment;
 - iii. the satisfaction by the Seller of any Seller Condition;
 - iv. the achievement of the commissioning of the Capacity by the Commercial Operations Longstop Date;
 - v. Availability Guarantee or Energetic Availability Liquidated Damages;
 - vi. Market Readiness Assessment outcome;
 - vii. Determination of Contract Quantity for the purpose of the CfD payments;
 - viii. CfD Price Differential;
 - ix. Determination of a Market Disruption Event;
 - x. Determination of the Replacement Index;

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

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

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

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

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

26.6 Neither Party shall suspend or be excused from the performance of its respective obligations, including any payment obligations, arising under this Agreement until such time any dispute has been finally resolved in the manner provided therein.

26.7 The occurrence of any dispute or pendency of any dispute resolution proceedings shall not affect the obligation of either Party to make payments under this Agreement. Any such amount shall be considered due and shall be paid in full pending resolution of the dispute. The reconciliation of the amounts paid shall occur promptly after and based on the final resolution of such dispute.

27. MISCELLANEOUS PROVISIONS

27.1 No provision of this Agreement shall be construed to provide any recovery of any losses, damages, costs or other amounts for which the damaged Party has been compensated for the same losses, damages, costs or other amount under any other provision of this Agreement or the Project Development Agreement.

- 27.2 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.
- 27.3 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.
- 27.4 If at any time any part of this Agreement (including any one or more of the articles of this Agreement or any sub-clause or paragraph or any part of one or more of these article) 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.
- 27.5 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.
- 27.6 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.
- 27.7 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.
- 27.8 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
- 27.9 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.
- 27.10 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 or damage under this Agreement, the Project Development Agreement, insurance proceeds or otherwise.

No Party shall be entitled to recover damages or obtain an extension of time, payment, reimbursement, restitution or indemnity more than once in respect of the same loss.

- 27.11 The parties in this agreement may decide to complete the annexes related to; plant, location, metering device, seasonal profiles and targets; formula for energetic availability and damages
- 27.12 This Agreement is prepared in three (3) copies in the Albanian language and three (3) copies in the English language. In the event of conflict between the Albanian language version and the English language version, the Albanian language version shall prevail.

SIGNATURE PAGE

In the name and on account of:

.....

In the name and on account of:

.....

ANNEX 1: FACILITY, SITE PLAN AND METERING DEVICE LOCATION

Facility

Site plan

Metering Device Location

ANNEX 2: FORM OF BANK GUARANTEE

[LETTERHEAD OF THE ISSUING COMMERCIAL BANK]

To:

[Name Of Commercial Bank]

[Address]

Place Where Issued: [PLACE]

Date Of Issuance: [DATE]

Letter Of Guarantee No. _____

BETWEEN:

[Name of commercial bank], [address of commercial bank] hereinafter referred to as the "**Guarantor**"; [name of company], [address of company] hereinafter referred to as the "**Principal**"; and [name of beneficiary], [address of commercial beneficiary] hereinafter referred to as the "**Beneficiary**".

1. DEFINITIONS AND INTERPRETATION

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

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

"**Guaranteed Obligations**" means the principal's payment obligations undertaken or assumed by it in respect of any transactions under the Agreement during the period from [date] up to and including [date];

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

"**Cap**" means [For Trading Period I, the amount corresponding to expected PPA payments for a period of 3 months, depending on the Facility; (ii) for the Trading Period II, the amount of expected CfD payments to the Seller for a period of 3 months] in aggregate in respect of each and all demands hereunder, subject to any adjustment in accordance with paragraph 4 below.

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

2. GUARANTEE

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

- (a) guarantees to the Beneficiary the punctual performance by the Principal of the guaranteed obligations; and

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

3. LIMIT OF GUARANTEE

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

4. FORM OF DEMAND

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

5. EXPIRY

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

6. TERMINATION

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

7. MISCELLANEOUS

7.1 The Guarantor may not assign and/or transfer any of its rights or obligations under this Guarantee to any person without the prior written consent of the Beneficiary and the Principal.

7.2 This Guarantee is governed by the laws of Albania. Any dispute or disputes arising out of or relating to this Guarantee, including any dispute relating to the existence, validity or termination of this Guarantee or any non-contractual obligation arising out of or in connection with it (a "**Dispute**") shall be referred and finally resolved by arbitration under the rules of the international chamber of commerce (ICC) (the "**Rules**"). The rules are incorporated by reference into this paragraph. The arbitral tribunal shall consist of three arbitrators appointed in accordance with such rules. The seat, or legal place, of arbitration, shall be Vienna, Austria. The language used in the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.

7.3 Save for the Guarantor, the principal and the Beneficiary, no other person has any right(s) to enforce or enjoy the benefit of any term of this Guarantee.

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

FOR AND ON BEHALF OF
[NAME OF ISSUING COMMERCIAL BANK]
[NAME OF SIGNATORY]
[TITLE OF SIGNATORY]

ADDITION TO ANNEX 2: FORM OF DEMAND

[DATE OF DEMAND]

TO: [Name and address of the issuing bank]

FROM: [Name and address of beneficiary]

RE: YOUR LETTER OF GUARANTEE NO. [◆] DATED [◆] 20[◆]

We refer to your above letter of guarantee ("**Guarantee**"). This is a written demand for payment under the guarantee as referred to in the Guarantee. Words and expressions defined in the guarantee shall have the same meanings when used in this demand.

As required by paragraph 4 of the Guarantee, we hereby confirm as follows:

The Principal is in breach of the Guaranteed Obligations;

1. The particular breach of those obligations giving rise to this demand is [specify relevant breach which has given rise to this particular demand at the time of making the demand];
and
2. The amount due and owing by the Principal and claimed under this demand is [*specify the relevant amount in words and figures*].

Please arrange to make payment of the amount specified in point 3 above by swift to the following account within the time limit specified in the Guarantee:

[insert payment account details at time demand is made]

This demand is governed by the laws of England and Wales. It is made without prejudice to our rights to continue to issue further demands as provided for by the Guarantee up to the amount of the cap.

For and on behalf of [name of beneficiary]

[*name of beneficiary's authorised signatory*]

Authorised signatory

ANNEX 3: FORMULA FOR AVAILABILITY GUARANTEE AND DAMAGES (IF APPLICABLE)

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

ANNEX 5: DETERMINATION OF CONTRACT QUANTITY FOR TRADING PERIOD II