



**Republika e Kosovës**  
**Republika Kosova-Republic of Kosovo**  
***Qeveria-Vlada-Government***  
**Ministria e Ekonomisë**  
**Ministarstvo Ekonomije/Ministry of Economy**

**Ministry of Economy**

**-AND-**

**[name of Project Developer]**

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**PROJECT DEVELOPMENT AGREEMENT**

**FOR CONSTRUCTION OF A 100 MW SOLAR PHOTOVOLTAIC (PV) PLANT FOR GENERATION OF  
ELECTRICITY SUPPORTED WITH GUARANTEED PURCHASE PRICE**

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## PROJECT DEVELOPMENT AGREEMENT

**THIS AGREEMENT** is made and entered into as of this [date ●] (the “**PDA Execution Date**”), by and between:

(1) **Ministry of Economy**, a Government of Kosovo institution, with offices located at the No. 36 Mother Teresa Street, Pristina, 10000, Republic of Kosovo (hereinafter referred to as “**Ministry**”).

and

(2) [name of **Project Developer**] a company duly incorporated under the laws of the Republic of Kosovo with a registered number [●] whose registered office is at [●] (hereinafter referred to as “**Project Developer**”).

(Each a “**Party**” and together the “**Parties**”)

### WHEREAS

- A. On DD.MM.YYYY. the Ministry published a Contract Notice for the Competitive Process for Awarding Guaranteed Purchase Price for Electricity Generated from a 100 MW Solar Photovoltaic (PV) Plant to be Constructed on Public Land;
- B. According to the Ministry of Economy Administrative Instruction no. 01/2023 on Utilization and Support of Energy Generation from Renewable Sources, after the completion of the competitive bidding process the Ministry adopted a decision on the selection of the most favorable bidder, which became final on DD.MM.YYYY;
- C. According to Article 13.1 of the Administrative Instruction (ME) no. 01/2023 on Utilization and Support of Energy Generation from Renewable Sources, following the final decision on the selection of the successful most favorable bidder, a Project Development Agreement is to be entered into in accordance with the terms of said Competitive Process;
- D. The Project Developer has provided and submitted to the Ministry a Performance Security in favor of the Ministry and Market Operator in the amount of 3,000,000 Euros;

**NOW, THEREFORE**, in view of the foregoing premises and in consideration of the mutual benefits to be derived and the representations and warranties, covenants and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

**PROJECT DEVELOPMENT AGREEMENT  
FOR THE CONSTRUCTION OF A 100MW SOLAR PHOTOVOLTAIC (PV) PLANT FOR THE  
GENERATION OF ELECTRICITY SUPPORTED WITH A GUARANTEED PURCHASE PRICE**

**I. SUBJECT MATTER OF THE AGREEMENT**

**Article 1**

The present agreement (the “**Agreement**”) shall arrange the rights and obligations of the Parties to the Agreement related to the construction of a solar photovoltaic (PV) plant for the generation of electricity (the “**Project**”) supported with a guaranteed purchase price of each megawatt-hour (MWh) of electricity sold on the basis of the Power Purchase Agreement concluded with the Market Operator.

Capitalized terms in this Agreement shall have the meaning given to them in Annex A to this Agreement.

**II. CONDITIONS PRECEDENT**

**Article 2**

- (1) Articles 2-4, Article 14, and Articles 17-37 shall be effective on and from the PDA Execution Date. The remaining Articles of this Agreement shall come into full force and effect on and from the Effective Date.
- (2) Fulfilment of Conditions Precedent
  - 1) Each Party undertakes to use reasonable endeavors to ensure the timely fulfillment of the Conditions Precedent.
  - 2) Where a Party considers that a Condition Precedent has been satisfied, it shall promptly notify the other Party.
  - 3) Each Party may, in its sole discretion, waive any Condition Precedent which is designated as being the responsibility of the other Party by notice in writing to that Party.
- (3) Non-Fulfilment of Conditions Precedent
  - 1) If the Conditions Precedent are not satisfied in full or waived by the Longstop Effective Date or such later date as the Parties may agree in writing, then this Agreement shall be immediately terminable but only by a Party who has satisfied each of the Conditions Precedent for which it is responsible (excluding, in the case of the Project Developer, any Condition Precedent where a Party’s failure to satisfy it occurs for reasons attributable to the other Party) and provided that such Party is in full compliance with all of its obligations under this Agreement.
  - 2) Subject to sub-paragraphs (3)3 and (3)4 of this Article, upon termination of this Agreement, neither Party shall have any claim against the other Party, and both Parties shall be discharged from their obligations to each other.
  - 3) Where the termination of this Agreement occurs as a result of a failure by the Project Developer to satisfy any of the Conditions Precedent for which it is responsible, then the Ministry shall be entitled to draw on the Performance Security in full, provided that:

- i. such failure of the Project Developer is not attributable to the Ministry or Force Majeure; and
  - ii. the Ministry has satisfied each of the Conditions Precedent for which it is responsible, or to the extent the Performance Security is not available for a draw in violation of the terms of this Agreement, to maintain a cause of action against the Project Developer and/or its Affiliates in an amount up to the required amount of the Performance Security.
- 4) Where the termination of this Agreement occurs as a result of:
- i. a failure by the Ministry to satisfy any of the Conditions Precedent for which it is responsible for reasons attributed to the Project Developer or Force Majeure; or
  - ii. a failure by the Project Developer to satisfy any of the Conditions Precedent for which it is responsible for reasons attributable to the Ministry or Force Majeure,

then, provided that the applicable Party has satisfied each of the Conditions Precedent for which it is responsible (excluding any Condition Precedent where the Party's failure to do so occurs for reasons attributable to the other Party or Prolonged Force Majeure), Annex G shall apply.

### **III. DEVELOPMENT RIGHTS AND SUPPORT UNDERTAKINGS**

#### **Article 3**

- (1) The Ministry, within the scope of its competencies, hereby grants to the Project Developer on and from the PDA Execution Date for the term of this Agreement (but subject to any transfer of the Project to the Ministry in accordance with this Agreement) the following exclusive rights and Consent to undertake the Project subject to and in accordance with strict compliance by the Project Developer of the Project Agreements and the applicable Laws of Kosovo (the "**Development Rights**"):
- 1) the exclusive right for the Project Developer to design, develop, finance, insure, engineer, construct, own, commission, operate, maintain, and generate power from, exploit the benefits of and Decommission the Project on the Site;
  - 2) the benefit of the Land Lease Agreement entered into between the Ministry and the Project Developer;
  - 3) the right to possess, use and procure benefits from the Project including the right to sell energy at the prices specified in the Power Purchase Agreement and the right to sell energy generated by the Project within Kosovo, and the right to all state support as set forth in the Power Purchase Agreement and this Agreement;
  - 4) the right, to be exercisable by the Project Developer or any of its contractors, to employ such persons (whether expatriates or Kosovo nationals) on such terms as the Project Developer or such contractor considers necessary or appropriate, subject to the Laws of Kosovo;
  - 5) the right to transport within the territory of Kosovo, subject to the Laws of Kosovo, any equipment and material required for the construction, operation, and maintenance of the Project, taking into account the quantity and size of such equipment and material for the Project;
  - 6) in accordance with the Laws of Kosovo, the right to grant any valid, effective and enforceable security over all or part of the Project, or the Project Agreements, each Construction Contract, each contractor agreement, all of its moveable property, all insurance proceeds and all of its other receivables, and Project Developer's offshore account, if any, and to assign and/or transfer by way of security its rights and/or obligations under the Project Agreements to any party pursuant to the Financing Agreements (including parties who are not nationals of Kosovo), except third
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party that would not meet the qualifications to bid for the Project set forth in the Tender Dossier, in order to obtain financing in connection with the Project; and

- 7) all other rights granted under or pursuant to the Power Purchase Agreement and this Agreement.
- (2) The Ministry undertakes to maintain that the Development Rights granted to the Project Developer pursuant to this Agreement remain in full force and effect for the term of this Agreement, subject to the rights of the Ministry to exercise its rights, including termination of this Agreement, in the event of the failure of the Project Developer to comply with the terms of this Agreement as herein provided.
- (3) The Ministry shall, upon written request for support from Project Developer, use, in accordance with applicable law and regulations, all reasonable efforts, as the Ministry may determine, to have the relevant Governmental Authorities review the Project Developer's properly made applications (or other steps required by the Laws of Kosovo) for such Consents or re-issuances thereof, and the timely, in accordance with applicable law and regulations grant and issuance or re-issuance of such Consents, and without derogating from the principle and the requirement that obtaining Consents is a Project Developer responsibility and the Parties agree that there shall be no remedy against the Ministry, whether under the Project Agreements or otherwise at law, in connection with Project Developer's failure to timely, properly and in accordance with requirements of the Laws of Kosovo obtain any required Consents.
- (4) The Ministry shall enter into a Direct Agreement in the form provided as Annex C to this Agreement within 10 Business Days following a written request from the Project Developer.
- (5) The Ministry shall, upon satisfaction of the Commissioning and upon receipt of a Plant Completion Form from the Independent Engineer, confirm the completion of the Project by issuing the Certificate of Completion within the deadline determined in Administrative Instruction no. 01/2023 on Utilization and Support of Energy Generation from Renewable Sources.

#### **IV. PERFORMANCE SECURITY**

##### **Article 4**

- (1) Project Developer shall have provided the Performance Security in the amount of 3,000,000 Euros to the Ministry prior to the PDA Execution Date, substantially in the form provided in Annex D. The Performance Security shall be:
  - 1) posted as unconditional demand guarantee, issued by a first-class bank (i.e., having ratings for its unsecured unsubordinated debt obligations from at least two of Standard & Poor's Ratings Services, Fitch Ratings Limited and Moody's Investors Service, such ratings being no less than "A-" (Standard & Poor's Ratings Services or Fitch Ratings Limited) or "A3" (Moody's Investors Service)); and/or

If it is a Kosovo bank (where banks are not rated), it must be a bank licensed by the Central Bank of the Republic of Kosovo and possesses an acceptable level of creditworthiness. To determine whether a bank has an acceptable level of creditworthiness, the following Credit Risk Exposure parameter shall be observed: The issuing of an unconditional demand guarantee should not cause a breach of the Bank's legal requirements of Article 46 on Limitations on Lending Exposures and Deposit Concentration for Banks of Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions. In particular, the value of the guarantee shall not exceed 15% of the issuing bank's Tier I capital. In this respect, where the value of the Guarantee exceeds 15% of the Tier I capital of the issuing bank, an extract from the bank's board of directors meeting shall be presented to the Ministry for its approval, which it shall not unreasonably withhold.

- 2) in favor of both the Ministry and the Transmission System Operator;
  - 3) valid for at least 60 days after the Longstop Commercial Operations Date; and
  - 4) shall be irrevocable and due and payable upon demand.
- (2) Prior to the Effective Date, Project Developer shall increase the amount of the Performance Security to 7,500,000 Euros. It is noted that providing an increased Performance Security in the amount of 7,500,000 Euros is a Condition Precedent according to Annex B.
- (3) Subject to paragraph (4) below, the Ministry shall return the Performance Security to the Project Developer within 30 days of the earlier of (a) the Commercial Operations Date, and (b) the date of termination in the event it is not entitled to draw on the Performance Security in accordance with the terms of this Agreement.
- (4) The Ministry shall be entitled to draw upon the Performance Security in any of the following events:
- 1) The Project Developer has failed to procure an extension of the Performance Security by a date which is 14 days prior to the expiry date of the Performance Security. In such case, the Ministry may draw on the Performance Security in full and hold the proceeds as cash security in a collateral account. Subject to the Ministry's right to have recourse to the cash security in the same way that it would be entitled to have recourse to the proceeds of the Performance Security pursuant to this paragraph 3, such amount shall be repaid to the Project Developer, less any expenses that the Ministry shall have incurred, promptly upon the Project Developer delivering to the Ministry an extension of, or replacement for, the Performance Security meeting the requirements of this Agreement.
  - 2) Failure of the Project Developer to achieve the Commercial Operations Date by the Scheduled Commercial Operations Date. In such case, the Project Developer shall pay to the Ministry liquidated damages at the rate of 35,000 Euro per each additional day that the Project Developer fails to achieve the Commercial Operations Date, until the Longstop Commercial Operations Date. The Ministry shall be entitled to have recourse to the proceeds of the Performance Security to satisfy such amounts in accordance with the terms of this Agreement.
  - 3) Failure of the Project Developer to achieve the Contracted Capacity of the Project. In such case, the Project Developer shall pay to the Ministry as compensation 100,000 Euro for each one percent, or part thereof, that the Actual Installed Capacity is lower than the Contracted Capacity of the Project.
  - 4) Failure of the Project Developer to achieve the Minimum Installed Capacity of the Project. In such case, the Ministry may draw on the Performance Security in full.
  - 5) Breach of the Project Development Agreement, which causes more than immaterial damage to the Ministry and/or requires the Ministry to incur expense in obtaining the completion of said Agreement.
  - 6) The Project Development Agreement is breached and any workers, subcontractors and /or any suppliers are left unpaid for more than 30 days.
  - 7) Failure of the Project Developer to satisfy a payment obligation of the Producer under the terms and conditions set forth in the Connection Agreement.

- 8) Failure of the Project Developer to satisfy a payment obligation of the Project Developer under this Agreement within 30 days of the applicable due date.
  - 9) Termination of this Agreement due to a Project Developer Event of Default.
- (5) If due to the occurrence of an event of Force Majeure, the Longstop Commercial Operations Date is extended by the Ministry, the Project Developer shall extend the Performance Security validity period on a day-for-day basis commensurate with the duration of the Force Majeure event and in any event no less than 30 days.

## V. POWER PLANT DATA

### Article 5

- (1) The Parties to this Agreement hereby agree that the Project Developer shall construct the Project \_\_\_\_\_ (*insert the name of the power plant*) that shall meet the following requirements:
- 1) Total installed power of \_\_\_\_\_ MWp (the “**Contracted Capacity**”),
  - 2) Planned annual electricity generation of \_\_\_\_\_ MWh,
  - 3) Constructed on the parcel number \_\_\_\_\_, in the cadaster zone \_\_\_\_\_, on the area of the Municipality \_\_\_\_\_.
- (2) The constructed Project shall fulfill the technical parameters set forth in the Tender Dossier Part A: Information to Bidders, Section Technical Specification, which is incorporated as Appendix 1 of this Agreement.
- (3) The constructed Project shall be owned, operated and maintained by the Project Developer for the duration of the Land Lease Agreement subject to the terms and conditions of this Agreement.

## VI. AMOUNT OF GUARANTEED PURCHASE PRICE

### Article 6

- (1) Following the issuance of the Certificate of Completion by the Ministry, the Project Developer shall commence the sale of electricity produced by the Project under the Power Purchase Agreement with the Market Operator (the “**Commercial Operations Date**”) at the Guaranteed Purchase Price in the amount of \_\_\_\_\_ €/MWh [*insert to be the final winning bid of the most favorable bidder*].
- (2) The Power Purchase Agreement shall be effective from the Commercial Operations Date for period of 15 years, or such longer period as the parties to the Power Purchase Agreement mutually agree in writing, and may be transferred by the Market Operator to any other public entity under the same terms and conditions as concluded.

## **VII. DETERMINING THE CONDITIONS ON THE SITE AND THE CONSTRUCTION PLOT**

### **Article 7**

- (1) The Ministry shall allow and not hinder the Project Developer to:
  - 1) inspect and get acquainted with all existing visible buildings, structures and installations, utility, communication and transport infrastructure, as well as the character of climatic, hydrological, geological, environmental conditions, surface and sub-surface layer, landform, including properties which border the land and their owners and users,
  - 2) become acquainted with and determine the necessary scope and manner of performing the construction works according to the conditions of the location and the construction plot, as well as the measures for prevention of injury or causing damage to a third person or his property,
  - 3) inspect and use analysis, studies, surveys, reports, calculations and other documents provided by the Ministry, which are subject to the provisions of paragraph 2 (2) below, to determine the actual and correct conditions described in items (1) and (2) and
  - 4) perform its own analysis, studies and assessments in order to determine the conditions from items (1) and (2).
- (2) The Project Developer agrees that:
  - 1) is fully acquainted with the conditions of the construction plot and that it will not be entitled to receive any compensation for damage arising out of any defects in the construction plot; and
  - 2) The Ministry shall not be liable for the accuracy, completeness or appropriateness of the analyzes, surveys, reports, calculations and other documents referred to in paragraph (1) item 3) above provided to the Project Developer and shall not be entitled to any compensation from the Ministry of the damage that may arise by their use. In amplification thereof the Ministry makes no representation or warranty in respect of any foregoing, which are provided for information only.

## **VIII. UNFORESEEN CIRCUMSTANCES ON THE CONSTRUCTION PLOT**

### **Article 8**

- (1) If during the cleaning and preparatory works on the construction plot, as well as during the construction of the Project, archeological artifacts, fossil remains, as well as explosive and scattering materials, ammunition and other dangerous, toxic or contaminated materials or substances are discovered under the surface of the construction plot, the existence of which could not be determined by the implementation of the procedures referred to in Article 7, the Project Developer shall immediately notify the Ministry and the State Authority competent to act in such cases and shall take all necessary and reasonable professional measures for securing the persons and the property, as well as for the preservation of the found objects at such place and the condition in which they were found.
  - (2) In the cases referred to in paragraph (1), the Project Developer shall be obliged to:
    - 1) harmonize the works on the construction of the Project with the requirements of the competent state authority,
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- 2) provide access to the competent state authority on the construction plot and provide the necessary conditions for uninterrupted handling of the objects referred to in paragraph (1), and
  - 3) make available to it, to the extent possible, its own labor force and equipment necessary for the action of the competent state authority, for which it may request reasonable compensation from the competent state authority.
- (3) The Project Developer shall be liable for all damages to the life, health and property of third parties, to the environment, as well as the damages to the discovered objects arising from by its handling of the found objects contrary to paragraphs (1) and (2).
  - (4) The discovered objects referred to in paragraph (1) are property of the Republic of Kosovo.
  - (5) If during the preparatory works and cleaning of the construction plot, as well as during the construction of the Project, parts of infrastructure networks for providing utility services (water supply and wastewater drainage, electricity, telecommunication network) appear, whose existence the Project Developer could not reasonably have determined in accordance with Article 7, the Project Developer shall discontinue the works and shall immediately notify the Ministry and the legal entity responsible for the provision of the utility service.
  - (6) If the legal entity responsible for providing the utility service informs the Parties to this Agreement that the infrastructure networks are:
    - 1) out of function, the Project Developer will remove them at its own expense,
    - 2) in operating condition, the Project Developer shall, at the expense of the Ministry, dislocate them and ensure their re-operation.
  - (7) If due to the removal of the objects from paragraph (1) and (5), the Project Developer is delayed in the construction of the Project, the Project Developer shall be entitled to extend the Longstop Commercial Operations date on a day-for-day basis, for the period for which the object removal works are reasonably performed and otherwise treat such event as a Force Majeure as herein provided, but not longer than three months.<sup>1</sup>
  - (8) In the period when the works for removal of the objects from paragraphs (1) and (5) are performed, the Project Developer may perform the works on the construction of the Project which, depending on the circumstances, can be performed without preventing the execution of the works for removal of the objects from paragraph (1) and (5).

## **IX. ENVIRONMENTAL AND NATURE PROTECTION**

### **Article 9**

- (1) The Project Developer shall, during the construction of the Project, ensure that all of its employees and subcontractors implement the environmental and nature protection measures set out in the

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<sup>1</sup> ***Note to Bidders: Bidders will receive limited protection for such events and should ensure adequate due diligence of the Site. If there are any discoveries as a result of due diligence that indicate any anticipated liabilities, bidders may seek clarification from the Ministry during the clarification process.***

environmental protection consent, as well as remove any possible irregularities established by the inspection authorities responsible for environmental protection.

- (2) The Project Developer shall not have the right to request from the Ministry extension of the deadline for construction of the Project due to interruption of the construction works ordered by the inspection services responsible for environmental protection to the extent consistent with the environmental Laws of Kosovo as implemented in a non-discriminatory matter.
- (3) The Ministry shall not be liable for the damages to the environment and nature arising during the construction by the employees and subcontractors of the Project Developer.

## **X. SUBCONTRACTORS**

### **Article 10**

- (1) The Project Developer may, for the needs of design and construction of the Project and the connection facilities, conclude an agreement with one or more subcontractors, upon prior written notification to the Ministry.
- (2) The Project Developer shall be obliged to ensure that the subcontractor meets the conditions for construction of the applicable part of the Project in accordance with the applicable regulations on the day of concluding the contract with the subcontractor.
- (3) The Project Developer shall provide coordination and synchronization in the performance of the works by the subcontractors and shall be responsible for any damage or delay due to uncoordinated work of the subcontractors.
- (4) The Project Developer shall submit the contract with the subcontractor to the Ministry within three days from the day of concluding. It shall also enclose with the contract data on the subcontractor, including identifying all of the owners of the subcontractor, and the employees or engaged persons who will be involved in the construction works, as well as copies of the documents from which it is determined that the subcontractor meets the requirements of paragraph (2).
- (5) If the Project Developer hires a new subcontractor due to termination of the contract with the previous subcontractor or hires an additional subcontractor, it shall be obliged to act in accordance with paragraphs (1), (2), (3) and (4).
- (6) The Project Developer is responsible for all damages during the construction arising therefore by it and its subcontractors to the property of third parties, for the damages to the infrastructure facilities, as well as for the damages to the environment and nature.

## **XI. CONSTRUCTION OF THE PROJECT**

### **Article 11**

- (1) The Project Developer shall after the construction permit becomes effective start the construction of the Project and inform the Ministry in writing about the day of the start of the construction.
  - (2) The Project Developer shall in the course of construction of the Project at its own expense build installations and connections for electricity supply and drinking water and / or water for technological use.
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- (3) During the performance of the construction of the Project, the Ministry agrees to provide reasonable assistance to the Project Developer, at the request of the Project Developer, in connection with the Project Developer's applications for any permits or licenses or approvals required by the laws of the Republic of Kosovo.
- (4) The Project Developer shall be obliged to build the Project in accordance with the project design as provided to the Ministry and to comply with the highest and best standards applied in the European Union, but in no event less than the applicable regulations, standards and technical norms that regulate the construction of applicable facilities.
- (5) The Project Developer and its subcontractors are obliged during construction to apply the highest and best occupational health and safety measures used in the European Union, but no less than those prescribed under applicable law.
- (6) The Project Developer shall be obliged during construction to act upon and remedy the possible findings for removal of irregularities determined by the inspection authorities that supervise the construction and the application of the occupational health and safety and environmental protection measures.
- (7) The Ministry is not responsible for the interruptions of the construction ordered by the competent inspection services because the Project Developer did not adhere to the construction permit and the current regulations that regulate the construction of buildings, occupational health and safety measures and environmental protection.
- (8) The Project Developer shall not have the right to request from the Ministry the extension of the Longstop Commercial Operations Date due to suspension of the works in accordance with paragraph (7) of this Article.
- (9) The Ministry or its duly appointed agent and the Independent Engineer shall have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the Project for the purpose of inspecting the construction works on the Site and all buildings and improvements thereon.
- (10) During the construction of the Project, the Project Developer shall take all appropriate measures to prevent unauthorized persons from entering the construction site, as well as measures prohibiting and preventing its employees and subcontractors from endangering neighboring lands and facilities.
- (11) In the event of Abandonment for a period longer than 15 consecutive days, during which or prior to the Project Developer has not requested or received written consent from the Ministry in writing approving such Abandonment, the Project Developer shall be deemed to have breached its obligations under this Agreement.

## **XII. CONSTRUCTION OF CONNECTION FACILITIES**

### **Article 12**

- (1) The Project Developer shall be responsible for the financing, and the design, procurement, construction, installation, completion, testing, and commissioning of the Connection Facilities, including the New Transmission Assets and other facilities that are the responsibility of the Producer

under the Connection Agreement, which exercises shall be undertaken with all proper skill and care, which shall consist of applying the highest and best standards in the European Union and in all respects in accordance with:

- 1) this Agreement,
  - 2) the standards described in the Connection Agreement,
  - 3) the Relevant Codes,
  - 4) the Laws of Kosovo, and
  - 5) Prudent Utility Practices.
- (2) The Project Developer will provide and install transmission lines and associated equipment, protective relays and switching equipment, telecommunications devices, telemetering, protective devices and safety equipment, step-up transformers and other protective devices as the Project Developer may deem necessary in accordance with the Connection Agreement, Relevant Codes and Prudent Utility Practices provided however, that all such protective devices will be fully compatible with the Transmission System Operator requirements and consistent with Project Developer's Technical and Financial Feasibility Study.
- (3) The Project Developer shall undertake the following in connection with the Connection Agreement:
- 1) Project Developer shall, at its own expense, fully cooperate with the Transmission System Operator in the defense of any third-party claim brought in connection to the Connection Agreement;
  - 2) Project Developer shall grant to Transmission System Operator all necessary permanent rights of entry within its property and the Site required for the construction, equipment, replacement, decommissioning, operation, testing, inspection and maintenance of Connection Point Assets (as described in the Connection Agreement) in compliance with the current standards and procedures in Kosovo for the operation and maintenance of the high voltage system as defined in the Relevant Codes and relevant operational documents;
  - 3) Project Developer will provide such detailed standards and planning data as required by the Relevant Codes as relates to the New Transmission Assets and other facilities under the Connection Agreement within 3 months after the signing of procurement contracts for Project equipment; and
  - 4) Project Developer shall be responsible for any costs and damages incurred by Transmission System Operator arising out of Project Developer's actions (or the actions of a third party acting on Project Developer's behalf) with respect to the New Transmission Assets or other facilities under the Connection Agreement.

### **XIII. METERING SYSTEM**

#### **Article 13**

The Net Delivered Electricity will be metered by Metering System located at the Connection Point to be installed in accordance with the Connection Agreement.

#### **XIV. INDEPENDENT ENGINEER**

##### **Article 14**

- (1) The Ministry shall appoint the Independent Engineer prior to the Effective Date to perform such services and on such terms as are set out in Annex E. The Independent Engineer shall be selected in accordance with the following:
    - 1) The Ministry shall conduct an international competitive tender in a single-stage. Prior to issuing the tender, the Ministry shall provide for the Project Developer's review, at least 30 days prior to the anticipated release of the tender, the tender documents and Ministry's bid evaluation criteria.
    - 2) If the Project Developer is entering into Financing Agreements, it shall provide Lenders with an opportunity to review and comment on the tender documents for appointing the Independent Engineer and the Ministry's bid evaluation criteria during the period described in sub-paragraph (1)1 of this Article and that the Lenders approve the tender.
  - (2) The Ministry shall accommodate any reasonable changes to the tender documents, including any comments which may have been made by the Lenders as contemplated in sub-paragraph (1) 1, and Ministry's bid evaluation criteria requested by the Project Developer, provided such request is received at least 15 days prior to the anticipated release of the tender. At all times during the tender and the evaluation of relevant bids, the Ministry shall provide the Project Developer with access to all tender-related information and correspondence following the launch of the tender. To the extent the Project Developer does not provide such comments by such date, the Project Developer shall be deemed to have no comments and to accept that the tender will proceed.
  - (3) The Ministry shall conduct the tender to procure the Independent Engineer in accordance with the Kosovo Public Procurement Law. The contract award shall be based on the lowest price.
  - (4) Should both the Ministry and the Project Developer reasonably conclude that the single-stage tender described in sub-paragraph (1)1 of this Article will result, or has resulted, in less than two bids or otherwise not result in successful completion of the tender, the Project Developer and the Ministry shall jointly agree on the process to appoint the Independent Engineer, failing which the Project Developer shall conduct an open international competitive tender to procure the Independent Engineer in accordance with the World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers (available at: <http://pubdocs.worldbank.org/en/178331533065871195/Procurement-Regulations.pdf>) (the "Procurement Guidelines").
  - (5) The Independent Engineer shall act on behalf of, and owe a duty of care to, both the Project Developer and the Ministry equally.
  - (6) The Party successfully procuring the services of the Independent Engineer shall cover all fees, costs and expenses of the Independent Engineer.
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- (7) If the Independent Engineer Agreement is terminated at any point after its execution and during the term of this Agreement, a replacement Independent Engineer shall be jointly appointed by the Project Developer and the Ministry from the list of mutually acceptable candidates or, if the Parties are unable to mutually agree on replacement candidates within 30 days of termination of the existing Independent Engineer Agreement, replacement candidates shall be nominated by an international engineering body agreeable to the Parties or, if the Parties are not able to agree on such appointing body within 45 days of the termination of the existing Independent Engineer Agreement, then such replacement candidates by the ICC Centre for Expertise. Such replacement Independent Engineer may be appointed only if they agree to perform the services on substantially the same terms as set out in Annex E, and the Project Developer shall cover all fees, costs and expenses of the replacement Independent Engineer.

## **XV. TESTING AND COMMISSIONING OF THE PV POWER PLANT**

### **Article 15**

- (1) The Project Developer shall use all reasonable endeavors to achieve the Commercial Operations Date by no later than the Scheduled Commercial Operations Date.
- (2) If the Project Developer becomes aware that, for any reason, it shall not achieve the Commercial Operations Date by the Scheduled Commercial Operations Date, it shall promptly notify the Ministry of that fact, of the measures that it will take to mitigate such delay, and of the date on which it expects to achieve the Commercial Operations Date. The Project Developer shall keep the Ministry regularly informed as to its progress of achieving the Commercial Operations Date on the date so notified. The Project Developer, if applicable, shall be entitled to a day-for-day extension of the Scheduled Commercial Operations Date and Longstop Commercial Operations Date for any delays caused by the process of expropriation, easement or obtaining relevant permits from government authorities for the construction of the New Transmission Assets under the Connection Agreement, up to 365 days.
- (3) The Commercial Operations Date shall not occur unless the Actual Installed Capacity is equal to or greater than the Contracted Capacity; provided, however, that if on the Longstop Commercial Operations Date the Actual Installed Capacity is equal to or greater than the Minimum Installed Capacity, Project Developer has made payment of liquidated damages equal to 750,000 Euro for each percent that the Actual Installed Capacity is lower than the Contracted Capacity, and all of the other Commissioning Tests have been achieved in accordance with Annex F, then on the Longstop Commercial Operations Date, then:
- 1) the Project Developer shall procure that the Independent Engineer certifies the Actual Installed Capacity that has successfully been Commissioned by that date (in addition to the other requirements for achieving the Commercial Operations Date);
  - 2) the Commercial Operations Date shall be deemed to have occurred with respect to the Actual Installed Capacity successfully Commissioned by that date; and
  - 3) with effect from that date, the definition of Contracted Capacity is amended to the level of Actual Installed Capacity successfully Commissioned by that date.
- (4) The Project Developer shall carry out Commissioning of the Project in accordance with Annex F of this Agreement including (without prejudice to additional tests reasonably requested by the Transmission System Operator) the program for tests set forth therein. The Project Developer shall provide the Independent Engineer on an on-going basis with relevant information regarding its program for tests for the Commissioning and shall deliver a final program for the said tests, including

the expected duration and a tentative schedule therefore, not less than thirty (30) Days prior to the commencement of such tests.

- (5) The Project Developer shall inform the Transmission System Operator that the tests, which can be carried out before synchronization of the Project to the Transmission System Operator's grid, to be so carried out in the presence of the Transmission System Operator.
- (6) The Transmission System Operator shall be given not less than seventy-two (72) hours' notice of such tests (and any retests thereof) and shall have an opportunity to be present at and observe all such tests.
- (7) Upon mutual agreement of applicable parties for the timing for the program for tests and once the Project Developer is satisfied that the Project is capable of continued operation, the Project Developer shall provide to the Transmission System Operator the Statement of Availability and shall request from the Transmission System Operator to energize and keep energized the Connection Facilities for receipt of Net Delivered Electricity.
- (8) The Project Developer shall to the extent practicable or possible notify the Transmission System Operator of the schedule for performance of the Commissioning Tests. To the extent the Transmission System Operator is able to be present and observe any such tests it shall have the right to be so present, provided that, recognizing the impact of Climate Conditions, (i) the Project Developer may perform such Commissioning Tests as can be performed without the presence of officers from the Transmission System Operator, and (ii) the Project Developer shall request from the Transmission System Operator to issue standing instructions to its personnel at the relevant sub-station to accede to requests of the Project Developer at short or instantaneous notice to conduct such operations of the Connection Facilities as shall enable the program of tests for Commissioning to be carried out.
- (9) The Project will be considered Commissioned when declared by the Project Developer and subsequently certified in writing by the Independent Engineer issuing a Plant Completion Form.
- (10) Project Developer shall provide to the Market Operator a timetable for Scheduled Outages for the power plant for the first year of operation at least thirty (30) days prior to the Commercial Operations Date.

## **XVI. CERTIFICATE OF COMPLETION**

### **Article 16**

- (1) The Project Developer shall submit to the Ministry written request for issuance of Certificate of Completion, accompanied with:
    - 1) Construction permit for the Project, the Connection Facilities and New Transmission Assets,
    - 2) Authorization according to the Rule on Authorization Procedure for Construction of New Generation Capacities issued by ERO,
    - 3) Certificate of usage for the Project, the Connection Facilities and New Transmission Assets issued by the Ministry responsible for construction,
    - 4) License for performing energy activity electricity generation from the Project issued by the Energy Regulatory Office, and
    - 5) Plant Completion Form of the Project issued by the Independent Engineer.
-

- (2) If all conditions are met, the Ministry shall, within seven (7) days from the receipt of the request and complete documentation, issue a Certificate of Completion that, at least, will contain full name of the Project Developer and information on the power plant, including name of the power plant, cadastral data on the land on which the power plant will be built, installed capacity (in MW) and planned annual production of electricity (in MWh).

## **XVII. TERMINATION OF THE AGREEMENT REQUESTED BY THE PROJECT DEVELOPER**

### **Article 17**

- (1) The Project Developer prior to the expiry of this Agreement, may request termination of this Agreement for its convenience by submitting written notification to the Ministry. The Ministry shall have a right, but not an obligation, to accept such termination for convenience.
- (2) In the event of agreed termination for convenience pursuant to paragraph (1) of this Article:
  - 1) The Agreement shall cease to be valid after the expiry of 30 (thirty) days from the date on which the Ministry has received the written notification;
  - 2) The Ministry shall not be obliged to compensate the Project Developer for any damages and losses incurred or that might have been incurred due to the termination of this Agreement;
  - 3) The Ministry shall return the Performance Security, provided the Project Developer shall have paid all expenses and costs to date and shall not otherwise have been in violation of this Agreement, and
  - 4) The Project Developer's right of construction shall be deemed transferred to the Ministry.
- (3) The Project Developer shall have the right to terminate this Agreement due to breach of the contractual obligations by the Ministry (a "**Ministry Event of Default**") under this Agreement and shall accordingly submit to the Ministry a written notification that shall contain the reasons for the termination. The following shall be Ministry Events of Default:
  - 1) any misrepresentation, or breach or default by the Ministry of any of its obligations, representations or warranties under this Agreement, which is not remedied within 120 days after receipt of notice from the Project Developer;
  - 2) the direct or indirect expropriation, compulsory acquisition, nationalization or other compulsory procurement of any share capital, any asset or any other rights and interests of the Project Developer by the Ministry, or any other party with authority under the Laws of Kosovo to engage in the direct or indirect expropriation, compulsory acquisition, nationalization or other compulsory procurement of any share capital, any asset or any other rights and interests, which is not remedied within 120 days after receipt of notice from the Project Developer;
  - 3) a Change in Law that results in the invalidity or unenforceability of any Project Agreement, which is not remedied within 120 days after receipt notice from the Project Developer;
  - 4) the termination of the Land Lease Agreement by the Lessee on account of a default thereunder by the Lessor;
  - 5) the termination of the Power Purchase Agreement by the Market Operator for reasons other than a Privileged Producer Event of Default or a Prolonged Force Majeure, each as defined in the



Power Purchase Agreement, which is not remedied within 30 days after receipt of notice from the Project Developer; or

- 6) the termination of the Connection Agreement for reasons not attributable to the Producer.
- (4) In the event of paragraph (3) of this Article occurring prior to the Commercial Operations Date:
  - 1) this Agreement shall cease to be valid after the expiry of 30 (thirty) days after the date on which the Ministry has received the written notification;
  - 2) The Project Developer has a right to be compensated by the Ministry in accordance with Annex G of this Agreement;
  - 3) the Ministry shall return the Performance Security, provided the Project Developer shall have paid all expenses and costs to date and shall not itself be in violation of this Agreement; and
  - 4) following the Ministry's payment of amounts in accordance with Annex G of this Agreement, the Project Developer's right of construction shall be deemed transferred to the Ministry.
- (5) The Project Developer, prior to the expiry of the duration of this Agreement, may request termination of this Agreement prior to the Commercial Operations Date in the event that either party has been excused from the performance of any material obligation under this Agreement by reason of a Prolonged Force Majeure.
- (6) In the event of paragraph (5) of this Article:
  - 1) the Agreement shall cease to be valid after the expiry of 30 (thirty) days after the date on which the Ministry has received the written notification;
  - 2) the Project Developer has a right to be compensated by the Ministry in accordance with Annex G of this Agreement;
  - 3) the Ministry shall return the Performance Security, provided the Project Developer shall have paid all expenses and costs to date and shall not otherwise have been in violation of this Agreement, and
  - 4) Following the Ministry's payment of such amounts as may be payable in accordance with Annex G of this Agreement, the Project Developer's right of construction shall be deemed transferred to the Ministry.

## **XVIII. TERMINATION OF THE AGREEMENT UPON A REQUEST FROM THE MINISTRY**

### **Article 18**

- (1) The Ministry shall have the right to terminate this Agreement due to breach of the contractual obligations by the Project Developer (a "**Project Developer Event of Default**") under this Agreement and shall accordingly submit to the Project Developer a written notification that shall contain the reasons for the termination. The following shall be Project Developer Events of Default:
    - 1) the issued construction permit became void according to the Law on Construction for reasons attributable to the Project Developer action or inaction, which is not remedied within 120 days after written notice from the Ministry;
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- 2) the Project Developer fails to achieve the Commercial Operations Date by the Longstop Commercial Operations Date, as may be extended in accordance with this Agreement;
  - 3) Abandonment by the Project Developer (or its subcontractors) for a period longer than 15 consecutive days without Project Developer otherwise submitting a written request to, and receiving written consent from, the Ministry regarding such Abandonment, which is not remedied within 30 days after receipt of notice from the Ministry;
  - 4) the Project Developer fails to procure an extension of the Performance Security by a date which is 14 days prior to the expiry date of the Performance Security, which is not remedied within 7 days after receipt of notice from the Ministry;
  - 5) the Project Developer fails to achieve the Minimum Installed Capacity by the Longstop Commercial Operations Date;
  - 6) the Project Developer completely or partially transfers the rights and obligations arising from this Agreement to any Lenders or any third parties without previously obtaining written consent from the Ministry, except as pursuant to the Direct Agreement, which is not remedied within 120 days after receipt of notice from the Ministry;
  - 7) the Project Developer changes the ownership structure of the company that is the Project Developer Party to this Agreement or any of the Ultimate Beneficial Owners of the Project Developer have changed, in either case without the consent of the Ministry;
  - 8) the termination of the Land Lease Agreement for reasons other than a Lessee Event of Default as defined in the Land Lease Agreement, or a Prolonged Force Majeure, which is not remedied within 30 days after receipt of notice from the Ministry;
  - 9) the termination of the Power Purchase Agreement for reasons other than a Market Operator Event of Default or a Force Majeure Event as defined in the Power Purchase Agreement, which is not remedied within 30 days after receipt o notice from the Ministry;
  - 10) the termination of the Connection Agreement for reasons not attributable to the Transmission System Operator or Force Majeure, which is not remedied within 30 days after receipt of notice from the Ministry;
  - 11) any other misrepresentation, including the disclosure of the Ultimate Beneficial Owners of the Project Developer, breach of or default by the Project Developer of any of its obligations, representations or warranties under this Agreement, which is not remedied within 120 days after receipt of notice from the Ministry, provided, however, any failure to accurately disclose Ultimate Beneficial Owners shall result in an immediate Event of Default.
- (2) In the event of paragraph (1) of this Article occurring prior to the Commercial Operations Date:
- 1) the Agreement shall cease to be valid after the expiry of 30 (thirty) days as of the date on which the Project Developer has received the written notification;
  - 2) The Ministry shall be entitled to draw upon the Performance Security;
  - 3) The Project Developer has a right to be compensated by the Ministry in accordance with Annex G of this Agreement; and
  - 4) the Project Developer's right of construction shall be deemed transferred to the Ministry.
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- (3) The Ministry, prior to the expiry this Agreement, may request termination of this Agreement prior to the Commercial Operations Date in the event that either party has been excused from the performance of any material obligation under this Agreement by reason of a Prolonged Force Majeure.

**XIX. STATE AUTHORITIES' ACTS CONTRARY TO THE INTEREST OF THE PROJECT DEVELOPER**

**Article 19**

- (1) The Project Developer shall not be liable for default in the meeting of the obligations under this Agreement arising out of the undertaking or non-undertaking of actions, excluding actions undertaken or permitted not to be undertaken in accordance with applicable law, by competent authorities of state or local government, legal entities having an obligation to provide public service, or holders of public office, by means of which actions, the licenses, approvals, permits and/or other documents required to meet the obligations or use of the rights of the Project Developer of this Agreement have not been issued, amended or extended within the legally established deadlines.
- (2) In the cases referred to in paragraph (1), the Project Developer shall have the right to request extension of the validity of this Agreement for a period equal to the period that has elapsed from the expiration of the legally determined deadline within which the requested licenses, approvals, permits and/or other documents were not issued, amended or extended, for which it will ask the Ministry to enter into an annex to this Agreement within 30 days from the expiry of the legal deadline for taking action. If the Ministry refuses to enter in such extension within the specified period, the Project Developer shall have the right to initiate a dispute resolution procedure in accordance with the provisions of this Agreement.
- (3) If any licenses, approvals, permits and/or other documents issued to the Project Developer for construction of the Project in accordance with law or other regulation have been revoked or annulled due to reasons that are not a violation of any of the foregoing or do not constitute illegal or unethical behavior of the Project Developer, the Project Developer has the right to request termination of this Agreement if the meeting of its obligations under this Agreement has become impossible or materially prevented.
- (4) If in case of paragraph (3) the Agreement is terminated, the Project Developer has the right to claim from the competent authority or the legal entity the costs of the evidenced damages that it has suffered due to termination of the Agreement.
- (5) If a procedure for nationalization or expropriation of the whole or part of the power plant has been conducted, the Project Developer shall have the right to be paid fair compensation by applying the regulated procedure as provided for under applicable law.

**XX. FORCE MAJEURE**

**Article 20**

- (1) A Party, which due to the occurrence of an event of Force Majeure, is not able to fulfil its obligations under this Agreement, it shall notify the other party within 5 days as of the day the Force Majeure commenced, of the following:
    - 1) a description of the Force Majeure;
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- 2) the effects caused by the Force Majeure;
  - 3) the measures taken for overcoming the conditions and mitigating the consequences from the Force Majeure event; and
  - 4) the expected date when the notifying Party will be able to continue with the fulfilment of its obligations under this Agreement.
- (2) The notifying Party in paragraph (1) shall, within 5 days of the day of the cessation of the Force Majeure event, notify the other Party that the Force Majeure condition has ended.
- (3) “**Force Majeure**” shall mean:
- 1) any event or circumstance, or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the PDA Execution Date, materially and adversely effects the performance by such affected Party of its obligations under or pursuant to this Agreement; provided, however, that such material and adverse effect could not have been prevented, mitigated, overcome or remedied in whole or in part by the affected Party through the exercise of diligence, prudent and reasonable care, it being understood and agreed that such care includes the taking of acts and activities to protect the Project from a casualty or other event, that are reasonable in light of the possibility or probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Each of the following shall be a Force Majeure to the extent that each satisfies the foregoing requirements:
    - a. emergencies of major scope and intensity, such as earthquakes, floods, landslides, droughts, volcano eruptions, hurricanes, snow slides, torrential downpour, damages or demolishing caused by lightning strikes, epidemics and similar natural causes;
    - b. fires or explosions, not arising from actions or inactions of the Party claiming Force Majeure, that have caused damages or demolishing of equipment, machines and/or installations, as well as demolishing or blocking of power, telecommunications or traffic infrastructure;
    - c. war or martial law, terrorism attacks, revolutions, riots, sabotages (not by employees or sub-contractors of the Party claiming sabotage), blocking protests (excluding protests by employees or sub-contractors of the Party claiming Force Majeure);
    - d. failure of state or local authorities or holder of public office to issued any license, approvals, permits and/or other documents necessary for the fulfillment of the obligations by, or exercise of the rights, of a Party under this Agreement are not issued, amended or extended within the legally determined deadlines after the proper and complete submission of the request from the applicable Party, or are terminated or annulled due without cause;
    - e. nationalization or expropriation of the Project, or a part thereof; or
    - f. international sanctions or entry into force of ratified international agreements which are not of general or universal application, such as European Union wide applicability, and which oblige the Republic of Kosovo to apply them, and if due to their application a Party is not in the position to fulfil its obligations under this Agreement.
- (4) In case of Force Majeure, this Agreement shall remain in force, but its validity, and any applicable deadlines in this Agreement (including the Longstop Effective Date and the Longstop Commercial Operations Date) shall be extended on a day-for-day basis for the duration of the Force Majeure event, but in no event shall such extension be longer than 365 days.
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- (5) Upon termination of the Force Majeure effects the validity of this Agreement shall continue, and the validity period of this Agreement shall be extended for the period of the effects of the Force Majeure, whereas upon the request from the Project Developer, the Parties shall amend this Agreement to reflect such extension.
- (6) The Parties to this Agreement, hereby, agree that the amendment referred to in paragraph (5) of this Article is concluded within 30 (thirty) days at the latest as of the date of the submission of the Project Developer's request for amendment to the Ministry.
- (7) Should the Ministry refuse to enter the amendment to this Agreement as referred to in paragraph (6) of this Article, the Project Developer may initiate proceeding to resolve the dispute pursuant to Article 21 of this Agreement.
- (8) As an exception to paragraph (5) of this Article, in case of Prolonged Force Majeure, the validity of this Agreement shall not be extended for the duration of the Force Majeure effects if either Party requests termination of this Agreement.

## **XXI. DISPUTE RESOLUTION PROCEDURES**

### **Article 21**

- (1) Any dispute, claim, or controversy arising out of this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of it, shall be considered a dispute for the purposes of this Agreement (a "**Dispute**").
- (2) In the event of a Dispute, the Party alleging the existence of a Dispute shall give to the other Party written notice setting out the material particulars of the Dispute ("**Dispute Notice**").
- (3) Each Party to this Agreement shall promptly designate a senior official or executive with authority to resolve the Dispute. The designated senior official and executive shall meet in Pristina, Kosovo and shall use all reasonable efforts, and attempt in good faith, to reach a mutually satisfactory resolution of the Dispute within 60 days following the date of a Dispute Notice, or such longer period as the Parties agree in writing.
- (4) If a Dispute is not resolved within 60 days as of the date of a Dispute Notice, the Parties agree that either Party may, by written notice to the other Party, require that any Dispute shall be referred to and finally resolved by arbitration conducted under the rules of the International Chamber of Commerce ("**ICC Rules**") in accordance with the following:
  - 1) the language to be 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;
  - 2) unless otherwise agreed by the Parties, the number of arbitrators shall be 3, with such arbitrators to be nominated in accordance with the following:
    - i. each Party shall nominate one arbitrator within the period of nominating the arbitrator specified in the ICC Rules, and the two arbitrators thus nominated, within 30 days after the nomination of the second arbitrator, nominate the third arbitrator. If a Party fails to timely nominate an arbitrator, the ICC shall appoint that Party's arbitrator within 30 days after the date on which that Party's nomination came due. If the first two arbitrators fail to timely nominate the third arbitrator, the ICC shall appoint the third arbitrator within 30 days after the date on which the nomination of the third arbitrator came due;

- ii. if multiple parties initiate or respond to arbitration proceedings they shall jointly nominate an arbitrator as though a single Party; and
    - iii. no arbitrator nominated or appointed pursuant to this Article shall be a national of the jurisdiction of a Party nor shall any such arbitrator be, or formerly have been, a shareholder, director, employee, agent, or contractor of a Party;
  - 3) the seat (legal place) of the arbitration shall be Geneva, Switzerland. Without prejudice to this sub-paragraph, the Parties shall be free to agree on a mutually convenient and suitable location for the arbitration hearings. Failing such an agreement by the Parties, any hearings shall take place in Geneva, Switzerland;
  - 4) the governing law of the arbitration shall be that of Switzerland;
  - 5) the Parties agree that the marshalling of evidence, pre-hearing disclosure, and examination of witnesses and experts authorized by Article 25 of the ICC Rules, shall be construed to allow any Part to request the production of documents and other information that is reasonably calculated to lead to the discovery of evidence that is relevant to any claim or defense relating to the Dispute, including by the following means:
    - i. written interrogatories;
    - ii. requests for production of documents, including production of electronically stored information in a convenient electronic format in accordance with the International Bar Association Rules; and
    - iii. a reasonably sufficient number of oral depositions appropriate for the subject matter of the Dispute, including the deposition of a representative designated by an entity as its agent to testify as to specific matters on its behalf
- and to allow the non-requesting Party to object to such request, in which case the arbitration tribunal shall issue a ruling on such request.
- 6) each Party shall use reasonable endeavors to ensure that its advisors, agents, and Contractors are available for any depositions and other discovery mechanisms that are order by the arbitration tribunal;
  - 7) the decision of the arbitrators shall be final and binding upon the Parties and shall not be subject to appeal;
  - 8) any Party may petition any court having jurisdiction to enter judgement upon the arbitration award. At the request of any of the Parties, the arbitrators shall seek to have such arbitration award filed with any court so requested by a Party;
  - 9) the arbitral award shall be made and payable in Euro, and the award shall be grossed up for any payable taxes unless the amount paid would have been subject to tax if paid in the normal course under this Agreement; and
  - 10) the Parties may seek emergency, preliminary, temporary, interim or conservatory measures in accordance with Article 29 of the ICC Rules.
- (5) In accordance with the ICC Rules, Disputes may be resolved in a single arbitration together with 'Disputes' (as defined in the Power Purchase Agreement) arising out of the Power Purchase Agreement, the Land Lease Agreement, or the Connection Agreement.
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- (6) The pendency of a Dispute (other than a Dispute resulting from an Event of Default) shall not in and of itself relieve either Party of its duty to perform under this Agreement, and each Party shall continue to perform its obligations, unless the Parties otherwise Agree, and shall have the right to exercise rights under this Agreement, pending the resolution of the Dispute.

## **XXII. AMENDMENTS TO THE LEGISLATION AND REGULATION**

### **Article 22**

- (1) Any new laws and bylaws related to the fulfillment of the subject matter of the present Agreement, as well as amendments which have entered into force, or the cessation or expiration of laws and bylaws, regulating the subject matter of this Agreement occurring after the PDA Execution Date, shall apply to the provisions of this Agreement as of the day they enter into force, cease, or expire, as the case may be.
- (2) The Project Developer shall have the right to request from the Ministry to conclude an amendment to this Agreement for the harmonization of the Agreement with the requirements with the new (i.e., amended) laws and bylaws.

## **XXIII. SEVERABILITY CLAUSE**

### **Article 23**

- (1) The Parties to this Agreement agree that if for the duration of this Agreement one or more provisions of this Agreement are deemed as null and void it shall not affect the legal validity and applicability of the other provisions of this Agreement, which shall continue to be valid.
- (2) The Parties to this Agreement hereby agree that they shall pursue the provision or provisions of this Agreement deemed as null and void or inapplicable to be substituted with legally valid and applicable provisions, the economic effect of which shall be equal or similar to the economic effect caused by the provision or provisions deemed to be null and void or inapplicable.

## **XXIV. LIABILITY AND DAMAGE COMPENSATION**

### **Article 24**

- (1) The Parties to this Agreement agree that if one Party by breaching the contractual obligations has caused or resulted in damage to the other Party, it shall compensate such damage to the other Party.
- (2) The damaged Party to this Agreement shall have the right to request compensation for any loss if the loss is caused by fraud, by intentional failure to fulfill the contractual obligations or the failure to fulfill the contractual obligations due to gross negligence, less the amount of any insurance proceeds received by the damaged Party as compensation for the damages.
- (3) The provisions from paragraph 1 of this Article shall not affect the right of the Project Developer to compensation in accordance with Annex G upon the termination of this Agreement prior to the Commercial Operations Date.
- (4) Unless otherwise determined by this Agreement, none of the Parties to this Agreement shall be held liable the other Party for any indirect or consequential damage or whatsoever loss, regardless of what caused them, by applying the provisions of the Law on Obligations.
- (5) Should the Parties to the Agreement fail to agree on the terms of the amount and the manner of damage compensation, the dissatisfied party shall have the right to initiate proceeding for dispute resolution pursuant to the provisions of the present Agreement.
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**XXV. WAIVER**

**Article 25**

- (1) Unless agreed otherwise, if any of the Parties fails to exercise its right, claim, authorization or possibility determined by this Agreement or requires the other Party to fulfill and abide by its obligations under this Agreement, it shall not be considered a waive by that Party of such right, claim, authorization or possibility, or waive of the conditions and provisions under this Agreement related to any current or future violation of this Agreement by the other Party.
- (2) As an exception to paragraph (1) of this Article, a waiver shall be legally valid if given in written form and signed by the authorized representative of the Party to this Agreement, and it unambiguously, precisely and fully states the rights, claims, authorizations and possibilities the Party waives, as well as the time when the waive commences to be legally valid.

**XXVI. TRANSFER (ASSIGNMENT) OF RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT**

**Article 26**

- (1) Except for an assignment or pledge of this Agreement to a Lender through a Direct Agreement, the Project Developer may not, fully or partially, transfer or delegate any rights and obligations under this Agreement to another party without the written consent from the Ministry, which shall have been provided with all necessary information about such party, which shall be such information as was required for the qualifications to bid for the Project set forth in the Tender Dossier, as well as with such additional information and documents as the Ministry may reasonably require. The Ministry is entitled to withhold its consent to such transfer or delegation on the basis that party would not meet the said qualifications.
- (2) Consent by the Ministry to one such assignment shall not be deemed to be a consent to any subsequent assignment. The Ministry may withhold its consent to assignment on the basis that the Market Operator has withheld consent to a corresponding assignment of the Power Purchase Agreement.
- (3) Any transfer made without the written consent from the Ministry shall not produce any legal effects vis-à-vis the Ministry and shall be considered a case of violation of this Agreement and basis for termination of this Agreement by the Ministry, except for an assignment or pledge of this Agreement through a Direct Agreement from paragraph (1) of this Article.
- (4) In the case of a permitted transfer of this Agreement, the Ministry may conclude a contract for transfer with the entity to which this Agreement is transferred under the same conditions set forth in the present Agreement.

**XXVII. ALTERATIONS TO THE OWNERSHIP STRUCTURE OF THE PROJECT DEVELOPER AND ALTERATION OF MINISTRY'S STATUS**

**Article 27**

- (1) If the Project Developer, pursuant to the law regulating the founding and operation of the companies in the Republic of Kosovo proposes to undergo any change in its ownership, including Ultimate Beneficial Ownership, it shall inform the Ministry thereof prior to effecting the same and provide evidence that such change satisfies the qualifications to bid for the Project set forth in the Tender Dossier. The change in ownership structure shall not be in contrary to the requirements to the qualifications to bid for the Project set forth in the Tender Dossier. After review by the Ministry that such requirements have been satisfied, the Ministry shall give its approval and then the change in ownership can proceed.
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- (2) The Project Developer shall attach to the notification referred to paragraph (1) of this Article an updated business certificate issued by the Kosovo Business Registration Agency, that can confirm the entry of the change in the Kosovo Business Registration Agency, as well as any other applicable registries.
- (3) In case of an amendment to the law whereby the rights and obligations of the Ministry under this Agreement are assumed by another entity determined by law, the Parties hereby agree that in a period of 30 (thirty) days as of the entry into force of such law or as of start of implementation of such law, they shall conclude an Annex whereby this Agreement will be harmonized with the changes.
- (4) Unless agreed otherwise, the Parties agree that they shall not request cancellation of this Agreement by means of termination due to the changes referred to in paragraphs (1) and (3) of this Article.

## **XXVIII. NOTIFICATIONS**

### **Article 28**

- (1) Within three business days as of the date of entry into force of this Agreement, each Party shall assign a responsible person for communication and exchange of information and data necessary to perform the obligations of the Parties under this Agreement and shall notify the contact information of the assigned person to the other Party.
- (2) If for the duration of this Agreement a Party changes the person referred to in paragraph (1) of this Article, it shall notify the other Party for the change and shall submit the contact information for the newly assigned person.
- (3) All notifications, exchange of information and data or other addressing between the Parties to this Agreement shall be between the assigned persons referred to in paragraphs (1) and (2) of this Article and shall be in writing.
- (4) If in urgent cases a notification is given orally, the Party giving the notification shall, in a period of 24 hours after the oral notification, submit the same in a written form to the other Party.
- (5) A notification is considered as duly submitted if it is submitted as follows:
  - 1) In person to the registered office of the other Party; or
  - 2) by registered mail with return receipt or via courier with clear identification of the date of receipt of the notification, or
  - 3) in electronic form to the e-mail address of the person referred to in paragraph (1) of this Article with evidence that it was properly transmitted.

## **XXIX. CONFIDENTIALITY**

### **Article 29**

- (1) The Parties agree that any Party holding a document (report, drawing, calculation, program, plan) which, in order to meet its obligations under this Agreement is obliged to make available to the other Party and if that document contains technical, economic or business data and information whose disclosure may worsen its position in relation to its suppliers, subcontractors or the electricity market, may mark that document as confidential and request the other Party not to disclose the information and data contained in such document to third parties.

- (2) The Parties agree that a document that according to the applicable legislation is deemed to be public, cannot be marked as a confidential document.
- (3) The Party to which the document referred to in paragraph (1) has been made available may disclose the information and data contained in that document to third parties only if:
  - 1) it has received written consent from the other Party, or if
  - 2) it has been requested by a competent state authority for the purpose of implementing the legally determined competencies of such authority or in a court procedure.
- (4) The restrictions in this Article shall continue to apply after termination or expiry of this Agreement without limit in time.

### **XXX. PERSONAL DATA PROTECTION**

#### **Article 30**

- (1) If during the fulfilment of the obligations and the exercising of the rights from this Agreement, there is a need for processing of personal data, the Party that processes the personal data is obliged to perform the processing in accordance with the regulations for personal data protection.
- (2) If the processing of personal data requires the consent of the person whose data is being processed, then the Party shall be obliged to obtain written consent in order to be able to submit such personal data to the other Party.
- (3) The Privileged Producer is obliged to establish and apply a system of technical and organizational measures that will provide confidentiality and protection in the processing of personal data

### **XXXI. THIRD PARTIES**

#### **Article 30**

Except for the rights expressly granted to the third parties herein, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any rights in, duty to, standard of care to, or any liability to, any person who is not a Party.

### **XXXII. MAINTENANCE OF INSURANCE POLICIES**

#### **Article 31**

- (1) The Project Developer, at its sole cost and expense, shall obtain and maintain, or cause to be obtained and maintained, during the Term the policies of insurance set forth in Annex H of this Agreement in the amounts set forth therein and during the periods mentioned therein; provided, however, that such amounts may be changed from time to time with the prior written consent of the Ministry or Market Operator; provided, further, that the Project Developer shall not be in breach of its obligations hereunder if and to the extent that:
  - 1) any particular insurance is not available to it under commercially reasonable terms and for commercially reasonable rates for reasons other than any negligence or default by, or condition (financial or otherwise) of, the Project Developer; or
  - 2) the Project Developer is unable to obtain (having exercised all reasonable efforts) any endorsements or written acknowledgements required under this Agreement.

- (2) The Project Developer shall cause its insurers or agents to provide the Ministry and/or the Market Operator with certificates of insurance evidencing the policies and endorsements listed above. Failure by the Project Developer to obtain the insurance coverage or certificates of insurance required by this Article shall not in any way relieve or limit the Project Developer's obligations and liabilities under any provision of this Agreement.
- (3) If the Project Developer shall fail to procure or maintain any insurance required pursuant to this Article then the Ministry and/or the Market Operator shall have the right, but not the obligation, to procure such insurance the cost of which the Project Developer shall reimburse and otherwise in accordance with the requirements set forth in Annex H to this Agreement. The Ministry and Market Operator, in amplification of the foregoing, shall be entitled to offset the premiums paid for such insurance against any amounts owed to the Project Developer pursuant to the terms of this Agreement. The Project Developer shall be named as the loss payee on any such insurance procured by the Ministry and/or the Market Operator pursuant to this Article.
- (4) The insurance policies referred to in paragraph (1) shall be issued by an insurance company that has a rating, or is reinsured through a reinsurance agreement with a reinsurance company with a credit rating of at least A + according to A. M. Best or Standard & Poor's.

## **XXXII. RELATIONSHIP OF THE PARTIES**

### **Article 32**

- (1) This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party.
- (2) Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, or be an agent or representative of, or to otherwise bind, the other Party, and neither Party shall hold itself out to any third-party as having such right, power, or authority.

## **XXXIII. AMENDMENTS**

### **Article 33**

- (1) Any Party to this Agreement may ask from the other Party for this Agreement to be amended, provided that such amendments are in line with the applicable laws and other regulations and the provisions of this Agreement.
- (2) Any and all amendments referred to in paragraph (1) of this Article shall be made in form of annexes to this Agreement and shall be signed by both Parties to the Agreement.

## **XXXIV. APPLICABLE LAW**

### **Article 34**

The applicable laws of the Republic of Kosovo shall apply to the rights and obligations of the Parties under the present Agreement.

## **XXXV. LANGUAGE**

### **Article 35**

This Agreement has been drafted and signed in Albanian and English, and the English version shall prevail in the event of any conflict.

**XXXVI. REPRESENTATIONS AND ENTIRE AGREEMENT**

**Article 36**

- (1) Each Party represents and warrants to the other Party that, as at the date of this Agreement:
  - 1) it has full corporate power and authority to enter into and to exercise its rights and perform its obligations under this Agreement;
  - 2) the obligations expressed to be assumed by it under this Agreement are legal and valid obligations binding on it;
- (2) Subject to the applicable provisions of other Project Agreements, this Agreement constitutes the whole and only agreement between the Parties relating to its subject matter. Except to the extent repeated in this Agreement and except that all of the documents and evidence provided to verify the qualifications to bid for the Project as set forth in the Tender Dossier in respect of the Project Developer, as well as the representations and warranties therein contained, shall remain in full force and effect, this Agreement supersedes and extinguishes any other agreement relating to its subject matter that is not a Project Agreement.
- (3) Each Party acknowledges that in entering into this Agreement it is not relying upon any prior agreement, whether oral or written which is not set out in this Agreement or any other Project Agreement, other than documents and evidence provided to verify the qualifications to bid for the Project as set forth in the Tender Dossier.

**XXXVII. FINAL PROVISION**

**Article 37**

Parties to this Agreement shall sign this Agreement, through their authorized representatives in four originals in English language, whereas each contracting party receiving one original in English language. The English language version of this agreement shall be binding. One original in the English language and one translated copy in the Albanian language shall be provided to the Market Operator and the Energy Regulatory Office.

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be duly executed on its behalf as of the date first above written.

For the Ministry

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For the Project Developer

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## ANNEX A: DEFINITIONS

Wherever the following capitalized terms appear in this Agreement or in in any Annex thereto, they shall have the meanings stated below. Capitalized terms used in this Agreement and not defined below shall have the meaning given to them in Article I of the Power Purchase Agreement.

**“Actual Installed Capacity”** means the actual maximum alternating current export capacity of the Project, expressed in MWAc, as determined in accordance with Annex F.

**“Abandonment”** means:

- (i) the voluntary cessation of the design, procurement, construction, and installation of the Project by or on behalf of the Project Developer (provided that the completion of any such activity shall not constitute a cessation of that activity); or
- (ii) the withdrawal of all, or substantially all, personnel of the Project Developer from the Site (provided that any withdrawal of personnel from Kosovo or the Site shall not constitute abandonment if, in the period immediately prior to such withdrawal, there are health, civil unrest, terrorism, and or natural-disaster related concerns in respect of Kosovo, or such part of Kosovo in which the Site is located reasonably requiring full evacuation of the Site),

in each case occurring other than as a result of Force Majeure.

**“Affiliate”** shall mean any company, partnership, trust, or other legal entity, irrespective of ownership form, in which the most favorable bidder (“Winning Bidder”), or any Ultimate Beneficial Owner of the Bidder, owns, directly or indirectly, 5% or more of the shares or ownership interests of such company, partnership, trust, or entity, or otherwise by contract, whether written or oral, whether directly or indirectly, controls the management or decision making of such company, partnership, trust or entity.

**“Agreement”** has the meaning given the term in Article 1 of this Agreement.

**“Article”** means one Article in this Agreement.

**“Availability Date”** means the day following the day the Statement of Availability is issued under Annex F in this Agreement.

**“Bid”** the proposal contained in the Tender Dossier and submitted in accordance with the call for proposals to design, construct, and operate the Project, which proposal resulted in the award of this Agreement to the Project Developer.

**“Certificate of Completion”** means the certificate issued by the Independent Engineer following the satisfactory completion of the Commissioning Tests and in accordance with Article 16.

**“Change in Law”** means the occurrence of any of the following after date the Bid is submitted:

- (i) the enactment of any new Laws of Kosovo that requires suspension of or otherwise prevents, materially hinders, or materially delays the construction or operation of the Project;
- (ii) the repeal, modification or re-enactment of any existing Laws of Kosovo that requires suspension of or otherwise prevents, materially hinders, or materially delays the construction or operation of the Project);
- (iii) the termination, or cessation of the effect of, or modification of, any existing Relevant Codes;

- (iv) the commencement or entry into effect of any Relevant Codes which were not formally adopted as at the date the Bid was submitted;
- (v) a change in the interpretation or application of any Laws of Kosovo or of any Relevant Codes;
- (vi) a regulatory decision, instruction or course of action by any current or future energy regulatory body or other regulatory body in Kosovo which prevents or materially contradicts the operation, performance or effectiveness of this Agreement in accordance with its terms;
- (vii) the imposition of tax or fees on the Project Developer on the land parcels constituting the Site, which taxes or fees requirement did not exist and could not have been anticipated by the Project Developer as at the date the Bid was submitted;
- (viii) the imposition of a requirement for a Consent, where such requirement did not exist and could not have been anticipated by the Project Developer (acting reasonably) as at the date the Bid was submitted;
- (ix) the grant of any Consent on terms and conditions that are contrary to, or inconsistent with, the Laws of Kosovo or the Relevant Code;
- (x) after the date of grant of a Consent, a change in the terms and conditions attaching to such Consent or the attachment of new terms and conditions to such Consent;
- (xi) a Consent not being granted on a timely basis, following an application therefor having been properly and duly made;
- (xii) any Consent ceasing to remain in full force and effect, or, if granted for a limited period, not being renewed within the time required by the Laws of Kosovo, or where no time is so specified, within a reasonable time, following a properly and duly made application (or other steps required by the Laws of Kosovo), or being renewed on terms and subject to conditions which are less favorable to the Project Developer, its investors, any Lenders or the Project Developer's contractors than those attached to the original Consent; or
- (xiii) a change in the Laws of Kosovo that may be reasonably anticipated to negatively and materially impact the financial settlements under the Power Purchase Agreement.

**“Commercial Operations Date”** has the meaning given the term in Article 6 of this Agreement.

**“Commissioned”** means in respect of the Project or the Connection Facilities, that the Project and the Connection Facilities have passed the Commissioning Tests in accordance with the requirements of Annex F of this Agreement.

**“Commissioning”** means, in respect of the Project or Connection Facilities, the performance of the Commissioning Tests in accordance with the relevant requirements of Annex F of this Agreement.

**“Commissioning Tests”** means the tests and procedures for the Project and the Connection Facilities as set out in Annex F of this Agreement.

**“Connection Point”** has the meaning given to that term in the Power Purchase Agreement.

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**“Conditions Precedent”** means the conditions precedent specified in Annex B of this Agreement.

**“Consent”** means an approval, consent, authorisation, notification, concession, acknowledgement, agreement, licence, permit, decision, right or similar item required to be obtained from any governmental authority for the purposes of the Project.

**“Construction Contract”** means the principal construction contract or contracts to be entered into between the Project Developer and a construction contractor in connection with the construction of the Project and any Connection Facilities.

**“Contracted Capacity”** has the meaning given the term in Article 5 of this Agreement.

**“Development Rights”** has the meaning given the term in Article 3 of this Agreement.

**“Direct Agreement”** means any direct agreement entered into between the Ministry, the Project Developer and any Lenders, substantially in the form set out in Annex C, subject to reasonable modifications (if any, and without obligation) acceptable to the parties thereto.

**“Dispute”** has the meaning given the term in Article 21 of this Agreement.

**“Dispute Notice”** has the meaning given the term in Article 21 of this Agreement.

**“Effective Date”** means the first date on which all the Conditions Precedent are either satisfied or irrevocably waived in accordance with Article II of this Agreement.

**“Financing Agreements”** means any loan agreements, participation agreements, notes, indentures, security agreements, guarantees, swaps and insurance products and other documents relating to any third party financing of the Project, or any part thereof, but excludes any such of the foregoing entered into with any of the Project Developer’s immediate shareholders or Ultimate Beneficial Owners, the Project Developer’s anchor sponsor and, in each case, any of their Affiliates.

**“ICC Rules”** has the meaning given the term in Article 21 of this Agreement.

**“Independent Engineer”** means the independent consulting engineer or engineering company or consortium of companies of international repute with relevant experience in photovoltaic electric power generation, as well as in environmental and social issues related to developing and operating such projects), engaged to act for the Project Developer and the Ministry in connection with this Agreement and appointed in accordance with Article 14 of this Agreement.

**“Independent Engineer Agreement”** means the agreement to be entered into between the Ministry, the Project Developer and the Independent Engineer in accordance with Article 14 of this Agreement appointing the Independent Engineer to perform such services as further set forth therein, substantially in the form set out in Annex E of this Agreement.

**“Laws of Kosovo”** means any international (to the extent having direct effect in Kosovo), national, provincial or local law, order, rule, regulation, by-law, statutory order, statutory reversionary order, executive order, decree, policy, judicial decision, notification, administrative decision or other similar directive made pursuant thereto, or legally binding instruction, guideline, code or standard issued by an executive, legislative, judicial or administrative entity applicable in Kosovo, or any acts of any regulator having jurisdiction over the Project Developer or the Project, whether or not independent from the Government of Kosovo, including in relation to any tax, as any of them may be amended from time to time, other than the Relevant Codes.

**“Land Lease Agreement”** means the agreement between the Ministry and the Project Developer related to the lease of Site land necessary for the development of the Project, dated and effective on or around the date of this Agreement.

**“Lenders”** means any banks or other financial institutions party to any Financing Agreements in any capacity or any entity appointed to act as security trustee or agent or in any other similar capacity for and on behalf of the Lenders, but excludes the Project Developer, its immediate shareholders, the Project Developer’s anchor sponsor and, in each case, any of their affiliates.

**“Longstop Commercial Operations Date”** means the date falling 6 months after the Scheduled Commercial Operations Date.

**“Longstop Effective Date”** means the date falling 6 months after the PDA Execution Date.

**“Market Operator”** means the Transmission System and Market Operator - KOSTT J.S.C a company duly incorporated under the laws of Kosovo, licensed by the Energy Regulatory Office, responsible for operation and organization of the electricity market in Kosovo, which is a party to the Power Purchase Agreement.

**“Minimum Installed Capacity”** means 90% of the Contracted Capacity.

**“Ministry”** has the meaning given the term in the introductory paragraph of this Agreement.

**“Ministry Event of Default”** has the meaning given the term in Article 17 of this Agreement.

**“Net Delivered Electricity”** has the meaning given the term in the Power Purchase Agreement.

**“New Transmission Assets”** has the meaning given the term in the Connection Agreement.

**“Party”** has the meaning given the term in the introductory paragraph of this Agreement.

**“PDA Execution Date”** has the meaning given the term in the introductory paragraph of this Agreement.

**“Performance Security”** means the unconditional and irrevocable on-demand guarantee to be procured by the Project Developer in accordance with Article 4 of this Agreement.

**“Power Purchase Agreement”** means the agreement between the Market Operator and the Project Developer related to the purchase and sale of electric energy from the Project, dated on or around the date of this Agreement.

**“Procurement Guidelines”** has the meaning given the term in Article 14 of this Agreement.

**“Producer”** has the meaning given the term in the Connection Agreement.

**“Program for Tests”** means the detailed information provided by the Project Developer to the Transmission System Operator after confirmed by the Independent Engineer for testing the Plant, which amongst others include the description of the facility and equipment, proposed timing for test to occur, testing schedules and the personnel involved for the testing in accordance with Annex F, and the *Relevant Codes*.

**“Project”** has the meaning given the term in Article 1 of this Agreement.

**“Prudent Utility Practices”** has the meaning given in the Power Purchase Agreement.

**“Project Agreements”** means this Agreement, the Power Purchase Agreement, Connection Agreement, Land Lease Agreement, Direct Agreement, if any, and Independent Engineer Agreement.

**“Project Developer”** has the meaning given the term in the introductory paragraph of this Agreement.

**“Project Developer Event of Default”** has the meaning given the term in Article 18 of this Agreement.



**“Prolonged Force Majeure”** means a Force Majeure lasting 365 consecutive days.

**“Relevant Codes”** has the meaning given to that term in the Power Purchase Agreement.

**“Site”** has the meaning given the term in the Land Lease Agreement.

**“Statement of Availability”** means the written determination to be issued by the Project Developer for the Transmission System Operator under Annex F stating, in relation to the Plant, that the Project Developer has submitted the necessary Program for Tests and that the Project Developer is ready for and capable of synchronization with the Transmission System Operator and is available for generation and delivery of Net Delivered Electricity, and that the Project Developer is in a condition that it will successfully complete the Commissioning Tests.

**“Scheduled Commercial Operations Date”** means the date falling 18 months after the Effective Date, as extended pursuant to the terms of the Power Purchase Agreement.

**“Technical and Financial Feasibility Study”** means the design and technical proposal (i.e., the Technical and Financial Feasibility Study) submitted as part of the Bid, which is attached to this Agreement as Appendix 2.

**“Tender Dossier”** shall mean all of the documents and materials submitted to the Ministry by any and all owners of the Project Developer in connection with this Project.

**“Transmission System Operator”** means the counterparty to the Ministry under the Connection Agreement.

**“Ultimate Beneficial Owner”** shall be any and all natural persons who, directly or indirectly, ultimately own, hold or control any share, or ownership interest of whatever nature, capital, voting rights, or otherwise ultimately controls the management or decision making, in the underlying entity. In amplification of the foregoing if such natural person(s) has such ownership, holding or control via a company, partnership, trust or other legal entity whose shares or ownership interests are registered on an internationally recognized stock exchange, which requires the disclosure of the identity of all such persons then such company, partnership, trust or other legal entity shall be considered the Ultimate Beneficial Owner.

## ANNEX B: CONDITIONS PRECEDENT

No.	Condition Precedent	Document Signatories (where applicable)	Responsible Party
1.	The execution of the Power Purchase Agreement by the Project Developer (as Privileged Producer) and the Market Operator without reservation.	a. Project Developer b. Market Operator	Project Developer
2.	The execution of the Land Lease Agreement by the Project Developer (as Lessee) and the Ministry without reservation.	a. Project Developer b. Ministry	Project Developer
3.	Completion of any due diligence on the Site in accordance with Article 8.	-	Project Developer
4.	Submission of application for a construction permit for the Project.	-	Project Developer
5.	Provide an increase in the amount of the Performance Security to 7,500,000 Euro	-	Project Developer

**ANNEX C: FORM OF DIRECT AGREEMENT**

**THIS DIRECT AGREEMENT** (the “**Agreement**”) is dated [●] and entered into by and between:

- (1) **THE MINISTRY OF ECONOMY OF THE REPUBLIC OF KOSOVO** in relation to the Project Development Agreement and the Land Lease Agreement (the “**Ministry**” or “**Lessor**”);
- (2) **[name of Project Developer]** a company duly incorporated under the laws of Republic of Kosovo with registered number [●] whose registered office is at [●] (hereinafter referred to as “**Project Developer**”); and
- (3) The entity specified in Schedule 1 (*Project Developer Specific Information*), as agent and trustee for and on behalf of the Finance Parties defined below (the “**Security Agent**”),

(each a “**Party**” and together the “**Parties**”).

**Recitals:**

- (A) A competitive tender for the Project has been conducted, which has been awarded to the Winning Bidder pursuant to the Laws of Kosovo. The Winning Bidder has formed a legal entity in Kosovo to serve as the Project Developer in relation to the Project.
- (B) Pursuant to the terms of the tender, the Project Developer has entered into the Project Development Agreement, the Power Purchase Agreement, Connection Agreement, and the Land Lease Agreement, as well as the Independent Engineer Agreement.
- (C) The Project Developer has entered into the Finance Documents, pursuant to which the Finance Parties, shall make loans and extend other credit to the Project Developer in amounts reasonably approved by the Ministry of Economy for the purpose of financing the cost to the Project Developer of constructing and operating the Project and certain related expenses.
- (D) The Finance Documents contemplate the execution, delivery and implementation of this Agreement and it is a condition precedent to the making of advances under the Finance Documents that the Assigned Agreement Counterparties shall have executed and delivered this Agreement.

**IT IS AGREED** as follows:

**1 Definitions and interpretation**

**1.1 Definitions**

In this Agreement:

“**Agreement Year**” means the one-year period commencing at 00:00 on the Commercial Operations Date and each subsequent one-year period commencing at 00:00 on the anniversary of the Commercial Operations Date until the Power Purchase Agreement terminates or expires.

“**Appointed Representative**” means any of (i) the Security Agent, (ii) any liquidator, receiver, administrator, custodian or other similar official appointed pursuant to the Security Agreement or (iii) a person directly or indirectly owned or controlled by any of the Finance Parties which is authorised to carry on business in Kosovo.

“**Assigned Agreement Counterparty**” means each of the Ministry, the Lessor, and the Market Operator.

**“Assigned Agreements”** means:

- (ii) the Project Development Agreement;
- (iii) the Land Lease Agreement;
- (iv) the Connection Agreement;
- (v) the Power Purchase Agreement; and
- (vi) the Independent Engineer Agreement.

**“Assigned Property”** means all of the Project Developer’s rights, title and interest in, to and under:

- (i) (a) each Assigned Agreement, (b) each Liquidity Agreement, (c) each Construction Contract, and (d) each other contractor agreement;
- (ii) all of its moveable property;
- (ii) all of its immovable property (including the Project and (until the transfer thereto to the Ministry in accordance with the Power Purchase Agreement and the Land Lease Agreement) the Purchaser Interconnection Facilities);
- (iv) all of its accounts (other than a distributions account), held in Kosovo and outside of Kosovo offshore; and
- (iii) all insurance proceeds and all of its other receivables.

**“Assignment”** has the meaning given to that term in Clause 2.1 (*Notice of Assignment*).

**“Business Day”** means a day, other than a Saturday, a Sunday and an official public holiday in Kosovo.

**“Change of Financing Arrangements”** means a material amendment, restructuring or replacement of any obligations under any existing Financing Agreements or the entering into of new Financing Agreements.

**“Commercial Operations Date”** has the meaning given to that term in the Project Development Agreement.

**“Connection Agreement”** has the meaning given to that term in Schedule 2 (*Project Specific Information*).

**“Connection Facilities”** has the meaning given to that term in the Power Purchase Agreement.

**“Consent”** means an approval, consent, authorisation, notification, concession, acknowledgement, agreement, licence, permit, decision, right or similar item required to be obtained from any governmental authority for the purposes of the Project.

**“Construction Contract”** has the meaning given to that term in the Project Development Agreement.

“**DA Novation Certificate**” means the novation certificate, substantially in the form set out in Schedule 4 (*Form of DA Novation Certificate*), pursuant to which the Project Developer each assigns its rights and obligations under the Assigned Agreements to the Substitute.

“**DA Novation Date**” means the date on which the Assigned Agreements are assigned to the Substitute in accordance with Clause 8.2 (*Novation*).

“**DA Novation Notice**” has the meaning given to that term in Clause 8.1 (*Proposal for Novation*).

“**Decommissioning**” has the meaning given to that term in the Land Lease Agreement.

“**Discharged Rights and Obligations**” has the meaning given to that term in Clause 8.2.2 (*Novation*).

“**Dispute**” has the meaning given to that term in Clause 17.1 (*General*).

“**Dispute Notice**” has the meaning given to that term in Clause 17.2 (*Amicable Resolution*).

“**Eligible Counterparty**” means any person or entity, subject to sanctions and integrity controls (e.g., anti-money laundering controls) if and to the extent applicable and required under Lender’s standard operating policies.

“**Enforcement Action**” means the taking of any steps to terminate, cancel or to accept as repudiated any of the Assigned Agreements or to suspend performance of payment or any other material obligation under any of the Assigned Agreements or otherwise to exercise any remedies granted (or purported to be granted) under any of the Assigned Agreements or at law.

“**Event of Default**” has the meaning given to that term in the Finance Documents.

“**Final Payment Date**” means the date on which the Finance Parties have been fully and irrevocably repaid (with any applicable insolvency preference periods or other analogous periods having expired) and have no further commitments or obligations to make advances under the Finance Documents.

“**Finance Documents**” means the documents specified in Schedule 1 (*Project Developer Specific Information*).

“**Finance Parties**” means the banking companies and financial institutions and any of their respective successors, permitted transferees and permitted assignees, which are parties to the Finance Documents, including the Security Agent.

“**Forecast Equity Amount**” has the meaning given to that term in the Project Development Agreement.

“**Government**” means the Government of Kosovo.

“**Land Lease Agreement**” has the meaning given to that term in Schedule 2 (*Project Specific Information*).

“**Laws of Kosovo**” has the meaning given to that term in the Project Development Agreement.

“**Lender Action Notice**” means a notice given by the Security Agent to the Project Developer specifying that an Event of Default has occurred and is subsisting and in respect of which the Security Agent intends to take action in accordance with its rights under the Finance Documents.

“**Lenders**” has the meaning given to that term in the Project Development Agreement.

“**Maximum Equity**” has the meaning given to that term in the Project Development Agreement.

“**Plant**” means the solar powered electric energy generation facility comprising the Project.

“**Project Development Agreement**” has the meaning given to that term in Schedule 2 (*Project Specific Information*).

“**Power Purchase Agreement**” has the meaning given to that term in Schedule 2 (*Project Specific Information*).

“**PPA Expiry Date**” means the expiry date of the Power Purchase Agreement.

“**Project**” has the meaning given the term in Article 1 of the Project Development Agreement.

“**Relevant Codes**” has the meaning given to that term in the Power Purchase Agreement.

“**Rules**” has the meaning given to that term in Clause 17.3 (*Arbitration*).

“**Security Agreements**” means the security agreements dated on or around the date of this Agreement pursuant to which the Project Developer makes the Assignment to the Security Agent.

“**Step-In Date**” means the date upon which the Appointed Representative assumes the rights and obligations of the Project Developer under the Assigned Agreements pursuant to the Step-In Undertaking in accordance with Clause 7.1 (*Step-In Notice*).

“**Step-In Decision Period**” means the applicable period described in Clause 5.1 (*Step-In Decision Period*).

“**Step-In Notice**” means a notice from the Security Agent to each of the Assigned Agreement Counterparties stating that an Appointed Representative is to become a party to the Assigned Agreements on and from the proposed Step-In Date, such date being not less than 14 days after the date of the Step-In Notice.

“**Step-In Period**” means the period from and including the Step-In Date to and including the Step-Out Date or the DA Novation Date (as the case may be).

“**Step-In Undertaking**” means an undertaking, substantially in the form set out in Schedule 3 (*Form of Step-In Undertaking*), given by the Appointed Representative.

“**Step-Out Date**” has the meaning given to that term in Clause 7.4 (*Step-Out Date*).

“**Substitute**” means a person nominated by the Security Agent pursuant to Clause 8 (*Novation*) as the transferee of the Project Developer’s rights and obligations under the Assigned Agreements, such person being:

- (i) a person which (a) could be appointed as an Appointed Representative, and (b) directly or indirectly owned or controlled by a person or persons satisfying all of the requirements to be a bidder pursuant to the tender dossier for the Project; or
- (ii) a person which is (a) authorized to carry on business in Kosovo, and (b) directly or indirectly owned or controlled by a person or persons satisfying all of the requirements to be a bidder pursuant to the tender dossier for the Project.

“**Termination Notice**” means a notice given by an Assigned Agreement Counterparty to the Security Agent specifying the Enforcement Action which that Assigned Agreement Counterparty intends to take.

“**Threshold Loss Event**” means the occurrence of an event or series of events which results in the destruction of, or irreparable damage to, such proportion of the Plant.

“**Transaction Documents**” means the documents specified in Schedule 1 (*Project Developer Specific Information*).

## **1.2 Interpretation**

In this Agreement:

- 1.2.1** References to one gender include all genders and references to the singular include the plural and vice versa.
- 1.2.2** References to:
  - (i) a person include any company, partnership or unincorporated association (whether or not having separate legal personality); and
  - (ii) a company include any company, corporation or any body corporate, wherever incorporated.
- 1.2.3** References to a provision of law are references to that provision as amended, extended or re-enacted and include all laws and official requirements made under or deriving validity from it or enacting such modification.
- 1.2.4** References to this Agreement shall include any Recitals and Schedules to it and references to Clauses and Schedules are to Clauses of, and Schedules to, this Agreement, except where otherwise indicated. References to paragraphs and Parts are to paragraphs and Parts of the Schedules, except where otherwise indicated.
- 1.2.5** Headings shall be ignored in interpreting this Agreement.
- 1.2.6** References to any document (including this Agreement), or to a provision in a document, shall be construed as a reference to such document or provision as amended, supplemented, modified, restated or novated from time to time.
- 1.2.7** The words “including,” “include,” “in particular,” and words of similar effect shall not be deemed to limit the general effect of the words that precede them.
- 1.2.8** The language which governs the interpretation of this Agreement is the English language.
- 1.2.9** A reference to any “Party” includes its successors in title, permitted assignees and transferees.
- 1.2.10** A reference to a “day” means a 24-hour period beginning at 00:00 on a day and ending at 24:00 on that day.
- 1.2.11** If the date for satisfaction of any obligation under this Agreement is due to occur on a Saturday, a Sunday or a public holiday in Kosovo, that date shall occur on the next day which is not a Saturday, a Sunday or a public holiday in Kosovo.

## **2 Consent to Assignment, payment instructions and other undertakings**

### **2.1 Notice of Assignment**

The Project Developer gives notice to each Assigned Agreement Counterparty that, pursuant to the Security Agreements, it has assigned by way of security to the Security Agent all of rights, title and interest in, to and under, and granted security interests in, the Assigned Agreements to which it is a party and all of its rights to payment under or with respect to the Assigned Agreements to which it is a party and all payments due and to become due to the Project Developer under or with respect to the Assigned Agreements to which it is a party, whether as contractual obligations, damages, indemnity payments or otherwise, and all other Assigned Property to the Security Agent (together, the “Assignment”).

## **2.2 Consent to Assignment**

Each of the Assigned Agreement Counterparties acknowledges receipt of notice of, and consents to, the Assignment (in each case, to the extent necessary).

## **2.3 No other security interests**

Each of the Market Operator, Transmission System Operator, and Lessor (in respect of the Power Purchase Agreement, Connection Agreement, the Independent Engineer Agreement, and the Land Lease Agreement) and the Ministry (in respect of the Project Development Agreement) represents to the Security Agent that it has not previously received any other notice relating to the rights, title and interest of the Project Developer in and to any of the Assigned Agreements to which it is a party.

## **2.4 Payment of Monies**

**2.4.1** Each of the Assigned Agreement Counterparties agrees to make all payments due or which may become due from it under or arising from the Assigned Agreements to which it is a party to [*specify details of secured account of Project Developer to which payments should be made*] or to such other account as directed in writing by the Security Agent from time to time, subject to any rights, whether of offset or otherwise, any such Party may have against the Project Developer under the Project Development Agreement or any other applicable agreement.

**2.4.2** The authority and instruction contained in Clause 2.4.1 cannot be revoked or varied without the prior written consent of the Security Agent.

## **2.5 Obligations under Assigned Agreements**

**2.5.1** Each of the Assigned Agreement Counterparties undertakes to and for the benefit of the Security Agent to fully comply with the terms and conditions of and perform its respective obligations, undertakings and agreements under the Assigned Agreements to which it is a party.

**2.5.2** Each of the Assigned Agreement Counterparties shall promptly deliver to the Security Agent copies of all material notices and demands delivered by it to the Project Developer pursuant to any of the Assigned Agreements to which it is a party, within 10 Business Days of delivery of such notices and demands of the Project Developer.

## **2.6 Amendments**

None of the Assigned Agreement Counterparties shall, prior to the Final Payment Date, amend or otherwise vary the terms of the Assigned Agreements to which it is a party without the prior written consent of the Security Agent, which shall not be unreasonably withheld or delayed.



## 2.7 Duties of Finance Parties

Each of the Assigned Agreement Counterparties acknowledges and agrees that the Assignment shall not give rise to any duties or obligations whatsoever on the part of any of the Finance Parties (including the Security Agent) to the Assigned Agreement Counterparties under this Agreement or the Assigned Agreements, whether in place of the Project Developer or otherwise, except as provided in Clause 7.2 (*Rights and Obligations of Appointed Representative*).

## 2.8 Disclosure of Information

Each of the Assigned Agreement Counterparties agrees and accepts that, the Security Agent may disclose to each of the Finance Parties and their advisers such information as it may receive as a Party to this Agreement.

## 2.9 Subordination of Rights to Insurance

**2.9.1** The Ministry, Lessor, Market Operator, and Transmission System Operator acknowledge and agree that the requirements as to use of insurance proceeds under the Project Agreements are in all respects subordinate to the interests in such insurance of the Finance Parties under the Finance Documents, provided however the Finance Parties shall prioritize the reinstatement, reconstruction, replacement and renewal, as below provided, of any loss or damage.

**2.9.2** Where:

- (i) any loss or damage occurs to the Plant;
- (ii) such loss or damage does not constitute a Threshold Loss Event; and
- (iii) under the terms of the Finance Documents, the Project Developer may not apply the proceeds of any insurances towards reinstatement, reconstruction, replacement, renewal of such loss or damage or may only do so with the reasonable consent of the Finance Parties, it being understood that notwithstanding the foregoing, reinstatement, reconstruction, replacement, renewal of such loss or damage is of primary and priority concern,

the Project Developer shall, as soon as reasonably practicable, provide to the Finance Parties (with a copy to the Ministry and Market Operator), a proposal for the reinstatement of the Plant.

**2.9.3** The Finance Parties shall notify the Project Developer (with a copy to the Ministry) whether or not they approve the reinstatement proposal and, where they do not approve such proposal, give detailed reasons. The Project Developer shall, so far as it is able, take into account the comments provided by the Finance Parties and submit a revised reinstatement proposal for approval by the Finance Parties.

**2.9.4** If the Finance Parties, acting reasonably and in accordance with Clause 2.9.2, do not agree to such revised reinstatement proposal, the Ministry and Project Developer agree that:

- (i) the Project Developer shall not be required to apply such insurance proceeds towards reinstatement, reconstruction, replacement or renewal; and
- (ii) the Project Developer or the Market Operator shall, where applicable, be entitled to terminate the Power Purchase Agreement.

## 2.10 Privatization or Reorganization of the Market Operator

**2.10.1** Without prejudice to Clause 4.6 (*Privatization and Restructuring of Ministry*) of the Project Development Agreement, the Government shall not reorganize or restructure any or all of the functions of the Ministry without Lenders' reasonable consent except where:

- (i) the Government's obligations under this Agreement and all other Related Agreements to which it is a party remain in full force and effect, or are substituted by equivalent obligations from a person which is an Eligible Counterparty;
- (ii) all of the Ministry's obligations under each Related Agreement to which it is a party are novated to or in any other manner under applicable law become the obligations of another entity or the surviving entity following reorganization, restructuring or privatization and such succeeding entity is an Eligible Counterparty and accordingly there is no material and adverse effect on the ability of any such successor to perform the Ministry's obligations under the Project Agreements (including payment obligations); and
- (iii) Project Developer's rights under each Project Agreement to which it is a party or any replacement thereof, remain subject to the security granted by the Project Developer to the relevant Security Agent as established at the time of first disbursement of the loans under the Finance Documents.

**2.10.2** Without prejudice to the relevant provisions of the Power Purchase Agreement, the Market Operator may not be privatized without Lenders' reasonable consent except where there is no material and adverse effect on the ability of any such successor(s) to the Market Operator under the Related Agreements to perform its obligations (including payment obligations) thereunder.

**2.10.3** A failure by the Ministry or Market Operator to comply with this Clause 2.10 (*Privatization or Reorganization of the Ministry*) shall be a "Ministry Event of Default" for the purposes of the termination provisions of the Project Development Agreement and Annex G of the Project Development Agreement.

## 3 Notification of Terms of Finance Documents, Maximum Equity and Forecast Equity Amount

**3.1** Schedule 5 (*Finance Documents Principal Economic Terms*) sets out (i) the Maximum Equity and (ii) the amortization profile of the loan facilities to be made available to the Project Developer under the Finance Documents as at the date of this Agreement.

**3.2** Schedule 6 (*Forecast Equity Amount*) sets out the Forecast Equity Amount and is consistent with the final version of the Lender's base case financial model, a copy of which has been provided to the Ministry.

**3.3** As soon as reasonably practicable, and in any event within 14 days of any Change of Financing Arrangements, the Security Agent shall provide to the Ministry of Finance:

**3.3.1** an updated Maximum Equity amount and an updated amortization profile in the form provided in Schedule 5 (*Finance Documents Principal Economic Terms*);

**3.3.2** an updated Forecast Equity Amount in the form provided in Schedule 6 (*Forecast Equity Amount*).

## **4 Notification of Enforcement**

### **4.1 Notification of Default**

Within 10 Business Days of becoming aware of the same, the relevant Assigned Agreement Counterparty shall notify the Security Agent of any material default, event or circumstance which could give that Assigned Agreement Counterparty a right to terminate any of the Assigned Agreements to which it is a party, provided, however, there shall be no such notification obligation unless a comparable notification is given to the Project Developer.

### **4.2 Termination Notice**

Each Assigned Agreement Counterparty shall not take any Enforcement Action without first giving a Termination Notice to the Security Agent.

### **4.3 Lender Action Notice**

The Security Agent shall notify each of the Assigned Agreement Counterparties as soon as reasonably practicable after serving a Lender Action Notice on the Project Developer.

### **4.4 Notices from the Security Agent**

After serving a Termination Notice or receiving a Lender Action Notice, the Assigned Agreement Counterparties shall accept as validly given by the Project Developer any notices or demands pursuant to and in accordance with the Assigned Agreements to which it is a party given or made by the Security Agent provided, in each case, such notice or demand would have been validly given had it been given by the Project Developer itself. The Project Developer consents to the giving of such notices or demands.

## **5 Step-In Decision Period**

### **5.1 Step-In Decision Period**

**5.1.1** The Step-In Decision Period shall commence on the earlier of:

- (i) the date of receipt by the Security Agent from the relevant Assigned Agreement Counterparty of the Termination Notice; and
- (ii) the date of receipt by each Assigned Agreement Counterparty from the Security Agent of the Lender Action Notice.

**5.1.2** The Step-In Decision Period shall last until the later of the date which is:

- (i) 120 days after the commencement of the Step-In Decision Period; and
- (ii) provided that the Finance Parties are diligently pursuing a permanent remedy, including any compensation for any cost, expense, loss or damage incurred or suffered as consequence of such breach or failure to be paid to the applicable Assigned Agreement Counterparty, to the circumstances giving rise to the breach or right to terminate, 240 days after the commencement of the Step-In Decision Period.

## **5.2 Effects of Step-In Decision Period**

During a Step-In Decision Period:

- 5.2.1** none of the Assigned Agreement Counterparties shall be entitled to take any Enforcement Action, provided, however the Assigned Agreement Counterparties may take any Enforcement Action to preserve its legal rights or ensure that none of its rights and interests are adversely effected by a failure to take any such Enforcement Action and provided that if there is a breach by the Project Developer of the restrictions on transfer and assignment in the Project Development Agreement, then the Assigned Agreement Counterparty may take immediate Enforcement Action;
- 5.2.2** each of the Assigned Agreement Counterparties undertakes to continue to comply with all of its payment and other obligations under each of the Assigned Agreements to which it is a party in accordance with the terms thereof, provided that any payment obligations may be held in trust by the applicable Assigned Agreement Counterparties during such Period until a resolution of any Enforcement Action prior to the end of such Period, and if there is no resolution, shall be paid to the Assigned Agreement Counterparts; and
- 5.2.3** the Security Agent may, but is under no obligation to, procure remedial action, consistent with the terms of the Assigned Agreements, as may be necessary to remedy the effects of the event or circumstance which has given rise to a Termination Notice and the Assigned Agreement Counterparties agree that any such action shall, to the extent of such remedy, constitute a valid discharge of the Project Developer's obligations under the Assigned Agreements to which such Assigned Agreement Counterparty is party.

## **5.3 Statements of Outstanding Obligations**

### **5.3.1 Initial Statement**

Within 30 days after the commencement of a Step-In Decision Period, each Assigned Agreement Counterparty shall deliver to the Security Agent a statement of:

- (i) all amounts due and payable by the Project Developer to that Assigned Agreement Counterparty under the relevant Assigned Agreement on or before the date of the Termination Notice or Lender Action Notice (as the case may be) but remaining unpaid on such date; and
- (ii) all outstanding claims by each Assigned Agreement Counterparty under or pursuant to the Assigned Agreements to which it is a party against the Project Developer whether arising out of or in connection with any breach or default or otherwise specifying:
  - (a) the provisions of the relevant Assigned Agreements under or in respect of which such claim arises;
  - (b) such information as is available to that Assigned Agreement Counterparty in relation to the acts or omissions of the Project Developer giving rise to such claim not subject to legal and other professional privilege, the disclosure of which to a third party would not prejudice the rights or interests of any such Counterparty to pursue an Enforcement Action; and

- (c) the amount of any monetary claim and the basis of calculation thereof.

### **5.3.2 Updates to Statements**

At any time within the first 90 days of a Step-In Decision Period and provided that the Security Agent has not issued a Step-In Notice or a DA Novation Notice, the relevant Assigned Agreement Counterparty shall be entitled to provide further statements updating the information previously supplied to the Security Agent pursuant to Clause 5.3.1 (*Initial Statement*) together with supporting information and materials in respect of any update, illustrating in reasonable detail the matters specified.

### **5.3.3 Verification of Statements**

The Security Agent may appoint a firm of independent chartered accountants to verify (at the cost of the Project Developer) any statement submitted by an Assigned Agreement Counterparty and the relevant Assigned Agreement Counterparty shall permit such firm to have access to and make copies of all relevant financial records, documents, data and accounting and other similar information not subject to legal and other professional privilege, the disclosure of which to a third party would not prejudice the rights or interests of any such Counterparty to pursue an Enforcement Action, which is reasonably required with a view to confirming the accuracy and completeness of such statements.

### **5.3.4 Conclusive Evidence**

No Appointed Representative or Substitute shall have any liability to an Assigned Agreement Counterparty in respect of any claims by an Assigned Agreement Counterparty arising before the Step-In Date or (where no Step-In Date occurs) the DA Novation Date which were not disclosed by that Assigned Agreement Counterparty pursuant to Clauses 5.3.1 (*Initial Statement*) or 5.3.2 (*Updates to Statements*).

## **6 Meaning of Remedy**

In this Agreement, a breach by the Project Developer, an Appointed Representative or a Substitute of any obligations under this Agreement or the Assigned Agreements shall be deemed to be remedied if, within any applicable cure period, in respect of:

- 6.1** a breach or failure to perform an on-going obligation or obligation which can still be performed, the Project Developer or Appointed Representative (as the case may be) resumes performance of or performs such obligation, and compensates the Assigned Agreement Counterparty for any cost, expense, loss or damage incurred or suffered as consequence of such breach or failure; and
- 6.2** a breach or failure to perform any other obligation (other than breach of the restriction on transfer and assignment in the Project Development Agreement), the Project Developer or Appointed Representative (as the case may be) rectifies, compensates for and otherwise holds harmless the Assigned Agreement Counterpart for any cost, expense, loss or damage it has incurred or suffered as consequence of such breach or failure.

## **7 Step-in and Step-out**

### **7.1 Step-In Notice**

- 7.1.1** At any time during a Step-In Decision Period, the Security Agent may deliver a Step-In Notice to the Assigned Agreement Counterparties.

7.1.2 The Security Agent may revoke a Step-In Notice at any time prior to the Step-In Date by notice to the Assigned Agreement Counterparties.

7.1.3 The Step-In Date shall occur on the date on which the Appointed Representative provides a Step-In Undertaking to the Assigned Agreement Counterparties.

## 7.2 Rights and Obligations of Appointed Representative

On and from the Step-In Date:

7.2.1 the Appointed Representative shall, save as provided in Clause 5.3.5 (*Conclusive Evidence*), assume jointly and severally with the Project Developer, all of the Project Developer's rights and obligations under the Assigned Agreements whether arising before, on or after the Step-In Date pursuant to the Step-In Undertaking; and

7.2.2 as between the Project Developer, the Assigned Agreement Counterparties and the Appointed Representative, only the Appointed Representative shall be authorized to deal with the Assigned Agreement Counterparties and to exercise the rights of the Project Developer under the Assigned Agreements and the Assigned Agreement Counterparties shall only be discharged of their obligations under the relevant Assigned Agreements to the extent that such obligations are performed in favour of the Appointed Representative.

## 7.3 Enforcement Action during Step-In Period

During the Step-In Period, each Assigned Agreement Counterparty shall not take any Enforcement Action, subject to the provisions of Clause 5.2.1., in respect of the Assigned Agreements to which it is a party other than:

7.3.1 if the Appointed Representative breaches the terms of paragraphs (i) or (ii) of a Step-In Undertaking; or

7.3.2 in respect of any breach or default occurring after the Step-In Date which is not remedied or cured within the applicable grace periods under the relevant Assigned Agreement and which gives rise to a right of an Assigned Agreement Counterparty to terminate such Assigned Agreement.

## 7.4 Step-Out Date

The Appointed Representative may, at any time following the Step-In Date, by written notice to the Assigned Agreement Counterparties terminate the Appointed Representative's obligations under the Step-In Undertaking as and from a date (the "**Step-Out Date**") being a date falling not earlier than 14 days after the date of the notice.

## 7.5 Release

On and from the Step-Out Date, the Step-In Undertaking shall terminate and the Appointed Representative shall be released from all obligations under the Assigned Agreements save for any outstanding claims made by the Assigned Agreement Counterparties during the Step-In Period or within 90 days thereafter.

## 8 Novation

### 8.1 Proposal for Novation

At any time during a Step-In Decision Period or a Step-In Period, the Security Agent may give a notice (a “**DA Novation Notice**”) to the Assigned Agreement Counterparties that a Substitute shall assume the obligations of the Project Developer under the Assigned Agreements and specifying the proposed DA Novation Date, such date being no less than 14 days after the date of the DA Novation Notice and provides such evidence that the Substitute is directly or indirectly owned or controlled by a person or persons satisfying all of the requirements to be a bidder pursuant to the tender dossier for the Project and evidence that such requirements are satisfied.

### 8.2 Novation

The Assignment contemplated in the DA Novation Notice shall be effected by the delivery to the Assigned Agreement Counterparties of a duly completed and duly executed DA Novation Certificate, in which event, on the first day after the date of delivery of such DA Novation Certificate to the Assigned Agreement Counterparties (the “**DA Novation Date**”):

- 8.2.1 the Step-In Undertaking shall terminate;
- 8.2.2 the Project Developer and the Appointed Representative shall each be released from all obligations to the Assigned Agreement Counterparties, provided the Assigned Agreement Counterparties have been compensated for all costs, expenses, losses and damages incurred or suffered as consequence of the applicable breach or failure, and the Assigned Agreement Counterparties shall be released from all obligations to the Project Developer and the Appointed Representative under the Assigned Agreements and their respective rights against each other shall be cancelled (which shall include those rights and obligations which arose prior to the DA Novation Date, such rights and obligations being referred to in this Clause 8 as “**Discharged Rights and Obligations**”);
- 8.2.3 each of the Assigned Agreement Counterparties and the Substitute shall each assume and perform the obligations towards each other and/or acquire rights (which shall include the rights and obligations of the Project Developer and Appointed Representative which arose prior to the DA Novation Date) against each other which are the same as the Discharged Rights and Obligations except insofar as the Assigned Agreement Counterparties and the Substitute have assumed and/or acquired the same in place of the Assigned Agreement Counterparties and the Project Developer; and
- 8.2.4 each of the Assigned Agreement Counterparties shall not take any Enforcement Action in respect of events or circumstances arising before the DA Novation Date other than where:
  - (i) in respect of any sum due and payable but unpaid by the Project Developer and/or Appointed Representative or became due and payable following a Step-In Date, such sum is not paid on the DA Novation Date; and,
  - (ii) in respect of any other breach or default or occurred following a Step-In Date, such breach or default is not remedied or cured within 30 days after the DA Novation Date.

## **9 Termination of Assigned Agreements**

**9.1** If the Ministry or Lessor or the Market Operator has served a Termination Notice pursuant to Clause 4.2 (*Termination Notice*) and:

**9.1.1** no Step-In Notice or DA Novation Notice has been given prior to the expiry of the Step-In Decision Period relating to that Termination Notice; or

**9.1.2** a Step-Out Date occurs without a DA Novation Date occurring, but in any case no later than the end of the Step-In Period, or

**9.1.3** there was a breach of the restriction on transfer and assignment on the Project Development Agreement.

then the Ministry and Lessor and/or the Market Operator shall be entitled to terminate the Project Development Agreement, the Power Purchase Agreement, and the Land Lease Agreement.

## **10 Representations, Warranties and Undertakings**

Each of the Assigned Agreement Counterparties makes the following representations and warranties to the Security Agent on the date of this Agreement.

### **10.1 Authority and Authorization**

**10.1.1** It has full power and authority to execute and deliver this Agreement and the Assigned Agreements to which it is a party and to perform its obligations hereunder and thereunder in accordance with its terms.

**10.1.2** The execution, delivery and performance by it of this Agreement and the Assigned Agreements to which it is a party has been duly authorized.

**10.1.3** Each of this Agreement and the Assigned Agreements to which it is a party has been duly executed and delivered by it.

### **10.2 No Conflict**

None of the execution, delivery or performance by it of this Agreement or of the Assigned Agreements to which it is a party, nor its compliance with, or performance of the terms and conditions of, this Agreement or the Assigned Agreements to which it is a party shall violate any of the Laws of Kosovo.

### **10.3 Legality, Validity and Enforceability**

**10.3.1** Each of this Agreement and the Assigned Agreements to which it is a party is a legal, valid and binding obligation of it, enforceable against it in accordance with its terms.

**10.3.2** None of the Assigned Agreements to which it is a party has been amended, supplemented, suspended, novated, extended, restated, or otherwise modified except in accordance with their respective terms and the terms of this Agreement and each such Assigned Agreement is in full force and effect.



#### 10.4 Governmental Consents

In the case of the Ministry only:

- 10.4.1 the Ministry or a government related party has the authority to grant the approvals, consents, licenses and permissions envisaged in the Assigned Agreements and this Agreement;
- 10.4.2 in the event that a Step-In Decision Period is subsisting, a Step-In Notice is in force or the Finance Parties have exercised their security over the shares in the Project Developer, then the Ministry will support the Finance Parties in their discussions with any government related parties and use all reasonable efforts to ensure that, notwithstanding the terms of any of the Consents which have been issued to the Project Developer or the Project, such Consents shall not be withdrawn, suspended, conditioned, revoked or modified solely due to the assumption of ownership, control or governance of the Project Developer by the Security Agent or an Appointed Representative provided that the Project Developer continues to comply with the Assigned Agreements and any other provisions of the Consents and the terms of this Agreement are complied with; and
- 10.4.3 in the event that a Substitute is to be appointed pursuant to Clause 8.1 (*Proposal for Novation*) or the enforcement of the Finance Parties' security, the Government will support the Finance Parties in their discussions with any government related parties and use all reasonable efforts to ensure that, notwithstanding the terms of any of the Consents which have been issued to the Project Developer or the Project, such Consents shall not be withdrawn, suspended, conditioned, revoked or modified solely due to the enforcement of the Finance Parties' security or the substitution of the Project Developer by an Appointed Representative, provided that such Appointed Representative continues to comply with the Assigned Agreements and any other provisions of the Consents.

#### 10.5 Litigation

There are no pending or, to its knowledge, threatened actions, suits, proceedings or investigations of any kind, including arbitration proceedings and actions or proceedings of or before any governmental authority, to which it is a party or is subject, or by which it or any of its properties are bound that, if adversely determined to or against it, could reasonably be expected to materially and adversely affect its ability to execute and deliver the Assigned Agreements to which it is a party and this Agreement or to perform its obligations thereunder and hereunder. Each of the Assigned Agreement Counterparties further undertakes to notify the Security Agent within 10 Business Days of becoming aware of any such occurrence.

#### 10.6 Existing Defaults

It is not, and, to the best of its knowledge, no other party to any Assigned Agreement to which it is a party is, in default under such Assigned Agreement. Each of the Assigned Agreement Counterparties further undertakes to notify the Security Agent within 10 Business Days of becoming aware of any such occurrence.

#### 10.7 Conditions

Other than (in the case of the Ministry and Lessor and in respect of the Project Development Agreement and Land Lease Agreement only) the issuance of a notice to proceed under the Construction Contract, the conditions to the performance of its obligations under the Assigned Agreements to which it is a party and this Agreement have been satisfied or waived.

## 11 Duration

This Agreement shall commence on the date hereof and shall continue in full force and effect until the Final Payment Date without prejudice to any accrued rights and obligations existing at the date of termination.

## 12 Changes to the Parties

### 12.1 Benefit of Agreement

This Agreement shall benefit and be binding on the Parties, their respective successors and any permitted assignee or transferee of all or some of a Party's rights and obligations under this Agreement.

### 12.2 No Assignment

Save as provided in Clause 2 and Clause 8 (*Novation*), each of the Assigned Agreement Counterparties and the Project Developer shall not assign, transfer, novate or otherwise dispose of all or any of their respective rights, benefits or obligations under this Agreement without the prior consent of the Security Agent.

### 12.3 Replacement of the Security Agent

Upon the resignation or removal of the Security Agent:

- 12.3.1 the resigning or, as the case may be, removed Security Agent shall be automatically discharged from any further obligations under this Agreement;
- 12.3.2 its successors and the other Parties shall have the same rights and obligations among themselves as they would have had if the successor had been an original Party to this Agreement; and
- 12.3.3 this Agreement shall be construed as if all references to the former Security Agent were replaced by references to the successor Security Agent.

## 13 Dispute Resolution

### 13.1 General

Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it, shall be considered a dispute for the purposes of this Clause 13 (a "**Dispute**").

### 13.2 Amicable Resolution

- 13.2.1 In the event of a Dispute, a Party may provide written notice of that Dispute to the other Parties in accordance with Clause 14 (*Notices*) (the "**Dispute Notice**"). The Parties shall have a period of thirty (30) Days following the date of a Dispute Notice to enter into negotiations to resolve the Dispute during which they shall refer the Dispute to such representatives or senior executives of the Parties that each Party deems to have sufficient seniority, experience, power, authority and knowledge in respect of this Agreement to resolve such Dispute.

**13.2.2** If the Dispute is not resolved within the thirty (30) Day period referred to in Clause 13.2.1 above, or such further period as the Parties may agree in writing, regardless of whether any attempt has been made to resolve the Dispute, the Dispute shall be referred to and finally resolved by arbitration in accordance with Clause 13.3 (*Arbitration*) below.

### **13.3 Arbitration**

**13.3.1** Subject to Clause 13.2 (*Amicable Resolution*), a Party may, by written Notice to another Party, require that any Dispute be referred to and finally resolved by arbitration conducted under the rules of the International Chamber of Commerce (ICC) (such version as is in force at the time of the Dispute, the “**Rules**”).

**13.3.2** The Rules are incorporated by reference into this Clause and capitalized terms used in this Clause which are not otherwise defined in this Agreement have the meaning given to them in the Rules.

**13.3.3** The number of arbitrators shall be three, unless mutually agreed otherwise in writing by the Parties that there shall be a single arbitrator as provided under the Rules.

**13.3.4** The seat or legal place of arbitration shall be Geneva, Switzerland.

**13.3.5** 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.

**13.3.6** Service of any request for arbitration made pursuant to this Clause shall be at the address given for the sending of Notices under this Agreement at Clause 14 (*Notices*) and in the manner provided for in that Clause.

### **13.4 Consolidation of Connected Disputes**

**13.4.1** In accordance with the Rules, Disputes may be resolved in a single arbitration together with ‘Disputes’ (as defined in the Project Development Agreement) arising out of the Project Development Agreement or ‘Disputes’ (as defined in the Power Purchase Agreement) arising out of the Power Purchase Agreement.

**13.4.2** The Parties agree to the consolidation of any two or more arbitrations commenced pursuant to this Clause 13 and/or the arbitration agreement contained in the Project Development Agreement into a single arbitration, as provided for in the Rules.

The parties to the Assigned Agreements shall be deemed to have agreed to be bound by the provisions of this Clause 13.4.

### **13.5 Jurisdiction**

**13.5.1** The Project Developer and each of the Assigned Agreement Counterparties irrevocably submits to the non-exclusive jurisdiction of the courts of England and Wales to support and assist the arbitration process pursuant to Clause 13.3 (*Arbitration*) and Clause 13.4 (*Consolidation of Connected Disputes*) including, if necessary, the grant of interlocutory relief pending the outcome of that process.

**13.5.2** In addition, in respect of any proceedings arising out of or connected with the enforcement and/or execution of any award or judgment made against it, each of the Assigned Agreement Counterparties hereby submits to the jurisdiction of any court in which any such proceedings are brought.

## **14 Notices**

### **14.1 Writing and Delivery**

Any notice or other communication in connection with this Agreement (each, a “**Notice**”) shall be in writing, in English and delivered by hand or courier using an internationally recognised courier company.

### **14.2 Addresses**

A Notice to the Parties shall be sent to the addresses specified in Schedule 1 (*Project Developer Specific Information*) (in the case of the Project Developer and the Security Agent) and Schedule 2 (*Project Specific Information*) (in the case of the Assigned Agreement Counterparties), or such other person or address as that Party may notify to the other Parties from time to time.

### **14.3 Time of Receipt**

A Notice shall be effective upon receipt and, for these purposes, shall have been received at the time of delivery.

## **15 General**

### **15.1 Invalidity**

**15.1.1** If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties.

**15.1.2** To the extent it is not possible to delete or modify the provision, in whole or in part, under Clause 19.1.1 then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under Clause 15.1.1, not be affected.

**15.1.3** The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any invalid, illegal or unenforceable provision and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

### **15.2 Priority of Documentation**

Nothing in the Assigned Agreements shall prejudice or limit the rights, powers and benefits of the Security Agent under this Agreement and in the event of any conflict between the terms of the Assigned Agreements and this Agreement, then the terms of this Agreement will prevail.

### **15.3 No Partnership**

Nothing in this Agreement shall be deemed to constitute a partnership between the Parties or constitute a Party the agent of another Party for any purpose.

### **15.4 Entire Agreement**

**15.4.1** This Agreement, the Transaction Documents (to the extent relevant) and any other documents entered into pursuant to this Agreement contain the whole agreement between the Parties relating to its subject at the date of this Agreement to the exclusion of any terms

implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with herein or therein.

**15.4.2** Each Party agrees and acknowledges that in entering into this Agreement, the Transaction Documents (to the extent relevant) and any other documents entered into pursuant to this Agreement, it is not relying on any representation, warranty or undertaking not expressly incorporated into it.

**15.4.3** Nothing in this Clause 19.4 excludes or limits any liability for fraud.

## **15.5 Variation**

No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each Party.

## **15.6 Waiver**

**15.6.1** No failure or delay by a Party in exercising any right or remedy provided under this Agreement shall operate as a waiver of it, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise of it or the exercise of any other right or remedy.

**15.6.2** Any waiver of a breach of this Agreement shall not constitute a waiver of any subsequent breach.

## **15.7 Further Assurance**

Each Party shall, and shall use reasonable endeavours to procure that any necessary third party shall, from time to time, execute such documents and do such acts and things as the requesting Party may reasonably require for the purpose of giving the full benefit of this Agreement to the requesting Party.

## **15.8 Counterparts**

This Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by executing any such counterpart.

## **15.9 Contracts (Rights of Third Parties) Act 1999**

**15.9.1** Save as provided in Clause 15.9.2, this Agreement is intended for the sole and exclusive benefit of the Parties.

**15.9.2** The Contracts (Rights of Third Parties) Act 1999 is expressly excluded save for:

- (i) any rights of any Appointed Representative on and after the Step-In Date; or
- (ii) any rights of any Substitute on and after any DA Novation Date, or
- (iii) the rights of the Finance Parties, acting in accordance with the terms of the Finance Documents, to enforce any rights of the Security Agent,

in each case, as if they were a party to this Agreement.

**15.10 Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with laws of Kosovo.

**Direct Agreement  
Schedule 1 Project Developer Specific Information**

**Project Developer details**

<b>1</b>	<b>Project Developer details:</b>	Name:  Legal status:  Country of incorporation: Republic of Kosovo  Registered office:  Registered number:
<b>2</b>	<b>Project Developer notice details:</b>	Name:  Address:

**Security Agent**

<b>1</b>	<b>Security Agent details:</b>	Name:  Legal status:  Country of incorporation:  Registered office:  Registered number:
<b>2</b>	<b>Security Agent notice details:</b>	Name:  Address:

**Project Developer requested information**

**Note: These definitions should be based on the defined terms in the Financing Agreements.**

<b>1</b>	<b>Finance Documents:</b>	
<b>2</b>	<b>Transaction Documents:</b>	

**Direct Agreement**  
**Schedule 2 Project Specific Information**

**Ministry and Lessor details**

<b>Notice details:</b>	Name:  Address:
------------------------	-----------------------

**Project information**

<b>1</b>	<b>Project Development Agreement:</b>	the support agreement between the Project Developer and the Government of the Republic of Kosovo dated [●] pursuant to which the Ministry agrees to provide certain support undertakings in respect of the Project and Project Developer agrees to design and construct the Project
<b>2</b>	<b>Land Lease Agreement:</b>	the land lease agreement between the Project Developer and the Lessor granting the Project Developer rights to use, occupy and access land in connection with the Plant (i.e., the Site) dated [●].
<b>3</b>	<b>Independent Engineer Agreement</b>	the independent engineer agreement between the Ministry and the Independent Engineer relating to the appointment of the Independent Engineer to perform certain evaluation and certification services for the Project Developer and the Ministry and executed as a condition precedent to the Effective Date under the Project Development Agreement, dated [●].



**Direct Agreement**  
**Schedule 3 Form of Step-In Undertaking**

[From the Appointed Representative]

**Ministry of Economy**

[address]

[Date]

Dear Sirs,

**KRAMOVIK REGION SOLAR POWER PROJECT/DIRECT AGREEMENT (the “Direct Agreement”)**

In accordance with Clause 7.1 (*Step-In Notice*) of the Direct Agreement, we undertake to you that:

- 1 we shall pay you any sum due and payable but unpaid by the Project Developer to you as of the date hereof, to the extent that such sum was specified in a statement provided in accordance with Clause 5.3 (*Statements of Outstanding Obligations*) of the Direct Agreement:
  - (i) within 30 days of the date hereof; or,
  - (ii) if any payment is being disputed pursuant to the provisions of the Assigned Agreements, within 14 days of the same being agreed or finally determined; and
- 2 in respect of any other breach or default specified in a statement provided in accordance with Clause 5.3 (*Statements of Outstanding Obligations*) of the Direct Agreement, we shall use our best endeavors to remedy or cure such breach or default as soon as reasonably possible after the Step-In Date taking due account of the nature of the breach or default and the cost required to effect a remedy or cure,
- 3 from the Step-In Date until the Step-Out Date or DA Novation Date, we shall assume jointly and severally with the Project Developer all of the rights and obligations of the Project Developer under the Assigned Agreements,

in each case in accordance with and subject to the terms of the Assigned Agreements as if we were a party in place of the Project Developer.

This Step-In Undertaking may be terminated by the giving of notice to you in accordance with Clause 7.4 (*Step-Out Date*) of the Direct Agreement.

This Step-In Undertaking shall automatically terminate upon a DA Novation Date, as contemplated by Clause 8 (*Novation*) of the Direct Agreement.

All capitalized terms used in this letter shall have the meanings given them in the Direct Agreement.

Yours faithfully,

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For and on behalf of

[NAME OF APPOINTED REPRESENTATIVE]

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**Direct Agreement**  
**Schedule 4 Form of DA Novation Certificate**

**TO: The Ministry of Economy and Transmission System and Market Operator – KOSTT J.S.C.**

**Novation certificate in respect of the Assigned Agreements (as such term is defined in the Direct Agreement)**

- 1** Terms defined in the Direct Agreement dated [●] between the Ministry of Economy (the “**Ministry**”) in relation to the Project Development Agreement and as the Lessor (“**Lessor**”) in relation to the Land Lease Agreement, Transmission System and Market Operator – KOSTT J.S.C. (“**Market Operator**”) in relation to the Power Purchase Agreement and as the Transmission System Operator (“**Transmission System Operator**”) in relation to the Connection Agreement, [●] (the “**Project Developer**”) and [●] as security agent (the “**Security Agent**”) (the “**Direct Agreement**”) shall, subject to any contrary indication, have the same meaning herein.
- 2** The Security Agent requests that [●] (the “**Substitute**”) accepts and procures the assignment to the Substitute of all of the rights, title and interest of and all of the obligations of Project Developer under the Assigned Agreements and the Direct Agreement by countersigning and delivering this DA Novation Certificate to each of the Assigned Agreement Counterparties at its address for the service of notices specified in the Direct Agreement.
- 3** Each of the Assigned Agreement Counterparties hereby accepts the assignment to the Substitute of all of the rights, title and interest of and all of the obligations of Project Developer under the Assigned Agreements and the Direct Agreement and that this DA Novation Certificate has been executed by it pursuant to and for the purposes of Clause 8 (*Novation*) of the Direct Agreement so as to take effect in accordance with the terms thereof on the DA Novation Date or on such later date as may be determined in accordance with the terms thereof.
- 4** The Substitute represents and warrants that it is has received copies of the Assigned Agreements together with such other information as it has required in connection with this transaction and that it has not relied and shall not hereafter rely on the Security Agent to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and shall not rely on the Security Agent in relation to its entering into this DA Novation Certificate and the Assigned Agreements.
- 5** The Substitute hereby undertakes with each of the Assigned Agreement Counterparties that it shall perform in accordance with the terms thereof all obligations of the Project Developer which by the terms of the Assigned Agreements and the Direct Agreement shall be assumed by it after delivery of this DA Novation Certificate to the Assigned Agreement Counterparties.
- 6** The Security Agent makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Assigned Agreements or any document relating thereto and assumes no responsibility for the performance and observance by any party of any of its obligations under the Assigned Agreements or any document relating thereto and any and all such conditions and warranties whether expressed or implied by law or otherwise are hereby excluded.
- 7** The DA Novation Certificate and the rights and obligations of the parties hereunder and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with the laws of Kosovo.

By:

For and on behalf of the Security Agent

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Date:

[Substitute]

By:

Date:

Address for Notices:

Executed by **THE MINISTRY OF ECONOMY** acting by:

.....

.....

Name:

Name:

Title:

Title:

**Direct Agreement  
Schedule 5 Finance Documents Principal Economic Terms**

<b>Repayment date</b>	<b>Principal Repayment (Euro)</b>	<b>Outstanding Balance after Repayment (Euro)</b>
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]
[•]	[•]	[•]

**Direct Agreement  
Schedule 6 Forecast Equity Amount**

**Declining Aggregate of Forecast Equity Amount**

The figures in the table below set out, for each Agreement Year, the declining amount which represents a modelled forecast and estimate of the cumulative discounted cash flows (applying a discount rate of 10 and discounted to the start of the Agreement Year in question) projected to be available for distribution by the Project from that Agreement Year until the PPA Expiry Date, derived from the Lenders’ base case financial model, a copy of which model has been provided to Ministry prior to the Effective Date of the Project Development Agreement.

<b>Agreement Year</b>	<b>Amount (USD)</b>	<b>Agreement Year</b>	<b>Amount (USD)</b>
1	[•]	14	[•]
2	[•]	15	[•]
3	[•]	16	[•]
4	[•]	17	[•]
5	[•]	18	[•]
6	[•]	19	[•]
7	[•]	20	[•]
8	[•]	21	[•]
9	[•]	22	[•]
10	[•]	23	[•]
11	[•]	24	[•]
12	[•]	25	[•]
13	[•]		

**Maximum Equity: USD [•]**

**In witness** whereof this Direct Agreement has been executed on the date first stated above. **[INSERT APPROPRIATE SIGNATURE BLOCKS FOR EACH OF THE PARTIES.]**

**EXECUTED** on behalf of **THE  
MINISTRY OF ECONOMY** as Ministry  
and Lessor by

}

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**EXECUTED** on behalf of  
**[SELLER]** by:

}

---

**EXECUTED** on behalf of **[SECURITY  
AGENT]** by:

}

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**ANNEX D: FORM OF PERFORMANCE SECURITY**

The Performance Bond shall, consistent with the form provided below:

- 1 Name each of the Ministry and the Market Operator as the beneficiary thereof;
- 2 not expire prior to 30 days after the Commercial Operations Date;
- 3 be issued by an acceptable bank as required under this Agreement;
- 4 have a maximum amount available for draw equal to 3,000,000 Euro, which is increased to 7,500,000 Euro prior to the Effective Date;
- 5 expressly state that neither the account party nor the issuer may terminate it prior to its stated expiration date without the written consent of the Ministry;
- 6 become drawable on first demand solely against delivery of a demand and notice to the issuer of the occurrence of one or more of the drawing events specified in the Project Development Agreement;
- 7 not contain any condition to drawing other than the confirmation by the issuer that any drawing certificate required to be delivered in connection with a drawing appears to comply on its face with the requirements of such Performance Bond;
- 8 be reasonably satisfactory in form to the Ministry; provided, however, that a letter of credit from a First Class Bank substantially in the form provided below that otherwise meets the criteria set forth herein shall meet the requirements as to the form of the Performance Bond;
- 9 provide that the beneficiary thereof may make multiple drawings upon it; and expressly state that it shall be subject to the Uniform Rules for Demand Guarantees, 2010 revision, ICC Publication No. 758, except that the supporting document requirement of Article 15(a) is hereby excluded and as otherwise may be restated in the Performance Bond, and be issued subject to the Laws of [New York/England].<sup>2</sup>

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<sup>2</sup> Issuing bank to specify. Either acceptable, consistent with the place of issue.

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[On the letterhead of the Bank]

To: [Ministry]  
[Address]

Date: [ ] 20[ ]

Dear [ ]

You have awarded [●] (the **Project Developer**) the right to develop a photovoltaic solar power generation project in [●], Kosovo on a build, own, and operate basis and to supply electricity to you from that project on terms and conditions set out in an agreement entered into between you and the Project Developer (the **Project Development Agreement**) and an agreement between Transmission System and Market Operator – KOSTT J.S.C. (the **Market Operator**, together with you, the **Beneficiaries**) and the Project Developer (the **Power Purchase Agreement**). Capitalised terms in this guarantee have the same meaning that they have in the Project Development Agreement.

The Power Development Agreement contains an obligation on the part of the Project Developer to provide a bank guarantee (**Performance Security**) in the amount of [●] Euro (the **Maximum Amount**) reducing to zero on the Commercial Operations Date.

We, [*name of Performance Security Provider*] (**Bank**) have agreed to issue this Performance Security to secure certain undertakings and obligations of the Project Developer in respect of the Project Development Agreement.

THE BANK AGREES AS FOLLOWS:

**10** Subject to the terms of this Performance Security, the Bank, irrevocably and unconditionally undertakes to the Beneficiaries, individually and on a joint basis, on receipt of the first and all subsequent written demands to the Bank (each a Demand) declaring that:

- (a) the Project Development Agreement has been terminated prior to the Commercial Operations Date as a result of a Project Developer Event of Default; or
- (b) the Commercial Operations Date has not occurred and the Project Developer has failed to deliver an extended or replacement guarantee to you as required under the Project Development Agreement; or
- (c) the Project Developer has failed to satisfy a payment obligation of the Producer under the Connection Agreement as required under the Project Development Agreement; or
- (d) payment of liquidated damages is due and payable in accordance with the Project Development Agreement.

To immediately pay to the Beneficiary making a Demand the sum stated in such Demand(s), without proof or conditions.

**11** The Demand(s) shall be conclusive evidence of the Bank's liability and of the amount of the sum or sums which it is liable to pay to the applicable Beneficiary, notwithstanding any objection made by the



Project Developer or any other person, including any objection as to the basis for the making of such Demand.

**12** The Bank's obligation to make payment under this Performance Security shall be a primary, independent and absolute obligation and it shall not be entitled to delay or withhold payment for any reason.

**13** All payments under this Project Developer shall be in Euro to the account the applicable Beneficiary may notify to the Bank in writing, and shall be made free and clear of, and without any set-off, counterclaim or deduction on account of any liability whatsoever including, without limitation, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

**14** The maximum aggregate liability of the Bank under this Performance Security shall not exceed the Maximum Amount, excluding interest and legal costs.

**15** This Performance Security shall come into effect on its issuance date, is a continuing obligation, and shall remain in full force and effect (and shall not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate the Bank from its obligations hereunder in whole or in part) until [●] (the Expiry Date). Provided that there is no unpaid Demand(s) outstanding under this Performance Security, it will be returned to the Project Developer on the Expiry Date.

**16** All Demands must be in writing and sent by personal delivery, reputable international courier or facsimile to the Bank at:

Address: *[address]*

Facsimile: *[fax number]*

Attention: *[name]*

**17** Any Demand(s) sent by:

- (a) reputable international courier will be deemed (in the absence of evidence of earlier receipt), to have been delivered five days after dispatch; and
- (b) facsimile is deemed to have been delivered on the date of its dispatch on receipt by the sender of the delivery confirmation report and shall be deemed to have the same force and effect as a signed original writing.

**18** The Bank may by five days' written notice (delivered by courier) to the Beneficiaries change its postal or facsimile address or addressee for receipt of such Demand(s).

**19** This Performance Security is subject to the Uniform Rules for Demand Guarantees, 2010 revision, ICC Publication No. 758, except that the supporting document requirement of Article 15(a) is hereby excluded and as otherwise may be stated in this Performance Security.

**20** This Performance Security and any non-contractual obligations arising out of or in connection with it are governed by [English law/the laws of New York]<sup>3</sup> and the parties irrevocably submit to the exclusive jurisdiction of the [English/New York] Courts with respect to any dispute or difference arising out of or in connection with this Performance Security. Nothing in this clause shall affect the ability of the Beneficiaries to enforce any judgment against the Bank in any jurisdiction.

[Issuing Bank]

.....

Authorized signatory

.....

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<sup>3</sup> Issuing bank to specify. Either acceptable, consistent with the place of issue.

## ANNEX E: FORM OF INDEPENDENT ENGINEER AGREEMENT

This **INDEPENDENT ENGINEER AGREEMENT** (this “**Agreement**”) is made on [●] between:

- (1) **Ministry of Economy**, a Government of Kosovo institution, with offices located at the No. 36 Mother Teresa Street, Pristina, 10000, Republic of Kosovo (hereinafter referred to as “**Ministry**”); and
- (2) [**INDEPENDENT ENGINEER**], a [type of company] established in Kosovo whose [registered office/principal place of business] is at [address] [and whose registered number is [number]] (the “**Independent Engineer**”),

(each a “**Party**” and together the “**Parties**”).

### Recitals

- (A) It is a requirement of the Project Development Agreement that the Ministry appoints an Independent Engineer to carry out the functions and duties assigned to the Independent Engineer in the Project Development Agreement.
- (B) The Independent Engineer is an independent Expert willing to provide the Certification Services and the Additional Services to the PDA Parties.
- (C) The Ministry appoints the Independent Engineer, and the Independent Engineer is willing to fulfil the role of “Independent Engineer” under the Project Development Agreement in accordance with the terms of this Agreement.

## 1 Definitions

Unless inconsistent with the context, terms defined in the Project Development Agreement which are used herein have the meaning given to them in the Project Development Agreement, and the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

“**Additional Services**” means the services to be performed by the Independent Engineer in terms of Clause 6.2 (*Additional Services*).

“**Affiliate**” means, in respect of a person, any person which Controls (directly or indirectly) that person and any other person Controlled (directly or indirectly) by such first-mentioned person, including, where a person is a company, the ultimate holding company of such person, any holding company of such person and any subsidiary (direct or indirect) of such holding company.

“**Certification Services**” means the services to be performed by the Independent Engineer in terms of Clause 6.1 (*Certification Services*).

“**Change in Control**” means any change whatsoever in Control, whether effected directly or indirectly, excluding any change of Control in respect of a company listed on a stock exchange.

“**Contractors**” means any contractor directly engaged by the Project Developer to undertake the whole or any part of the construction, operation and/or maintenance of the Plant.

“**Control**” means the power, directly or indirectly, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities or any interest carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its

board of directors (or equivalent body), whether by contract or otherwise, and “**Controlled**” shall be construed accordingly.

“**Dispute**” means any dispute or difference of whatsoever nature arising under, out of, in connection with or in relation (in any manner whatsoever) to this Agreement or any documents entered into pursuant to it, including:

- (i) any dispute or difference concerning the initial or continuing existence of this Agreement or any provision thereof or as to whether this Agreement or any provision thereof is invalid, illegal or unenforceable (whether initially or otherwise);
- (ii) any dispute relating to any non-contractual obligation arising out of or in connection with the matters provided for in this Agreement; and
- (iii) any dispute or claim which is ancillary or connected, in each case in any manner whatsoever, to the foregoing.

“**Independent Engineer’s Group**” means the Independent Engineer and its affiliates.

“**Limit of Liability**” means, in relation to any claim of the Ministry against the Independent Engineer, an amount equal to the higher of:

- (a) 100% of the aggregate fees (excluding VAT) paid or to be paid to the Independent Engineer for the Certification Services (calculated as if all the contemplated Certification Services are completed), and
- (b) 100% of the aggregate fees (excluding VAT) paid or to be paid to the Independent Engineer in the 12 Months preceding the date on which the claim arises,

less any amounts previously claimed by the Ministry from the Independent Engineer and which have been paid to the Ministry in full.

“**Mechanical (Construction and Assembly) Completion Checklist**” means the checklist in the form set out in Schedule 2 (*Mechanical (Construction and Assembly) Completion Checklist*) to be completed by the Independent Engineer for the purposes of determining whether the Mechanical (Construction and Assembly) Completion Test has been completed.

“**PDA**” means the Project Development Agreement.

“**PDA Parties**” means the Ministry and Project Developers who are parties to the Project Development Agreement.

“**Plant**” means the solar powered electric energy generation facility comprising the Project.

“**Plant Completion Form**” has the meaning given to that term in Clause 6.1.4 (*PV Performance Test Completion Form*).

“**PV Performance Test**” means the availability and commissioning test described in Annex F to the Project Development Agreement.

“**Quarter**” means the three-month period ending on 30 June, 30 September, 31 December, and 31 March, or such shorter period as determined from the Effective Date under the Project Development Agreement until the first of the dates specified above.

## 2 Appointment and Acceptance

With effect from the date of this Agreement, the Ministry appoints the Independent Engineer to perform the Certification Services and the Additional Services, and the Independent Engineer accepts such appointment on the terms and conditions set out herein.

## 3 Duration of Agreement

This Agreement shall commence on the date of this Agreement and, subject to Clauses 11 (*Termination*) and 12 (*Breach of Agreement*), shall subsist until the termination or expiry of the Project Development Agreement.

## 4 Consultation with the PDA Parties

- 4.1 The Independent Engineer undertakes to perform the Certification Services and Additional Services in close consultation and, subject to Clause 4.4, co-operation with the PDA Parties.
- 4.2 In the period between the date of this Agreement and the Commercial Operations Date, the Independent Engineer shall report to the PDA Parties in writing on a monthly basis on all those matters relating to compliance by the Project Developer with those of its obligations under the Project Development Agreement which are relevant for the purposes of completing the Plant Completion Form and the completion of the Connection Facilities. Such reports are to be based, in general, on a review of the Project Developer's monthly progress reports.
- 4.3 The Independent Engineer shall report to the PDA Parties in writing on any anticipated delays that would or might reasonably prevent or hinder the Project Developer from achieving the Commercial Operations Date by the Scheduled Commercial Operations Date and, if the Project Developer does not achieve the Commercial Operations Date by the Scheduled Commercial Operations Date, from achieving the Commercial Operations Date by the Longstop Commercial Operations Date.
- 4.4 The Independent Engineer shall comply with all reasonable instructions given to it by the Ministry for the purposes of the Independent Engineer conducting the Certification Services and Additional Services, except and to the extent that:
- 4.4.1 such instruction, if given by the Ministry, would or might reasonably, unjustifiably delay or prevent the issue of the Plant Completion Form; and/or
- 4.4.2 the Independent Engineer reasonably considers that any such instructions vary or might vary the Certification Services or the Additional Services or its responsibilities under this Agreement, or prejudice or might prejudice the exercise by the Independent Engineer of its professional, fair and impartial judgement under this Agreement.
- 4.5 In the event that a Dispute arises between Ministry and the Independent Engineer in respect of any instructions given to the Independent Engineer in accordance with Clause 4.4, such Dispute shall be referred to dispute resolution in terms of Clause 13 (*Dispute Resolution*), save that where a Dispute arises between the PDA Parties in respect hereof, such Dispute shall be resolved in accordance with the dispute resolution provisions of the Project Development Agreement.
- 4.6 All instructions to the Independent Engineer shall be given in writing by the Ministry copied to the the Project Developer.
- 4.7 Where the Project Development Agreement contemplates that instructions could be given to the Independent Engineer by the Ministry, and the Ministry issue conflicting instructions to the Independent Engineer, the Independent Engineer shall inform the Ministry of this fact, and shall not commence with any Certification Service or Additional Service to which such instruction relates
-

until the Ministry have issued a joint written statement to the Independent Engineer in which the instruction is clarified.

## **5 Project Agreements**

**5.1** The Independent Engineer shall be deemed to have full knowledge and understanding of the Project Development Agreement and the Power Purchase Agreement to the extent necessary to perform its obligations in terms of this Agreement, and shall carry out the duties of the Independent Engineer prescribed in the Project Development Agreement.

**5.2** Subject to Clause 10 (*Confidentiality*), the Project Developer shall provide to the Independent Engineer all required or requested information that is necessary for the performance of the Certification Services and Additional Services and is available or ought reasonably to be available to the Project Developer. This information includes, but is not limited to, the following information (which shall be deemed to be available to the Project Developer):

**5.2.1** a signed copy of the Project Development Agreement, including all Schedules thereto in completed form and all details of any change to the Scheduled Commercial Operations Date in accordance with the Project Development Agreement;

**5.2.2** copies of all studies provided as part of the tender for the Project;

**5.2.3** copies of working drawings, schedules and specifications prepared by the Project Developer and Contractors sufficient to demonstrate compliance by the Project Developer and Contractors with the requirements of the Project Development Agreement;

**5.2.4** detailed summaries of the Project Developer's quality control and quality assurance records;

**5.2.5** information related to energy yield as appropriate and necessary for the Independent Engineer to discharge its obligations under this Agreement;

**5.2.6** the progress reports of the Project Developer and any Contractors covering the Project implementation;

**5.2.7** copies of the Project Developer's testing and Commissioning procedures and reports;

**5.2.8** copies of any engineering, procurement and construction agreements entered into by the Project Developer or its Contractors in relation to the Project; and

**5.2.9** as and when requested by the Independent Engineer, copies of data relating to the Project and any other information as reasonably necessary for the Independent Engineer to discharge its obligations under this Agreement.

**5.3** Within five Business Days of termination of this Agreement in accordance with Clause 11 (*Termination*) or 12 (*Breach of Agreement*) or the termination or expiry of the Project Development Agreement, the Independent Engineer shall deliver to the Project Developer all copies of the Project Development Agreement and as well as all other agreements, documentation, plans, drawings, records and any other materials made available to it by the Project Developer pursuant to this Agreement, with complete copies thereof to the Ministry. Notwithstanding the foregoing, the Independent Engineer may retain one copy of any such materials if so required in terms of applicable laws or in connection with any Dispute referred for resolution pursuant to Clause 13 (*Dispute Resolution*).

## 6 Certification Services and Additional Services

### 6.1 Certification Services

#### 6.1.1 Review of Commissioning procedures

The Independent Engineer shall review the Commissioning test procedures submitted by the Project Developer. Based on the conditions of the Project Development Agreement, the applicable test codes and standards, the manufacturers' recommendations and the accepted international industry practices, the Independent Engineer shall comment on the adequacy and appropriateness of the proposed test plans and procedures.

#### 6.1.2 Review of Key Components and Performance Ratio Values of the Plant

The Independent Engineer shall audit the key components selected by the Project Developer in order to ensure the selected components are fully compliant with the technical requirements detailed in the Technical Specifications and the Project Development Agreement. As a part of this audit, the Independent Engineer should consider if any adjustments are required to the Project Developer's Technical and Financial Feasibility Study.

#### 6.1.3 Commissioning Tests – Witnessing of the Plant

The Independent Engineer shall undertake a single visit to the Site for [●] days for the Commissioning of the Plant and each Phase, at the time of the PV Performance Test in order to:

- (i) Confirm mechanical completion by means of spot checks on the items listed in the Mechanical (Construction and Assembly) Completion Checklist and physical inspection of workmanship, connections and equipment;
- (ii) Confirm that the Functional Tests have been passed satisfactorily; by means of discussions with the Project Developer, the Construction Contractor, and confirmation of the existence of testing documentation and other evidence observed on-site; and
- (iii) Witness the PV Performance Test to confirm that it is undertaken in accordance to the approved testing procedures and assess the adequacy of the data collected by the different measurement systems and by the SCADA System.

Where the Project Developer has elected to Commission the Plant in Phases, on the Commissioning of the final Phase the Independent Engineer shall be required to confirm, on a whole Plant basis, that the Functional Tests of any common parts of the Plant (such as transformers and instrumentation and control systems) have been passed satisfactorily.

#### 6.1.4 Plant Completion Form

The Independent Engineer shall review the testing report and a complete set of recorded test data issued by the Project Developer upon the successful completion of the PV Performance Test, containing the test results and relevant analysis, in order to assess the validity of the performance testing. Within ten days after receiving such report and data, the Independent Engineer shall issue a certificate (the "**Plant Completion Form**") confirming that, based on the information provided by the Project Developer, and exercising the skill and care consistent with this Independent Engineer Agreement:

- (i) the PV Performance Test has been completed successfully; and

- (ii) the Actual Installed Capacity is as calculated by the Project Developer.

#### **6.1.5 Review of design of Connection Facilities**

Prior to the commencement of the associated equipment procurement and construction activities, the Independent Engineer shall review and approve all Project Developer-prepared documentation related to the design, installation, and construction of the Connection Facilities to ensure it is fully compliant with the technical requirements detailed in the Technical Specifications and Annex F of the Project Development Agreement.

#### **6.1.6 Inspection of Connection Facilities**

The Independent Engineer shall undertake visits to the Site from time to time as reasonably necessary for the Commissioning of the Connection Facilities in order to:

- (i) Confirm mechanical completion by means of spot checks on the items listed in the Completion Test for Connection Facilities and physical inspection of workmanship, connections and equipment; and
- (ii) Confirm satisfactory implementation by Project Developer of approved Test Programs consistent with Prudent Utility Practices and that test carried out under the Test Programs have been passed satisfactorily; by means of discussions with the Project Developer, the Construction Contractor, and confirmation of the existence of testing documentation and other evidence observed on-site.

#### **6.1.7 Connection Facilities Completion**

The Independent Engineer shall review the testing and a complete set of recorded test data issued by the Project Developer upon Commissioning of the Connection Facilities as required to complete the Completion Test for the Connection Facilities. Within ten days after receiving such report and data, the Independent Engineer shall issue a certificate confirming that, based on the information provided by the Project Developer, and exercising the skill and care consistent with this Independent Engineer Agreement, the Connection Facilities are complete.

### **6.2 Additional Services**

#### **6.2.1 Connection Facilities**

The Independent Engineer shall provide the following services in connection with the Connection Facilities:

- (i) review and approve Project Developer's commissioning procedure and proposed Test Programs;
- (ii) review and approve of any changes proposed by the Project Developer to manufacturer or specification of any key equipment in connection with the Connection Facilities, as submitted by the Project Developer or its Construction Contractor; and
- (iii) such routine inspection of Connection Facilities as may be requested by Ministry consistent with Prudent Utility Practice.



### **6.2.2 On-going Support**

The Independent Engineer shall provide impartial technical advice to the Project Developer and the Ministry in case of issues or disputes of a technical nature arising under or in connection with the Project Development Agreement or the Power Purchase Agreement, on the written request of either the Ministry or the Project Developer copied to the other, including in relation to:

- (i) the approval of any changes proposed by the Project Developer to manufacturer or specification of any key equipment in connection with the Project, as submitted by the Project Developer or its sponsors in connection with the bid for the Project;
- (ii) the estimate of Energy delivered as required by the Power Purchase Agreement;
- (iii) the calculation of the Deemed Generated Energy as required by the Power Purchase Agreement;

### **6.2.3 Decommissioning and Handback**

The Independent Engineer shall provide the following services in connection with the expiry of the Land Lease Agreement or if requested by Ministry or Government in connection with any early termination of the Land Lease Agreement:

- (i) prepare and deliver the Project State of Repair Report and, provided it is required under the terms of the Project Development Agreement, approve the Decommissioning Program (as such terms are defined in the Project Development Agreement); and
- (ii) determine whether the Project Developer has carried out:
  - (a) the reparations; or
  - (b) provided that decommissioning is required under the terms of the Project Development Agreement, the decommissioning,

both in accordance with the provisions of the Project Development Agreement.

## **7 Obligations of the Independent Engineer**

### **7.1 Performance of the Certification Services and the Additional Services**

The Independent Engineer shall carry out and complete the Certification Services and the Additional Services in accordance with the requirements of this Agreement.

### **7.2 Standards for providing the Certification Services and the Additional Services**

In carrying out its obligations under this Agreement, the Independent Engineer shall:

- 7.2.1** act fairly, impartially and independently and not as an arbitrator;
- 7.2.2** exercise that degree of skill, prudence, diligence and foresight which would be expected from a highly professional person in the renewable energy industry with skills in the relevant fields of engineering seeking in good faith to comply with its contractual obligations and complying with all applicable laws and regulations, and any orders or directives of its governing authority;

- 7.2.3 owe a professional duty of care to the PDA Parties encompassing the standards set forth in Clauses 7.2.1 and 7.2.2;
- 7.2.4 allocate and furnish adequate resources, including a sufficient number of qualified and experienced personnel to enable the Independent Engineer to comply with its obligations under this Agreement, and the Independent Engineer shall ensure that reasonable levels of care and responsibility will be exercised by all such personnel; and
- 7.2.5 co-operate with any other contractors, consultants, and service providers who may be engaged by the PDA Parties and schedule its performance of the Certification Services and the Additional Services so as to facilitate the overall requirements of the Project.

### 7.3 Limitation of Liability

- 7.3.1 The liability of the Ministry to the Independent Engineer and of the Independent Engineer to the Ministry arising out of or in connection with this Agreement, shall be as detailed in this Agreement.
  - 7.3.2 The Independent Engineer acknowledge and agree that the Ministry shall have no liability whatsoever in connection with the performance by the Project Developer and the Independent Engineer of their respective obligations under this Agreement.
  - 7.3.3 Subject to Clause 7.3.7, the maximum liability of (a) each of the Project Developer and the Independent Engineer to the other of them under this Agreement and (b) save in respect of third party indemnified claims in terms of Clause 7.3.6, the Independent Engineer to the Ministry for any claim under this Agreement, shall in either case be limited to an aggregate amount equal to the applicable Limit of Liability.
  - 7.3.4 No Party shall be liable to any other Party for any loss of profits, revenues or business opportunity or any indirect, special or consequential losses.
  - 7.3.5 The Parties shall comply with their common law duties to mitigate any losses, liabilities, damages and claims they may have pursuant to this Agreement.
  - 7.3.6 The Independent Engineer shall indemnify and hold harmless the Ministry and its respective officers, employees, consultants, agents and representatives (the “**Indemnified Parties**”) against any and all claims by a third party which may be asserted against or suffered by any of the Indemnified Parties, which relate to any death, injury or loss or damage to property suffered by the relevant third party, to the extent resulting from any negligent act or omission of the Independent Engineer and its respective officers, employees, consultants, agents and representatives, provided that the death, injury, loss or damage suffered by the relevant third party is not attributable to any act or omission of any one or more of the Indemnified Parties or to the failure of one or more of the Indemnified Parties to take reasonable steps to mitigate or avoid the death, injury, loss or damage in question.
  - 7.3.7 The limits on liability set out in this Clause 7.3 shall not apply in respect of:
    - (i) any liability for death or personal injury resulting from the negligence of a Party, its officers, employees, consultants, agents or representatives;
    - (ii) any liability for fraud or fraudulent misrepresentation by a Party, its officers, employees, agents or representatives; or
    - (ii) any other liability to the extent which it cannot be lawfully excluded.
-

#### **7.4 Scope of Authority**

The Independent Engineer shall have no authority or power to, amongst other things, incur liability on behalf of the Ministry, grant an extension of time under the relevant Construction Contracts or any other agreement or issue instructions on behalf of the Ministry, in the absence of a written instruction from the Ministry given in accordance with this Agreement, and then only to the extent consistent with that instruction.

#### **7.5 Compliance with Laws**

**7.5.1** The Independent Engineer undertakes that the performance of all the Certification Services and the Additional Services hereunder shall comply with all applicable laws, including but not limited to, the health, safety, security and environmental requirements applicable to the Site and the Project.

**7.5.2** Subject to Clauses 7.3.3 to 7.3.5, the Independent Engineer shall indemnify and hold harmless the PDA Parties from and against any and all liability arising by reason of the Independent Engineer and the Independent Engineer's employees' and agents' failure to comply with the applicable laws.

#### **7.6 Access to Information**

**7.6.1** The Independent Engineer shall allow each of the PDA Parties access at all reasonable times and on reasonable prior written notice by the requesting PDA Party to technical records and documents prepared by or for the Independent Engineer in connection with the performance by the Independent Engineer of its obligations under this Agreement including any and all results of any test.

**7.6.2** The Independent Engineer shall be obliged to maintain such technical records and documents for a minimum period of five years from (i) the completion of the relevant Certification Service or Additional Service, or (ii) earlier termination of this Agreement.

#### **7.7 Responsibility of the Independent Engineer**

No enquiry, inspection, approval, sanction, comment, consent, decision or instruction by or on behalf of any one of the Ministry shall exclude or limit the Independent Engineer's obligation to act in accordance with the requirements of Clause 7.2 (*Standards for providing the Certification Services and the Additional Services*).

#### **7.8 Timing for Decisions**

On all matters properly referred to it for its review, decision or determination in accordance with the Project Development Agreement, the Independent Engineer shall give its review findings, decision or determination in writing within the time period referred to in the relevant provision of the Project Development Agreement or if no such period is prescribed, within a reasonable time period which in such latter event, shall be no later than 20 Business Days after being referred to the Independent Engineer. The Independent Engineer shall perform its functions under this Agreement reasonably and fairly and shall not unreasonably withhold or delay its review, decision or determination.

#### **7.9 Inducement**

The Independent Engineer shall not offer or give to or accept from any member, employee or representative of either PDA Party any gift or consideration of any kind.

## 7.10 Insurance

**7.10.1** The Independent Engineer shall obtain and maintain in effect, at its own cost and expense, such insurance coverage as is required by any applicable laws and the standards set forth in Clause 7.2.2 with reputable insurers.

**7.10.2** The Independent Engineer shall as and when so requested by either PDA Party on reasonable written notice produce for inspection by the PDA Parties, documentary evidence from its insurers or auditors that such insurance is being properly maintained.

## 7.11 Qualifications, Experience and Conflicts

**7.11.1** The Independent Engineer represents and warrants to the Ministry as of the date of this Agreement and each day thereafter during the term hereof that:

- (i) it is duly qualified, skilled and experienced to conduct the Certification Services and the Additional Services in accordance with the standards referred to in this Agreement;
- (ii) the qualifications, skills and experience of all its personnel, contractors and contractors' personnel engaged from time to time in the conduct of such services shall be sufficient to conduct such services in accordance with the standards referred to in this Agreement;
- (iii) it is not rendering or providing any services to the Project Developer or any of its affiliates in respect of or in connection with the Project other than pursuant to this Agreement; and
- (iv) it is not rendering or providing any services to any shareholder of the Project Developer, any Construction Contractor (including any Specialized PIF Subcontractor), any O&M Contractor or any Lenders or any Affiliate of any of them in respect of or in connection with the Project.

**7.11.2** The Parties acknowledge that the Independent Engineer's Group provide professional engineering and/or consultancy services internationally to clients other than the PDA Parties some of whom may have interests adverse to either PDA Party or their affiliates, and each PDA Party hereby agrees that any member of the Independent Engineer's Group may at any time and from time to time provide professional engineering and/or consultancy services to any other clients who may have interests in any one or more renewable energy projects, subject at all times to and without limitation of the representations and warranties made by the Independent Engineer pursuant to Clause 7.11.1 or its obligations pursuant to Clause 10 (*Confidentiality*).

## 8 Obligations of the PDA Parties

**8.1** The Ministry shall render such assistance to the Independent Engineer as shall reasonably be required for the carrying out by the Independent Engineer of its obligations under this Agreement.

**8.2** The Project Developer shall allow the Independent Engineer access to the Site and Plant at all times reasonably required in order for the Independent Engineer to carry out its obligations under this Agreement.

**8.3** Subject to Clause 12.1.1 (*Breach of Agreement*), in the event that a matter is referred to dispute resolution in terms of Clause 13 (*Dispute Resolution*), the Independent Engineer shall continue with

its Certification Services and Additional Services (as applicable) until the relevant Plant Completion Form or other work product has been issued.

## **9 Fees Payable and Payment**

- 9.1** The Ministry shall be liable to pay the Independent Engineer for the Certification Services and Additional Services to be performed by the Independent Engineer hereunder on the terms and conditions set forth in Schedule 1 (*Fees Payable and Conditions of Payment*). If there is any conflict between any provision of Schedule 1 (*Fees Payable and Conditions of Payment*) and any provision of the main body of this Agreement, then the provision of the main body of this Agreement shall prevail.
- 9.2** The Independent Engineer acknowledges and agrees that it shall not be entitled to suspend its performance of the whole or any part of the Certification Services or the Additional Services pending the resolution of any Dispute between it and the Ministry concerning any invoice submitted by the Independent Engineer or pending payment of any overdue amount by the Ministry.
- 9.3** To the extent that the Independent Engineer performs any act without the written instructions of a Ministry, without limiting the provisions of Clause 12 (*Breach of Agreement*) such act shall be for the cost of the Independent Engineer, unless such act is performed in response to any emergency relating to health, safety or the environment and is subsequently ratified by the Project Developer.

## **10 Confidentiality**

- 10.1** The Independent Engineer undertakes to keep and hold confidential any information disclosed to it in performing its obligations under this Agreement and not to disclose the same to any other person in any way whatsoever without the prior written consent of the PDA Parties, and shall ensure that all such information shall be disclosed only to those of its and its affiliates' advisors, agents, contractors, directors and employees who have signed undertakings of secrecy and confidentiality and who have a need to know such information for the purposes of performing their obligations in respect of this Agreement.
- 10.2** The Independent Engineer acknowledges and agrees to sign any non-disclosure agreements as may be required by Contractors, on reasonable and market-related terms. Should the Independent Engineer refuse to sign such non-disclosure agreement, the Project Developer, with the prior written consent of the Ministry, shall be entitled to terminate this Agreement in terms of Clause 11 (*Termination*).
- 10.3** The Independent Engineer undertakes to ensure that all copies of all reports generated by it will be identified by a specific number and that such numbers will be collated on a master distribution list to enable management of security of documents.
- 10.4** All information pertaining to the Project acquired by the Independent Engineer from the Ministry or the Project Developer shall be treated as confidential by the Independent Engineer and:
- 10.4.1** shall not be used by the Independent Engineer for any purpose other than the purpose of performing its obligations under this Agreement, save to the extent:
- (i) that such information is or comes into the public domain other than through breach of this Agreement by the Independent Engineer;
  - (ii) required by any court, arbitrator, administrative tribunal or Expert in the course of any proceedings in which the Independent Engineer appears before it;

- (iii) required by the rules or any recognized securities exchange upon which the share capital of the Independent Engineer (or any of its shareholders (direct or indirect)) is or is proposed to be from time to time listed or dealt in;
- (iv) as may be necessary to comply with any obligation it may have under applicable laws;

**10.4.2** shall not be reproduced, distributed or otherwise made available to any other party; and

**10.4.3** shall remain the property of the Ministry or the Project Developer (as the case may be) and be returned to the Ministry or the Project Developer (as the case may be) on demand,

unless otherwise agreed to by the PDA Parties.

## **11 Termination**

### **11.1 Termination by the Ministry**

The Ministry shall be entitled to terminate this Agreement, upon written notice to the Independent Engineer, in the following cases:

- 11.1.1** with immediate effect where the Power Purchase Agreement expires or is terminated in accordance with its terms;
- 11.1.2** with immediate effect if an order has been made for the winding-up, liquidation, business rescue or dissolution of the Independent Engineer (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory);
- 11.1.3** on 30 days' prior written notice if a Change in Control of the Independent Engineer occurs without the consent of the Ministry (not to be unreasonably withheld or delayed);
- 11.1.4** on 10 days' written notice if the Parties are unable to agree on an updated rate, if applicable, in terms of Schedule 1 (*Fees Payable and Conditions of Payment*);
- 11.1.5** on five days' prior written notice if the Independent Engineer unreasonably fails to issue the Plant Completion Form in accordance with Clause 6.1.4 (*PV Performance Test Completion Form*) and fails to rectify the breach within 10 days of receipt of written notice by the Project Developer, copied to the Ministry, identifying the failure and requiring that it be remedied;
- 11.1.6** with immediate effect if the Independent Engineer commits a material breach and fails to remedy the breach within 30 days of receipt of written notice by the Project Developer, copied to the Ministry, identifying the breach and requiring that it be remedied; or
- 11.1.7** on 60 days' written notice, for convenience.

### **11.2 Termination by the Independent Engineer**

The Independent Engineer shall be entitled to terminate this Agreement upon written notice to the Ministry in the following cases:

- 11.2.1** with immediate effect if the Project Developer fails to pay any amount due any outstanding to the Independent Engineer or the Ministry commits a material breach, and such non-payment or breach remains unremedied within 30 Business Days of written notice to the Ministry, identifying the failure and requiring that it be remedied; or
-

**11.2.2** on not less than 30 days' prior written notice, without cause or reason, at any time after 90 days following the Commercial Operations Date.

### **11.3 Replacement Independent Engineer**

The Ministry acknowledge that the Project Development Agreement requires a new Independent Engineer to be appointed if the appointment of the Independent Engineer in terms of this Agreement terminates for any reason.

## **12 Breach of Agreement**

**12.1** In the event of a breach by the Independent Engineer of any of the terms and conditions of this Agreement, the Ministry shall be entitled to exercise all or any number of the following rights:

**12.1.1** if the Independent Engineer fails to remedy the breach within three Business Days after receiving written notice from the Ministry, copied to the Project Developer, describing the breach, then the Ministry (acting jointly) may on written notice to the Independent Engineer:

- (i) suspend the obligations of the Independent Engineer under this Agreement; and
- (ii) in their sole discretion, appoint a third party of their choice to carry out the obligations of the Independent Engineer under this Agreement, including the issuance of the Plant Completion Form in accordance with Clause 6 (*Certification Services and Additional Services*);

**12.1.2** to claim specific performance from the Independent Engineer; and/or

**12.1.3** terminate this Agreement in accordance with Clause 11.1 (*Ministry*),

without prejudice to any other rights or remedies they may have under applicable laws, including their rights to claim any damages.

**12.2** If the Ministry appoints a third party to carry out the obligations of the Independent Engineer under this Agreement during the period that they suspend the services of the Independent Engineer pursuant to paragraph (i) of Clause 12.1.1 (*Breach of Agreement*), then the Independent Engineer shall forthwith following the issue of the notice of suspension give access to and make available all information specified in Clause 5 (*Project Agreements*) as may be in its possession or under its control to such third party.

**12.3** If the Ministry terminate this Agreement for material breach on the part of the Independent Engineer, the Independent Engineer shall (at its own cost) comply with all reasonable instructions of the Ministry to assist and cooperate with any other person appointed by the PDA Parties to replace the Independent Engineer in resumption of the outstanding services of the Independent Engineer, which shall include handing over all information specified in Clause 5 (*Project Agreements*) as may be in its possession or under its control to such person.

**12.4** Should the Independent Engineer dispute the existence of a breach the matter may be referred at the request of any Party to dispute resolution in terms of Clause 13 (*Dispute Resolution*).

**12.5** In the event of any breach by the Ministry of the terms and conditions of this Agreement, the Independent Engineer shall, within five Business Days, give written notice to:

**12.5.1** the Ministry, specifying the particulars of such breach and calling for rectification thereof;

**12.6** In the event of the Ministry remaining in default after 30 Business Days of the written notice contemplated in Clause 12.5.2, the Independent Engineer shall be entitled to:

**12.6.1** claim specific performance from the Ministry and claim such damages as it may have suffered;

**12.6.2** terminate this Agreement in accordance with Clause 11.2 (*Termination by the Independent Engineer*) and claim all damages as it may have suffered from the Ministry.

**12.7** In the event that the existence of a breach is disputed in terms of Clause 12.4 or Clause 12.7 and referred to dispute resolution in accordance with Clause 13 (*Dispute Resolution*), the Ministry may suspend the obligations of the Independent Engineer and the provisions of Clause 12.1.1 shall apply *mutatis mutandis*.

### **13 Dispute Resolution**

**14 The Parties will attempt in good faith to negotiate a settlement to any claim or dispute between them arising out of or in relation to this Agreement. If the matter is not resolved by the negotiations, the Parties will refer the dispute to the Commercial Court in Kosovo. Notices**

#### **14.1 Writing and Delivery**

Any notice or other communication in connection with this Agreement (each, a “**Notice**”) shall be in writing, in Albanian and English and delivered by hand or courier using an internationally recognized courier company.

#### **14.2 Addresses**

**14.2.1** A Notice to the Ministry shall be sent to the following address, or such other person or address as the Ministry may notify the Independent Engineer from time to time:

Name:

Address:

Attention:

**14.2.2** A Notice to the Independent Engineer shall be sent to the following address, or such other person or address as the Independent Engineer may notify to the Ministry from time to time:

Name: [●]

Address: [●]

Attention: [●]

[Title]

#### **14.3 Time of Receipt**

A Notice shall be effective upon receipt and, for these purposes, shall have been received or deemed to have been received at the time of delivery, whether delivered by hand or courier.



**15 General**

- 15.1** Subject to Clause 18.3, the Independent Engineer shall not sub-contract, assign, grant any security interest over, hold on trust, or otherwise transfer the benefit of the whole or any part of this Agreement to any other person or entity without the prior written consent of the PDA Parties.
- 15.2** The provisions of the Project Development Agreement regarding transfer and assignment shall be applicable *mutatis mutandis* to the Parties of this Agreement.
- 15.3** The Independent Engineer may sub-contract the whole or any part of the tests and inspections described in Clause 6 (*Certification Services and Additional Services*), provided that the Independent Engineer shall not be relieved of any obligation, responsibility or liability under this Agreement in respect of such sub-contracted activities and shall be responsible under this Agreement for payment, performance, acts, defaults, omissions, breaches and negligence of all its sub-contractors.
- 15.4** Nothing in this Agreement shall be deemed to constitute a partnership between the Parties or constitute any Party the agent of any other Party for any purpose.
- 15.5** No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each Party.
- 15.6** No failure or delay by any Party in exercising any right or remedy provided under this Agreement shall operate as a waiver of it, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise of it or the exercise of any other right or remedy. Any waiver of a breach of this Agreement shall not constitute a waiver of any subsequent breach.
- 15.7** This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Kosovo.

[Signature page follows]

**In witness** whereof this Form of Independent Engineer Agreement has been executed on the date first stated above.

***[INSERT APPROPRIATE SIGNATURE BLOCKS FOR EACH OF SELLER, PURCHASER AND INDEPENDENT ENGINEER.]***

Executed by **[SELLER]** acting by:

.....

Name:

Title:

Place of execution:

Executed by **MINISTRY OF ECONOMY OF THE REPUBLIC OF KOSOVO** acting by:

.....

Name:

Title:

Place of execution:

Executed by **[INDEPENDENT ENGINEER]** acting by:

.....

Name:

Title:

Place of execution:

## Schedule 1 to Independent Engineer Appointment Letter

### Fees Payable and Conditions of Payment<sup>4</sup>

#### 1 Certification Services

##### 1.1 For the Certification Services:

1.1.1 the Ministry shall pay to the Independent Engineer [a fixed amount of [●]] excluding VAT for the Certification Services (the “**Fee**”). The Fee shall be [inclusive/exclusive] of any disbursements for out-of-pocket expenses;

1.1.2 subject to this paragraph 1, the Fee shall be paid to the Independent Engineer by the Project Developer on the following basis:

- (i) [●]% of the Fee will be retained as a retention amount until the final Plant Completion Form has been issued and the Connection Facilities have been certified as completed (the “**Retention Amount**”).
- (ii) subject to paragraph 1.2 of this Schedule 1, the total Fee less the Retention Amount, will be divided into [●] payments based on the estimated period between the date of this Agreement and the Scheduled Commercial Operations Date, to be paid [●] in arrears.

1.2 The Ministry shall review the [●] payments on a [●] basis. At the end of each Quarter to the extent that there has been a change in the Scheduled Commercial Operations Date during any Quarter (the “**Revised Scheduled Commercial Operations Date**”), the [●] Fee payable by the Project Developer to the Independent Engineer shall be the total remaining Fee (that is, the Fee less any payments made up until the date of the determination that such change is made less the Retention Amount) divided by the number of remaining [●] until the Revised Scheduled Commercial Operations Date.

1.3 If the Project Developer elects to Commission the Plant in Phases, the Fee shall be increased by [●]% of the original Fee for each separate Phase that it Commissions.

#### 2 Additional Services

##### 2.1 For any Additional Services:

2.1.1 the Fee charged by the Independent Engineer shall be based on an [●] rate;

2.1.2 not later than [●] Months prior to the commencement of each Agreement Year following the Commercial Operations Date, the Independent Engineer shall submit to the Project Developer its proposed [●] rate for the next Agreement Year;

2.1.3 the Project Developer and the Independent Engineer shall attempt to agree on the new [●] rate proposed by the Independent Engineer. Should the Project Developer and the Independent Engineer fail to agree such new [●] rate, the Project Developer shall be entitled to terminate this Agreement in accordance with Clause 11.1.4;

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<sup>4</sup> *Note: Pricing related details to be reasonably set in the IE tender.*

- 2.1.4** the [●] rate charged by the Independent Engineer for the period prior to the Commercial Operations Date and for the first Agreement Year following the Commercial Operations Date shall be [●];
- 2.2** For all Additional Services provided, the Independent Engineer shall submit to the Ministry an invoice for payment, duly signed by the Independent Engineer, together with a written report detailing the Additional Services provided for acceptance by the Ministry.
- 2.3** Within [●] Business Days of receipt of the invoice and written report in accordance with paragraph 2.2 of this Schedule 1, the Ministry shall either approve such invoice or Dispute the invoice by providing written notice to the Independent Engineer, failing which it shall be deemed to have approved the invoice.
- 2.4** Where the Ministry disputes an invoice, in whole or in part, the Project Developer shall set out in the notice to the Independent Engineer, pursuant to paragraph 2.3 of this Schedule 1, the reasons why the invoice or part thereof is disputed. The amount not in Dispute shall be promptly paid as described in this Schedule 1, and any disputed amount which is ultimately determined to have been payable shall be paid with interest at the Interest Rate. Without prejudice to the terms of Clause 13 (*Dispute Resolution*), in the cases where an invoice is fully or partially disputed, the Ministry and the Independent Engineer shall try to find an amicable resolution of their Dispute.
- 2.5** The Ministry shall pay the invoice submitted by the Independent Engineer within [●] Business Days of approval or deemed approval thereof by the Project Developer.
- 2.6** If any overpayment of whatever nature has been made to the Independent Engineer, the Ministry shall in its discretion either require the Independent Engineer to repay such amount to the Ministry or the Ministry shall be entitled to deduct such amount from any amounts due to the Independent Engineer.
- 2.7** Every payment due and payable by either Party to the other pursuant to this Agreement shall be subject to VAT.

Schedule 2 to Independent Engineer Appointment Letter

Mechanical (Construction and Assembly) Completion Checklist<sup>5</sup>

1 General Information – Plant

Plant:	
Location of the plant:	
Installed capacity (DC):	
Construction Contractor:	
Date:	

2 General Information – Connection Facilities

Transmission line:	
Location of the transmission line:	
Capacity (DC):	
Construction Contractor:	
Date:	

3 Scope of the Mechanical (Construction and Assembly) Completion Test Verification

3.1 To confirm completion of the Mechanical (Construction and Assembly) Completion Test it has to be shown that the Plant or a Phase is from the technical perspective in a “ready to operate” mode with all components installed and connected as per manufacturers’ instructions and/or specifications. Accordingly the following information has to be completed:

3.1.1 Table 1: Plant key assets

3.1.2 Table 2: Check for compliance with Technical Specifications

3.1.3 Table 3: Check of the Plant

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<sup>5</sup> Template checklist to be adapted by the Independent Engineer to fit the specific Project design.

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**3.2** For practicality reasons the plant shall be divided into sections. A section implies a part of the plant connected to one inverter station, including the panels, inverters, string combiner boxes, cables and accessories.

**3.3** The check of Site infrastructure, medium voltage system, power evacuation and monitoring system including weather station can be conducted for the entire plant.

**4      **Scope of the Completion Test for Connection Facilities****

**4.1** To confirm completion of the Completion Test for Connection Facilities it has to be shown that the Connection Facilities from the technical perspective in a “ready to operate” mode with all components installed and connected as per manufacturers’ instructions and/or specifications.

**Table 1: Plant Key Assets**

<b>No of inverter stations (sections):</b>	
<b>Installed capacity (DC) of each section:</b>	

<b>Key component</b>	<b>Type</b>	<b>Quantity</b>	<b>Installed</b>	<b>Comment by IE</b>
<i>Modules</i>				
<i>Inverters</i>				
<i>Module tables (structures)</i>				
<i>String combiner boxes</i>				
<i>Low voltage AC cables</i>				
<i>Transformers – MV</i>				
<i>Transformers – HV</i>				
<i>Medium Voltage AC cables</i>				
<i>Monitoring system</i>				
<i>Weather station</i>				
<ul style="list-style-type: none"> <li>• <i>Solar irradiation sensor – global horizontal irradiation</i></li> </ul>				
<ul style="list-style-type: none"> <li>• <i>Solar irradiation sensor- in plane irradiation</i></li> </ul>				
<ul style="list-style-type: none"> <li>• <i>Temperature sensor</i></li> </ul>				
<ul style="list-style-type: none"> <li>• <i>Wind direction sensor</i></li> </ul>				
<ul style="list-style-type: none"> <li>• <i>Wind speed sensor</i></li> </ul>				
<i>Connection Facilities</i>				

	<b>Signature</b>	<b>Date</b>
<b>Construction Contractor</b>		
<b>Project Company</b>		
<b>IE</b>		

**Table 2: Compliance with technical requirements in Schedule 3 (*Plant – Minimum Functional Specifications and Standards*) of the Power Purchase Agreement**

Key technical requirement	Specification	PDA Compliant	Comment by IE
<b>Modules</b>			
<i>Model number, (prefixes and suffixes) complies with the PPA.</i>			
<i>Product warranty available</i>			
<i>Linear degradation warranty.</i>			
<b>Inverters</b>			
<i>Model number, (prefixes and suffixes) complies with the PPA.</i>			
<i>Product warranty</i>			
<i>Certification for enclosure protection rating</i>			
<i>Temperature and moisture content control.</i>	-		
<i>Requirements for grid connection (Plant controller, automatic synchronization; VAR controller)</i>			
<i>Elevation of Inverter station platform above the maximum historical flood level</i>			
<i>Visual inspection of shading effects due to inverter station</i>	-		
<b>Module mounting structure</b>			
<i>Model number, (prefixes and suffixes) complies with the PPA.</i>			
<i>Visual inspection to assess shading effects and inadequate ventilation of modules</i>			
<i>Visual inspection to check for any galvanizing defects, rust, cracks etc.</i>			
<i>Visual inspection to check if structure is grounded</i>			



Key technical requirement	Specification	PDA Compliant	Comment by IE
<i>Foundation test results (Bearing capacity or pull out tests) satisfactory?</i>			
<b>Power Transformer</b>			
<i>Manufacturer</i>			
<i>Type and rating</i>			
<i>Transformer protections</i>			
<i>Oil containment measures</i>			
<i>Type of cooling</i>			
<b>String combiner boxes</b>			
<i>Manufacturer</i>			
<i>Visual inspection to check if the following are provided</i>			
<ul style="list-style-type: none"> <li>-Door switch interlock;</li> <li>-Over current protection;</li> <li>-Over Voltage protection;</li> <li>- String monitoring device connected to the plant control system;</li> <li>- Combiner box is grounded;</li> </ul>			
<i>Certification for enclosure protection rating</i>			
<b>Cables</b>			
<i>Manufacturer</i>			
<i>Type and rating DC Cables</i>			
<i>Type and rating of AC Cables</i>			
<b>MV/HV Switchgear</b>			
<i>Manufacturer</i>			
<i>Type</i>			
<i>Visual inspection to check if adequately located and adequate facilities (air conditioning, ventilation, fire protection measures) provided;</i>			
<b>Earthing and Lighting system</b>			

Key technical requirement	Specification	PDA Compliant	Comment by IE
<i>Results of resistivity test; Visual inspection to check if lightning protection is provided</i>			
<b>SCADA System</b>			
<i>Manufacturer</i>			
<i>Datasheet/specification review to check compliance with PPA requirements.</i>			
<b>Meteorological station</b>			
<i>Number of stations</i>			
<i>Solar irradiation sensor – global horizontal irradiation</i>			
<ul style="list-style-type: none"> <li>• <i>Manufacturer</i></li> </ul>			
<ul style="list-style-type: none"> <li>• <i>Type and Quantity</i></li> </ul>			
<i>Solar irradiation sensor- in plane irradiation</i>			
<ul style="list-style-type: none"> <li>• <i>Manufacturer</i></li> </ul>			
<ul style="list-style-type: none"> <li>• <i>Type and Quantity</i></li> </ul>			
<i>Temperature sensor</i>			
<ul style="list-style-type: none"> <li>• <i>Manufacturer</i></li> </ul>			
<ul style="list-style-type: none"> <li>• <i>Type and Quantity</i></li> </ul>			
<i>Anemometer</i>			
<ul style="list-style-type: none"> <li>• <i>Manufacturer</i></li> </ul>			
<ul style="list-style-type: none"> <li>• <i>Type and Quantity</i></li> </ul>			
<i>Humidity Sensor</i>			
<ul style="list-style-type: none"> <li>• <i>Manufacturer</i></li> </ul>			
<ul style="list-style-type: none"> <li>• <i>Type and Quantity</i></li> </ul>			
<i>Datalogger</i>			
<ul style="list-style-type: none"> <li>• <i>Manufacturer</i></li> </ul>			
<ul style="list-style-type: none"> <li>• <i>Type and Quantity</i></li> </ul>			
<i>Valid calibration certificates of above sensors available?</i>			
<b>Emergency Generator /UPS</b>			
<i>Manufacturer</i>			

Key technical requirement	Specification	PDA Compliant	Comment by IE
<i>Auxiliary loads supplied</i>			
<b>Buildings</b>			
<i>Number of buildings</i>			
<i>Visual inspection to check if adequate facilities (air conditioning, ventilation, fire protection measures) provided;</i>			
<b>Fence</b>			
<i>Minimum requirements as per PPA installed;</i>			
<i>Height of fence</i>			
<i>Internal fences installed?</i>			
<i>Visual inspection to check if metallic components are grounded.</i>			
<b>Drainage</b>			
<i>Design includes segregated systems as per PPA</i>			
<b>Roads</b>			
<i>Traffic management plan available?</i>			
<i>Drainage ditch provided?</i>			
<i>Visual inspection to check if the road condition is satisfactory?</i>			
<b>Surveillance</b>			
<i>Manufacturer</i>			
<i>Model and Quantity of CCTV cameras</i>			
<i>Location</i>			
<i>Certification for enclosure protection rating</i>			
<i>Lightning protection provided?</i>			
<b>Ministry Interconnection Facility</b>			
<b>Metering System</b>			

<b>Key technical requirement</b>	<b>Specification</b>	<b>PDA Compliant</b>	<b>Comment by IE</b>
<i>Type and Quantity</i>			
<i>Location</i>			
<i>Other requirements as outlined in the PDA</i>			

	<b>Signature</b>	<b>Date</b>
<b>Construction Contractor</b>		
<b>Project Company</b>		
<b>IE</b>		

Table 3: Check of the Plant

<b>(A) Site infrastructure</b>					
<b>No</b>	<b>Aspect</b>	<b>Pass</b>	<b>Fail</b>	<b>Comments</b>	<b>Punchlist item</b>
<b>1</b>	<b>Site</b>				
	<i>Drainage system installed</i>				
	<i>Accessibility and roadway system</i>				
	<i>Debris removed</i>				
	<i>Restoration of environment/landscape mitigation</i>				
	<i>Vegetation (Does it cause shading?)</i>				
	<i>Panel clearance (spacing from boundaries)</i>				
	<i>Staff facilities and control room</i>				
	<i>Other</i>				
<b>2</b>	<b>Fence and Gates</b>				
<b>2.1</b>	<b>Fence</b>				
	<i>Built in accordance with manufacturer's specifications</i>				
	<i>Workmanship fence</i>				
	<i>Workmanship posts and foundations</i>				
<b>2.2</b>	<b>Gate</b>				
	<i>Built in accordance with manufacturer's specifications</i>				
<b>2.3</b>	<b>Illumination</b>				
<b>2.4</b>	<b>Security system</b>				
	<i>Built in accordance with manufacturer's specifications</i>				
	<i>Alarm release/ Remote access function/ Camera surveillance</i>				

(B) Plant					
Section no:		Installed capacity (DC):		Transformer capacity:	Date:
No	Aspect	Pass	Fail	Comments	Punchlist item
<b>1</b>	<b>Support structure</b>				
	<i>Built in accordance with plant layout</i>				
	<i>Spacing</i>				
	<i>Inspection of screws and anchors (tightening, any damages etc.)</i>				
<b>2</b>	<b>PV panels</b>				
	<i>All PV panels installed (total number as per table "key assets")</i>				
	<i>All PV panels connected in accordance with the Project design</i>				
	<i>Visual inspection (damages or cracks)</i>				
<b>3</b>	<b>Cabling</b>				
<b>3.1</b>	<b>DC cables</b>				
	<i>Visual inspection cables and connectors, where possible</i>				
<b>3.2</b>	<b>AC cables</b>				
	<i>Visual inspection cables and connectors, where possible</i>				
<b>4</b>	<b>Inverters</b>				
	<i>Installed in accordance with manufacturer's specifications</i>				
	<i>Workmanship</i>				
	<i>Unusual noise from inverters</i>				
	<i>O&amp;M manual placed in inverters</i>				
	<i>Other</i>				
<b>5</b>	<b>String Combiner boxes</b>				
	<i>Installed in accordance with manufacturer's specifications and plant layout</i>				
	<i>Foundations and mounting</i>				

(B) Plant					
Section no:		Installed capacity (DC):		Transformer capacity:	Date:
No	Aspect	Pass	Fail	Comments	Punchlist item
	<i>Visual inspection</i>				
<b>6</b>	<b>Transformers</b>				
	<i>Installed in accordance with manufacturer's specifications and drawings</i>				
	<i>Other</i>				
<b>7</b>	<b>Medium Voltage/High Voltage Switchgear</b>				
	<i>Installed in accordance with manufacturer's specifications and drawings</i>				
	<i>Visual inspection</i>				
	<i>Check for electricals (fuses, control terminals, fuse holders, cable entry, cable glands and seals, breakers and protections etc.)</i>				
	<i>Other</i>				
<b>8</b>	<b>Monitoring system</b>				
	<i>Installed in accordance with manufacturer's specifications</i>				
	<i>Data recorder operational</i>				
	<i>Data transfer to SCADA and internet portal successful</i>				
<b>9</b>	<b>Weather Station</b>				
	<i>Installed in accordance with manufacturer's specifications</i>				
	<i>Solar irradiation sensor and temperature sensor operational</i>				
	<i>Wind direction and wind speed sensor operational</i>				

**ANNEX F: MINIMUM FUNCTIONAL SPECIFICATIONS AND STANDARDS**

**1. General Technical Requirements**

- 1.1 The Project shall be designed, installed, Commissioned, tested and operated in accordance with Prudent Utility Practices, the Laws of Kosovo, the Relevant Codes and relevant national and international standards including but not limited to those listed in this Annex F. The Site layout and electrical design of the plant shall be in accordance with the Project Developer’s Technical and Financial Feasibility Study unless otherwise agreed with the Ministry in its absolute discretion.
- 1.2 The Project shall in addition comply with the following general technical requirements:
  - 1.2.1 All equipment forming part of the Plant itself shall be new and unused and manufactured by reputable manufacturers with experience in at least two PV projects of similar size, subject to any stricter requirements set out in this Agreement.
  - 1.2.2 The Project shall be designed:
    - 1.2.2.1 with a design life of 30 years;
    - 1.2.2.2 for the climatic conditions and soil conditions at the Site;
    - 1.2.2.3 for compliance with all applicable environmental and social regulations of the Republic of Kosovo; and
    - 1.2.2.4 to enable compliance with all the requirements included in the Project Agreements, in particular the metering, testing and operational requirements.

**2. PV Modules**

- 2.1 The PV modules shall be one of the module types detailed in Project Developer’s Technical and Financial Feasibility Study unless otherwise agreed with the Ministry in its absolute discretion.
- 2.2 The following minimum guarantees shall be applicable:
  - 2.2.1 Product warranty of ten years; and
  - 2.2.2 Linear degradation warranty as follows:
    - 2.2.2.1 for any technology, a constant degradation of up to 0.6% of the nominal plate power per year from year 1 to year 30, or up to 2.5% in year 1 and up to 0.5% from year 2 to year 30; and
    - 2.2.2.2 with a guaranteed power output after 30 years no less than 80% of the initial nominal power.
  - 2.2.3 All PV modules shall be of the same type and from a single manufacturer. They shall be manufactured in PV module manufacturing facilities certified according to:
    - 2.2.3.1 ISO 9001 – Quality Management Systems; and



2.2.3.2 ISO 14001 – Environmental Management Systems.

**3. Inverters**

- 3.1 The inverters shall be one of the inverter models detailed in the Project Developer's Technical and Feasibility Specification unless otherwise agreed with the Ministry in its absolute discretion.
- 3.2 The inverters must have a product warranty of at least 10 years and a guarantee against manufacturing defects of at least 5 years.
- 3.3 The inverters shall be designed and constructed for continuous operation under the climatic and environmental conditions prevailing on Site. According to the PV module manufacturer's requirements, the grounding of negative/positive pole shall be provided.
- 3.4 The protection system shall be selected and coordinated in line with the requirements of the Transmission System Operator. Each inverter shall be connected to the earthing protection system by an appropriate arrangement.
- 3.5 The inverters shall be capable of automatic synchronization with the Transmission System Operator's system or of equivalent functionality by providing access to key operational parameters. A proven communication platform shall be provided to that extent.
- 3.6 The inverter shall be rated for the selected installation type.
- 3.7 The inverter and related equipment shall be elevated at least 50 cm above the maximum historical flood level.
- 3.8 All inverters shall be of the same type and from a single manufacturer. They shall be manufactured in inverter manufacturing facilities certified according to:
  - 3.8.1 ISO 9001 – Quality Management Systems; and
  - 3.8.2 ISO 14001 – Environmental Management Systems.

**4. PV Module Mounting Structure**

- 4.1 The PV module mounting structure shall be one of the mounting structure types detailed in Project Developer's Technical and Financial Feasibility Study unless otherwise agreed with the Ministry in its absolute discretion.
- 4.2 The PV module mounting structure shall be either fixed or single-axis tracking.
  - 4.2.1 Structural supports shall be manufactured and installed to withstand the levels of corrosion considered on the Site (Category 3 as stipulated in ISO 12944 Part 2) by using aluminum and/or in-factory pre-cut hot-dip galvanized steel exceeding 90 microns galvanization coating, bolts and screws shall be in sea grade stainless steel.
  - 4.2.2 The mounting system shall have a ten-year latent defect warranty.
  - 4.2.3 If trackers are used, the tracking system shall have a defect warranty of at least five years.

- 4.2.4 The mounting structure shall be provided with the adequate size/number of the cable ducts for the installation of the cables between PV modules and the junction boxes or inverters which prevent accidental or unintentional contact with cables for people and animals, specially rodents, deer and other alike ruminating animals.
- 4.2.5 The mounting structure shall be connected to the earthing protection system by an appropriate arrangement.

**5. Power Transformers**

- 5.1 The power transformers shall be one of the transformer models detailed in Project Developer's Technical and Financial Feasibility Study unless otherwise agreed with the Ministry in its absolute discretion.
- 5.2 The power transformers shall be oil-filled type and rated for outdoor installation.
- 5.3 The relevant environmental, fire safety and local regulations shall be complied with.
- 5.4 All oil-filled transformers shall be complete with oil conservator, oil level indication/alarm, silica gel breather, temperature/alarm/tripping, pressure relief/alarm/tripping, and Buchholz gas and surge protection/tripping/alarm all of which values and signals shall be available in the remote monitoring platform.
- 5.5 All transformers shall be equipped with motorized on load tap changers, allowing automatic local and remote manual operations.
- 5.6 Cooling shall be ONAN, ONAN/ONAF, ONAN/ONAF/ONAF or ONAN/ONAF/ODAF, the radiators may be mounted separate from the tank or mounted on the transformer tank.
- 5.7 Approved facilities shall be provided for inspection, testing and maintenance access to the gas and oil-actuated relays and conservators associated with the transformers.

**6. Balance of Plant**

- 6.1 The balance of plant equipment shall comply with the applicable IEC specifications.

**Medium Voltage / High Voltage switchgear**

- (i) MV switchgear shall be SF6 type, and installed in protected, metal enclosed modular type, with motorized operation local and remote, with access in remote monitoring and operations platform.
- (ii) The HV ring man units must be equipped with 110 DC battery system to allow for remote or local operation of the motorized breakers in the event of local or grid power absence.
- (iii) MV/HV switchgear shall be installed within a purpose built prefabricated building or in a dedicated room within the control building built on Site, and with specific facilities such as ventilation, fire protection and auxiliary systems.

**Earthing and lightning system**

- (i) The resistance to earth of any part of the earthing system shall not exceed 0.5 ohm, which value shall be demonstrated by calculation and during construction of the plant.
- (ii) The earthing conductors used shall be adequate to withstand for the maximum system fault current for one second.
- (iii) A lightning protection system for each building, inverter enclosures, MV stations and the PV module array, especially when frameless modules are used, shall be provided. Each lightning protection system shall be bonded to the main earthing system.

- SCADA System** The SCADA System shall be capable of:
- (i) Collecting and storing all relevant data required to verify the plant performance and energy output including but not limited to:
    - (a) Current, voltage, instantaneous DC power;
    - (b) Instantaneous AC power (active and reactive), AC energy, frequency at each inverter;
    - (c) Revenue metering device readings;
    - (d) Voltage and frequency set point, active and reactive power set point;
    - (e) Status and alarms of each inverter, transformer and HV associated breakers;
    - (f) Tracker monitoring; and
    - (g) Meteorological station data (temperature, irradiation, humidity, wind speed, wind direction);
  - (ii) Displaying the Project's real time status;
    - (a) Monitoring all relevant alarms that require operator intervention;
  - (iii) Generating and storing alarms and notifying configured recipients by email;
    - (a) Allowing data transmission via Internet; and
  - (iv) Tie-in with the utility remote dispatch system and be compliant to the Relevant Codes, to the extent applicable.
- Meteorological station** (i) Weather monitoring shall include a minimum of 3 complete stations adequate for solar plant real time remote monitoring, data acquisition with local backup for at least 30 days and backup power supply for at least 30 days.
- Emergency Generator and UPS** An emergency power supply (whether diesel generator or solar PV with batteries) shall be installed, capable of feeding into the LV grid in case of Unified Electric Power System of Kosovo failure to power auxiliary loads such a monitoring, communication and Site surveillance systems and also to safely stow the trackers. UPS must be sized to provide emergency power for one hour.

## 7. Fencing

- 7.1 A secure boundary fence along the full perimeter of the Site with a security booth at each Site entrance and area lighting, electrically operated sliding gates and road barriers, should be provided.
- 7.2 The perimeter fence shall meet the environmental and local security regulations.
- 7.3 The perimeter fence will be galvanized chain link with galvanized steel pipe poles in embedded concrete foundations with a minimum height of 2.5 meters above ground. The top of the fence shall be installed with barbed wire with a minimum height of 0.5 meters.
- 7.4 Internal fences for the security of any particular installations within the Site shall be erected complete with gates.

- 7.5 All fencing, gates, doors, and other similar metallic components should be adequately connected to the earthing system according to the local regulation.

## **8. Drainage**

- 8.1 A drainage system should be designed and executed in order to protect the Project from flash floods and erosion. The design should be based on the ambient conditions at the Site (climatic and topographical) and the adequacy of drainage for floods should be verified by the correct return period of peak floods in accordance with the hydrology studies. The design shall include segregated drainage systems for the following:
- 8.2 Surface water run-off;
- 8.3 Oily water;
- 8.4 All drains and liquids discharged from the Project shall be disposed of in a manner in accordance with applicable environmental regulation, including the environmental and social impact assessment for the Project (ESIA) as required by Lenders and as required under the Laws of Kosovo.

## **9. Roads**

- 9.1 Save as specified in the Project Agreements, all works related to access and internal roads are the responsibility of the Project Developer.
- 9.2 Access roads should be adequate and suitable for the construction and operational Phases of the Project and should be designed in consultation with the relevant authorities.
- 9.3 Internal roads should be adequate and suitable for the construction and operational phase of the Project. All such roads should not be dead end roads, in order to allow vehicles to drive in a loop without having to reverse.
- 9.4 The roads shall be designed such that the rainwater flows to the longitudinal and/or transversal slope of the roads and is disposed of via the drainage system. A drainage ditch shall be included for all roads.

## **10. Water Supply**

- 10.1 Water supply shall be designed in accordance with applicable environmental regulations and the water resource management plan and shall be done in a manner reasonably consistent with the such requirements.
- 10.2 The Project Developer shall use reasonable efforts to minimize use of water and to recycle water. Dry cleaning of the PV panels shall be given priority consideration.

## **11. Site Surveillance**

- 11.1 Outdoor CCTV cameras with IRvision and motion detection shall be provided in order to monitor the whole plant perimeter without dead areas. CCTV cameras shall also be provided at each inverter house and substation. The output of the cameras shall be available on LCD/LED monitor installed in the security booth and accessible remotely and a time rotating recording storage must be provided.
- 11.2 Perimeter breach must trigger automatic recording in all cameras and alarm in the security booth.
-

- 11.3 Housing of cameras used for indoor installation shall be of IP 55 whereas outdoor camera housing shall be of IP 66 or equivalent. It should also be protected against lightning.

## **12. Site Lighting**

- 12.1 The primary purpose of lighting is for security (as a deterrent and for security guard patrols). All lighting should be of LED Flood type and column-mounted type controlled via a photoelectric cell with manual override switch and with automatic night operation triggered by CCTV motion sensors.
- 12.2 All lighting shall utilize low loss control gear. Switches must be provided as necessary.

## **13. Applicable Norms & Standards**

- 13.1 The site design, components and interconnections must comply with each applicable IEC standards, remaining the responsibility of the Project Developer to ensure that the Project complies with this Agreement and the Related Agreements, together with the Laws of Kosovo, Relevant Codes and applicable international standards and codes of practice, as might be used in accordance with Prudent Utility Practices, provided, however, the Project shall comply with the highest and best standards and codes of practice as applied in the European Union.
- 13.2 All critical equipment shall be designed and manufactured under a quality assurance program in accordance with the latest ISO 9001. This requirement applies to all suppliers and subcontractors involved in the manufacture and installation of equipment.
- 13.3 In the case of a conflict between standards and/or codes, the more onerous shall apply.

## **14. Connection Facilities**

- 14.1 Transmission System Operator shall provide the applicable requirements for the Connection Facilities necessary to interconnect the Project to the Transmission System Operator's system. All equipment and works shall be provided as required to deliver the complete, properly functioning Connection Facilities and shall conform to Prudent Utility Practices for engineering design and workmanship.
- 14.2 [KOSTT to provide].

## **15. Commissioning of the Plant and Testing**

### **15.1 General**

- 15.1.1 The Commissioning Tests in respect of the Plant comprise (i) the Mechanical (Construction and Assembly) Completion Test described in paragraph 15.4 (*Mechanical (Construction and Assembly) Completion Test*), (ii) the Functional Tests described in paragraph 15.5 (*Functional Tests*), and (iii) the PV Performance Test described in paragraph 15.6 (*PV Performance Test*).
- 15.1.2 The Commissioning Tests will be performed to ensure that the Plant will perform in conformance with the requirements specified in the Technical Specifications. Only after successful completion of these tests will the Plant be considered to be successfully Commissioned.

- 15.1.3 All tests shall comply with the requirements of the standards or codes, including the Relevant Codes to the extent applicable and the norm IEC 62446.
  - 15.1.4 During all Commissioning Tests, the Project Developer's start-up and operating personnel will be present and will be responsible for the operation of the units.
  - 15.1.5 If the Plant fails to achieve the requirements of any test described in this Annex, the Project Developer shall have the opportunity to remedy such failures and repeat tests shall be carried out.
  - 15.1.6 The Project Developer shall provide a report to the Ministry certifying that the Commissioning Tests have been successfully completed. The report shall include the results of tests conducted.
  - 15.1.7 All costs of any tests shall be borne by the Project Developer.
- 15.2 Review of test procedures
- 15.2.1 The Project Developer shall, within 60 days prior to the date that it proposes to commence the first Commissioning Tests, submit the program of test procedures to the Ministry and the Independent Engineer for approval, such approval not to be unreasonably withheld or delayed, and will be deemed given unless the Ministry and the Independent Engineer presents to the Project Developer its objections in writing within 30 days of submission of the test procedures.
  - 15.2.2 Where the Project Developer proposes to Commission the Plant in Phases, the test procedures shall clearly identify the Phases, the proposed testing program and which of the Commissioning Tests are to be repeated on a whole Plant basis.
- 15.3 Witnessing of Commissioning Tests
- 15.3.1 The Project Developer shall give the Ministry and the Independent Engineer no less than 30 days' prior written notice of the anticipated date for the start of any Commissioning. The Project Developer shall notify the Ministry and the Independent Engineer as soon as reasonably practicable if the date on which it expects to start Commissioning subsequently changes.
  - 15.3.2 The Ministry and the Independent Engineer shall be permitted to have personnel at the Site, provided that such personnel abide by the rules set forth in the safety plan, general regulations and the Laws of Kosovo, to observe and verify all procedures and tests performed by the Project Developer, its contractors and their sub-contractors or suppliers.
- 15.4 Mechanical (Construction and Assembly) Completion Test
- 15.4.1 The Mechanical (Construction and Assembly) Completion Test is the first test to be undertaken as part of the Commissioning Tests in respect of the Plant. The Mechanical (Construction and Assembly) Completion Test is the standard procedure to verify that the Plant has been built according to the requirements of Technical Specifications and the Laws of Kosovo and that there are no major technical shortcomings or visual defects.
  - 15.4.2 The Independent Engineer shall determine whether the Mechanical (Construction and Assembly) Completion Test has been successfully completed in accordance
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with the procedures set out in Schedule 2 (*Mechanical (Construction and Assembly) Completion Checklist*) to the Independent Engineer Agreement.

15.5 Functional Tests

15.5.1 The Functional Tests shall be performed after successful completion of the Mechanical (Construction and Assembly) Completion Test.

15.5.2 As a minimum the Functional Tests shall include the following:

- (i) PV array commissioning tests, according to IEC 62446, including at least:
  - (a) Continuity of earthing tests;
  - (b) Polarity test;
  - (c) String open circuit voltage test;
  - (d) String short circuit current test;
  - (e) Insulation resistance of the DC circuits;
- (ii) Inverter commissioning tests, as per the equipment manufacturers' commissioning procedures;
- (iii) Tracking system (when applicable) commissioning test, as per the manufacturers' recommendations and procedures;
- (iv) Low Voltage equipment test according to IEC 62446-6 and IEC 62446-7;
- (v) Medium Voltage (MV) equipment, including at least:
  - (a) MV transformers according to IEC 60076 and IEC 60726;
  - (b) MV switching equipment for protection of feeders and transformers according to IEC 60298;
- (vi) Protective Relay Settings and Protective Device Coordination
- (vii) Uninterruptible Power System, according to IEC 60086; and
- (viii) Instrumentation and Control equipment, as per manufacturer's guidelines, including at least:
  - (a) SCADA System;
  - (b) Metering equipment; and
  - (c) Meteorological station.

15.5.3 The Independent Engineer shall determine whether the Functional Test has been successfully completed in accordance with the procedures set out in the Independent Engineer Agreement.



15.6 PV Performance Test

- 15.6.1 Upon mutual agreement for the timing for the Program for Tests referred herein and once the Project Developer (or Privileged Producer as defined in the Power Purchase Agreement) is satisfied that the Plant is capable of continued operation, the Project Developer shall provide to the Transmission System Operator the Statement of Availability.
- 15.6.2 Upon issuance of the Statement of Availability, but in any event no later than the following Day, the Project Developer shall request from the Transmission System Operator to energise and keep energised the Connection Facilities.
- 15.6.3 The Project Developer shall be entitled to commence and the Purchaser, as defined in the Power Purchase Agreement, shall be obliged to accept deliveries of Net Delivered Electricity at the Connection Point on the Day after the Availability Date. At any time thereafter, the Project Developer shall perform, at the first availability opportunity, the "Commissioning Tests".
- 15.6.4 The Project Developer shall, to the extent practicable or possible, notify the Transmission System Operator of the schedule for performance of the Commissioning Tests. To the extent the Transmission System Operator is able to be present and observe any such tests it shall have the right to be so present, provided that, recognising the impact of Climate Condition risk, (i) the Project Developer may perform such Commissioning Tests as can be performed without the presence of officers from the System Operator, but in no case without the presence of the Independent Engineer, and (ii) the Project Developer shall request from the Transmission System Operator to issue standing instructions to its personnel at the relevant sub-station to accede to requests of the Project Developer at short or instantaneous notice to conduct such operations of the Connection Facilities as shall enable the Commissioning Tests to be carried out.
- 15.6.5 The Project Developer may repeat the Commissioning Tests as many numbers of times as required by the Project Developer or the Independent Engineer and upon the Plant having satisfied the Commissioning Tests to establish the Commercial Operations Date. The Plant will be considered Commissioned when declared by the Project Developer and subsequently certified in writing by the Transmission System Operator and the Independent Engineer issuing the Plant Completion Form.
- 15.6.6 The Commercial Operations Date shall occur as of the first day after the day the Plant is Commissioned, and the Certificate of Completion is issued by the Ministry.
- 15.6.7 Notwithstanding commencement of deliveries of Net Delivered Electricity on the Day after the Availability Date but before the Commercial Operations Date, in the event any Commissioning Tests demonstrate a defect, fault, inadequacy in design or construction or defect or fault in the operation of (i) any safety or protective devices comprising the Project Developer Connection Facilities, (ii) the voltage regulation system, (iii) the power electronic converter, (iv) the reactive compensation system, or (v) any other equipment comprised in the Plant that, in each case, causes an Emergency or has a real likelihood of causing an Emergency, the Transmission System Operator may require the Project Developer to interrupt delivery of the Net Delivered Electricity to the Connection Point until the defect or fault is removed. The Project Developer shall in that case take such remedial measures as may be necessary or appropriate to ensure the Plant

operates consistent with the safety, technical and functional requirements stipulated in this Agreement. Upon confirmation by the Transmission System Operator that appropriate remedial measures have been implemented by the Project Developer, the Purchaser shall resume acceptance of Net Delivered Electricity at the Connection Point.

- 15.6.8 The Project Developer shall provide the Independent Engineer and the Transmission System Operator with copies of the Commissioning Test results and the test results after every general overhaul of the Plant or other major equipment at the Plant.
- 15.6.9 If, during or following a Scheduled Outage, a Maintenance Outage, or a Force Majeure Event, the Project Developer is required to undertake additional tests of the Plant and which require that electricity is delivered to the Transmission System Operator, the Project Developer, in accordance with the Relevant Codes, shall request from the Transmission System Operator to accommodate such tests as soon as reasonably practicable following a request.
- 15.6.10 To the extent any other testing of the Plant is required under the Grid Code or the Connection Agreement, the Project Developer shall perform such tests as and when required.

## ANNEX G: PAYMENTS UPON TERMINATION

### 1 Introduction

1.1 This Annex sets out the Project Developer's entitlement to termination payments following:

- the termination of this Agreement prior to the Commercial Operations Date; or
- the termination of the Power Purchase Agreement (and therefore this Agreement) by the Project Developer on or after the Commercial Operations Date as a result of a Market Operator Event of Default or Prolonged Force Majeure.

This Annex does not apply following a termination of this Agreement by the Ministry after the Commercial Operations Date where, upon termination of the Power Purchase Agreement for a Privileged Producer Event of Default, the Ministry (or Market Operator, if so designated by the Government of Kosovo) does not exercise its right to purchase or cause the purchase of the Project and, for the avoidance of doubt, the Ministry has sole discretion whether to exercise its right to purchase or cause the purchase of the Project following such termination.

1.2 Without prejudice in any respect to the detail further specified below, the general intention is that:

1.2.1 Where this Agreement terminates prior to the Effective Date, or after the Effective Date but before the Commercial Operations Date for a Project Developer Event of Default, no payment is made, save for costs directly caused by fault of the Ministry, subject to offset for damages resulting from Event of Default of the Project Developer;

1.2.2 In the event this Agreement is terminated on or after the Effective Date and prior to the Commercial Operations Date by the Project Developer as a result of:

- (i) a Ministry Event of Default, then the Ministry will compensate the Project Developer in an amount sufficient to allow the Project Developer to repay both any Lenders and any shareholders for their lost capital and return on capital and will acquire ownership of the Project;

1.2.3 Where this Agreement is terminated following termination of the Power Purchase Agreement, or this Agreement is otherwise terminated, on or after the Commercial Operations Date by the Project Developer as a result of:

- (i) a Market Operator Event of Default or Ministry Event of Default, then the Government of Kosovo (or its designee) will compensate the Project Developer in an amount sufficient to allow the Project Developer to repay both any Lenders and any shareholders for their lost capital and return on capital and will acquire ownership of the Project.

1.2.4 Where this Agreement is terminated on or after the Commercial Operations Date by the Ministry as a result of a Project Developer Event of Default and the Ministry exercises the **option** to purchase the Project, then the Ministry will only compensate the Project Developer in an amount sufficient to allow the Project Developer to repay any Lenders, and then only to the extent that there are neither committed (but unpaid) Equity nor Insurance Proceeds available for the purpose.

In each case, in consideration for the transfer of the Project to the Ministry or the Government of Kosovo (or its designee) as the case may be.

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It is further acknowledged by both Parties that, in the interests of certainty, the projections of debt and Equity amounts were made at the date of execution of this Agreement and agreed to by both Parties as a genuine pre-estimate of the Project Developer's losses (and amended from time to time in accordance with this Agreement) shall be used for the determination of the payments to be made under this Annex, notwithstanding that the actual amounts which they represent may vary at the date of termination.

**2 Termination Payment Amounts Before Effective Date or for Project Developer Event of Default before the Commercial Operations Date**

**2.1** If this Agreement terminates as a result of (i) a failure by the Ministry to satisfy any of the Conditions Precedent for which it is responsible; or (ii) a failure by the Project Developer to satisfy any of the Conditions Precedent for which it is responsible for reasons attributable to a Ministry Event of Default and the Project Developer has otherwise satisfied each of the Conditions Precedent for which it is responsible (excluding any Condition Precedent where the Project Developer's failure to do so occurs for reasons attributable to the Ministry ), the Ministry shall compensate the Project Developer for such actual and documented costs and expenses reasonably incurred by the Project Developer in connection with the Project up to and not exceeding the amount of the Performance Security.

**2.2** Upon reasonable request by the Ministry, Project Developer shall provide verification of its actual and documented costs and expenses referred to in Clause 2.1 by an independent firm of auditors that is acceptable to the Ministry (with such acceptance not being unreasonably withheld) prior to the Ministry providing the compensation referred to in Clause 2.1.

**2.3** If this Agreement terminates as a result of a Project Developer Event of Default prior to the Commercial Operations Date, without prejudice to the Ministry's right to draw on the Performance Security, no termination amount shall be payable by any Party under this Annex.

**3 Termination Payment Amounts on or after Effective Date**

**3.1 Termination Amount Following Termination for Ministry Event of Default Before Commercial Operations Date; Ministry Event of Default or Market Operator Event of Default After Commercial Operations Date**

**3.1.1 Ministry Event of Default Before Commercial Operations Date:**

If the Project Developer serves notice to terminate this Agreement as a result of a Ministry Event of Default on or after the Effective Date but prior to the Commercial Operations Date then the consideration for the sale of the Project in accordance with paragraph 4 (*Transfer*) of this Annex shall be an amount equal to:

- (a) Financing Principal and Costs; *plus*
- (b) Termination Costs; *plus*
- (c) Forecast Equity Amount *less* Equity Committed but not Contributed; *less*
- (d) Insurance Proceeds that are attributable to the event or circumstances giving rise to termination and to the same loss.

**3.1.2 Ministry Event of Default After Commercial Operations Date:**

If the Project Developer serves Notice to terminate this Agreement as a result of:

- (i) the termination of the Power Purchase Agreement by the Project Developer in accordance with its terms due to a Market Operator Event of Default; or
- (ii) a Ministry Event of Default under this Agreement,

on or after the Commercial Operations Date then the consideration for the sale of the Project in accordance with paragraph 4 (*Transfer*) of this Annex shall be an amount equal to:

- (a) Financing Principal and Costs; *plus*
- (b) Termination Costs; *plus*
- (c) Forecast Equity Amount; *less*
- (d) Insurance Proceeds that are attributable to the event or circumstances giving rise to termination and to the same loss.

**3.2 Termination Amount Following Termination for Privileged Producer Event of Default (on or after the Effective Date)**

**3.2.1** If the Market Operator serves notice to terminate the Power Purchase Agreement and the Government of Kosovo (or its designee) exercises its right to purchase or cause the purchase of the Project in accordance with the terms of the Power Purchase Agreement due to a Privileged Producer Event of Default (as defined in the Power Purchase Agreement), then the consideration for the sale of the Project, if any, in accordance with paragraph 4 (*Transfer*) of this Annex shall be an amount equal to:

- (a) Financing Principal and Costs; *plus*
- (b) Termination Costs arising under paragraph (c) of the definition of Termination Costs, *plus* any other Termination Costs arising under paragraph (a) of the definition of Termination Costs, but only if and to the extent that such Termination Costs must at law be paid in priority to the Financing Principal and Costs under paragraph (a) of this Clause 3.2; *less*
- (c) Insurance Proceeds that are attributable to the event or circumstances giving rise to termination and to the same loss; *less*
- (d) Overhaul Costs;

provided, however, such summed amount shall not (i) exceed the amount required for the Lenders to receive an amount equal to the Financing Principal and Costs (as such amount would be calculated if there were no Termination Costs) *plus* amounts due and unpaid to the Project Developer under this Agreement and any Project Agreements; or (ii) be less than the amount required for the Lenders to receive (together with Insurance Proceeds) an amount equal to the Financing Principal and Costs (as such amount would be calculated if there were no Termination Costs).

**3.3 Termination Amount Following Termination for Prolonged Force Majeure**

**3.3.1** If the Project Developer serves Notice to terminate this Agreement as a result of Prolonged Force Majeure or the termination of the Power Purchase Agreement by either the Project Developer or the Market Operator for Prolonged Force Majeure, then the consideration for

the sale of the Project in accordance with paragraph 4 (*Transfer*) of this Annex shall be determined by an independent financial arbitrator as mutually agreed by the Parties

### 3.4 Definitions

For the purposes of this Annex, the following terms shall have the meanings given to them below. All amounts shall be denominated in Euro.

**“Calculation Date”** means date of termination of the Power Purchase Agreement or of service of a notice of termination of this Agreement.

**“Contributed Equity”** means the aggregate nominal amount of all Equity contributed to the Project Developer by its Shareholders, in cash or in kind, the value of which shall have been independently certified by recognized certified firm of international accountants, prior to the first Calculation Date.

**“Equity”** means capital contributed to the Project Developer, whether by way of subscription for shares, or share premium.

**“Equity Amount Outstanding”** means:

- (a) the Contributed Equity up to but not exceeding Maximum Equity; less
- (b) where the Project Developer has terminated the Power Purchase Agreement, the aggregate Shareholder Return prior to the first Calculation Date,

provided that where such sum results in a negative amount, the amount shall be zero.

**“Equity Committed but not Contributed”** means the aggregate amount of any Shareholder commitments to fund the Project Developer with Equity which have not, at such time, expired less any amounts of Contributed Equity paid in discharge of such commitments at such time, provided that where such sum results in a negative amount, the amount shall be zero.

**“Financing Principal and Costs”** means:

- (a) the Principal Amount at the first Calculation Date; plus
  - (b) other amounts accrued and outstanding under any Financing Agreements including (x) interest, fees, and indemnity payments (including in respect of experts’ and professional advisers’ fees and expenses) accrued and unpaid up to the relevant Calculation Date; and (y) breakage costs, hedge termination costs and repayment and prepayment premia, in each case calculated assuming that the Principal Amount was repaid in full 100 days after the relevant Calculation Date; less
  - (c) any amount due and unpaid to any Lenders as a result of fraud or willful breach of any Financing Agreements prior to the relevant Calculation Date; and less
  - (d) any amounts standing to the credit of any of the Project Developer’s accounts on the relevant Calculation Date, as certified by any Lenders (save where such amount corresponds to an amount already taken into account under paragraph (c) above), unless by reason of acts or omissions of any Governmental Authority, any Lenders’ security over such accounts has been rendered ineffective or unenforceable.
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The Financing Principal and Costs shall exclude any financing of Project Developer of its equity contribution to the Project.

“**Forecast Equity Amount**” shall be calculated as follows:

Forecast Equity Amount = A x B x C

where:

A = at any time, the projection at such time of the aggregate discounted Shareholder Return from the first Agreement Year after the first Calculation Date until the PPA Expiry Date, ascertained as follows:

- (i) where the Project Developer is entering into Financing Agreements in connection with the Project, the relevant Forecast Equity Amount shall be as notified by the Lenders to the Ministry pursuant to the terms of the Direct Agreement, as amended by any Change of Financing Arrangements undertaken in accordance with Clauses 11.1 to 11.4 of this Agreement (which shall be binding on the Project Developer in all circumstances and on the Ministry in the absence of manifest error); or
- (ii) where the Project Developer is not entering into Financing Agreements in connection with the Project, the relevant Forecast Equity Amount shall be provided by the Project Developer and verified by an independent firm of auditors that is acceptable to the Ministry (with such acceptance not being unreasonably withheld) or such other amounts as may be agreed between the Project Developer and the Ministry;

B = the Actual Installed Capacity divided by the Contracted Capacity (in the latter case, as defined at the PDA Execution Date), provided that where the Project Developer serves a Notice to terminate this Agreement before the Commercial Operations Date, B shall equal 1; and

C = the average annual Plant PV Performance Ratio in the three Agreement Years prior to the termination of the Power Purchase Agreement divided by the average Estimated PV Performance Ratio for those Agreement Years, provided that:

- (i) where the Project Developer serves a Notice to terminate this Agreement before the Commercial Operations Date or within 12 months of the Commercial Operations Date, C shall equal 1;
- (ii) where the Project Developer serves a Notice to terminate this Agreement at any time during the period between 12 months after the Commercial Operations Date and the end of the third Agreement Year, C will be determined by reference to the number of Agreement Years that have elapsed;
- (iii) the calculation of the average annual Plant PV Performance Ratio in the preceding three Agreement Years shall exclude any period where the Plant PV Performance Ratio has been reduced as a result of a Market Operator Event of Default or Force Majeure; and
- (iv) C shall not exceed 1.

**“Insurance Proceeds”** means any amount received by the Project Developer in respect of insurance policies taken out by it in connection with the Project and any amount (each such amount being deemed to have been received) for which:

- (a) insurers have accepted liability under and committed to make a payment in respect of any insurance policies taken out by the Project Developer in connection with the Project; or
- (b) the Ministry can reasonably demonstrate (on the balance of probabilities) that the insurers would have accepted liability had the Project Developer taken out and maintained required minimum insurances in compliance with its obligations under the Project Agreements,

in each case less any deductible.

**“Maximum Equity”** means the maximum value of Equity that could be required to be paid by or on behalf of the Shareholders to the Project Developer under any Financing Agreements or shareholders’ agreement at the Effective Date (or for the purposes of Clauses 11.1 to 11.4 of this Agreement only, as at the date of any Change of Financing Arrangements), ascertained as follows:

- (a) where the Project Developer is entering into Financing Agreements in connection with the Project, the Maximum Equity shall be as notified by the Lenders to the Ministry pursuant to the terms of the Direct Agreement, as amended following any Change of Financing Arrangements undertaken in accordance with Clauses 11.1 to 11.4 of this Agreement (which shall be binding on the Project Developer in all circumstances and on the Ministry in the absence of manifest error); or
- (b) where the Project Developer is not entering into Financing Agreements in connection with the Project, the Maximum Equity shall be as specified by Project Developer and verified by an independent firm of auditors that is acceptable to the Ministry (with such acceptance not being unreasonably withheld) or such other amounts as may be agreed between the Project Developer and the Ministry.

**“Overhaul Costs”** means any cost related to conditions which require maintenance to bring the Plant into good working condition except to the extent that any item identified for maintenance service has been or will be remediated prior to transfer under Clause 4 (*Transfer*) of this Annex.

**“Plant”** means the solar powered electric energy generation facility comprising the Project.

**“Principal Amount”** shall be calculated as follows:

Principal Amount = A x B

where:

A =

- (i) prior to the Commercial Operations Date, the actual amount of principal outstanding under any Financing Agreements, such amount not exceeding the Principal Amount specified for the first repayment date in the amortization profile as notified by any Lenders to the Ministry pursuant to the terms of any Direct Agreement, as amended by any Change of Financing Arrangements undertaken in accordance with Clauses 11.1 to 11.4 of this Agreement; and
- (ii) at any time thereafter, the outstanding Principal Amount under any Financing Agreements taken from the amortization profile as notified by any Lenders to the Ministry pursuant to the terms of any Direct Agreement, as amended by any



Change of Financing Arrangements undertaken in accordance with Clauses 11.1 to 11.4 of this Agreement; and

B = the Actual Installed Capacity divided by the Contracted Capacity (in the latter case, as defined at the PDA Execution Date) provided that where the Project Developer or Ministry serves a notice to terminate this Agreement before the Commercial Operations Date, B shall equal 1.

**“Plant PV Performance Ratio”** means the performance ratio of the Plant as determined in accordance with Annex F.

**“Shareholder”** means each shareholder that holds one or more shares in the share capital of the Project Developer.

**“Shareholder Return”** means, over any period, the aggregate nominal amount paid (or, as the case may be, projected to be paid) by the Project Developer to its Shareholders by way of return on capital, whether in the form of dividends, redemption of capital, repayment of shareholder loans or otherwise.

**“Termination Costs”** means:

- (a) all taxes and any other costs (including costs imposed if any special exemptions or concessions granted to the Project Developer are recalled under the Laws of Kosovo in connection with termination) imposed on the Project Developer and any Lenders by the governmental authorities as a result of termination of this Agreement and any other Project Agreement, the payment of the termination sum in Euro, offshore, and/or any transfer of right, title and interest in the Plant to the Government of Kosovo (or its designee);
- (b) all amounts payable or expected to be payable by the Project Developer with respect to termination of any other Project Agreement and any contract with any construction contractor, operator or supplier in relation to the Project;
- (c) all amounts due and unpaid to the Project Developer under this Agreement and any other Project Agreements; and
- (d) any experts' and professional advisers' fees and expenses which are reasonably incurred by the Project Developer in connection with the enforcement of any rights under, or the termination of, this Agreement and any other Project Agreement.

## **4 Transfer**

**4.1** Upon receipt by the Project Developer of payment in full of the termination amount as determined in accordance with paragraphs 3.1 to 3.4 above (as applicable) or, provided that the Project Developer has received payment in full of all amounts outstanding to it under this Agreement and any other Project Agreement, upon the expiry of this Agreement, the Project Developer shall, at such date and time as may be specified by the Ministry or the Government of Kosovo (or its designee), as applicable, or as soon as reasonably practical thereafter, transfer all its assets, rights, title, interest and benefit, and all its liabilities and undertaking in the Project (and, where applicable, the Purchaser Interconnection Facilities) to the Ministry or the Government of Kosovo (or its designee), as applicable, free and clear from any charges, pledges, encumbrances, liens or security interests of any sort in accordance with this paragraph 4.

**4.2** The assets to be transferred shall include, without limitation:

- 4.2.1** All plant, machinery, fixtures, fittings, consumable supplies (sufficient, in the latter case for at least 2 months operation in the ordinary course), vehicles and spare parts including test equipment and special tools used solely in connection with the Project;

- 4.2.2** All operating manuals, project documentation, handover notes, health, safety, environmental and operating policies and procedures, designs, drawings, as-built drawings, test records and other information and knowhow developed in connection with the Project;
- 4.2.3** All rights and liabilities under the Land Lease Agreement and any Consents, to the extent transferrable in accordance with their terms; and
- 4.2.4** All rights, warranties and liabilities under any ongoing utility, service or maintenance contracts or other project agreements, under any licenses or other intellectual property and under all then current policies of insurance, in each case to the extent transferrable in accordance with their terms (and, in the case of insurances, excluding rights to any Insurance Proceeds);

but shall not include rights to or liabilities under or in respect of any accounts of the Project Developer, cash, receivables, working capital or other funding or financing arrangements of any nature, or the employment contracts of any employees of the Project Developer.

- 4.3** The Plant (and where applicable the Connection Facilities) shall be transferred on an “as is, where is” basis with no representations or warranties provided by the Project Developer, whether express or implied, and the Ministry and the Government of Kosovo (or its designee) shall indemnify and hold the Project Developer harmless against any claims by the Ministry or the Government of Kosovo, their designee (if any), or their successors, agents, employees or representatives arising out of or relating to their ownership of the asset or its condition on or after the date of transfer.
- 4.4** On the date of the transfer, the Parties shall execute all such documentation and instruments and take all such other steps as are necessary under law to ensure that the transfer is effected in a legal, valid and enforceable manner on the date of such transfer. Where applicable, the Project Developer shall procure valid, binding and enforceable releases of any security interests over the transferred assets existing on or immediately prior to the date of transfer.
- 4.5** The Project Developer shall procure that the Ministry or the Government of Kosovo (or its designee), as applicable, or their nominee is provided with all keys, security codes and other devices necessary to afford the Ministry or the Government of Kosovo (or its designee), as applicable, or its nominee unlimited access to the Site, the buildings and any equipment with effect from the date of transfer.

## **5 Reimbursement of Insurance Proceeds**

- 5.1** If, following payment in full from the Ministry or the Government of Kosovo (or its designee), as applicable, of any termination amounts pursuant to this Annex, the Project Developer receives any Insurance Proceeds, liquidated damages, or other compensation which is attributable to the event or circumstances giving rise to termination and to the same loss, it shall reimburse the Ministry or the Government of Kosovo (or its designee), as applicable, for an amount equal to the amount of Insurance Proceeds, liquidated damages, or other compensation received (net of all costs and expenses incurred in recovering the same and all tax payable in respect of the amounts so received), except to the extent such Insurance Proceeds have already served to reduce the termination amount pursuant to Clause 3 of Annex.

**APPENDIX 1: TECHNICAL SPECIFICATIONS**

*[Attach the Technical Specifications from the Tender Dossier prior to execution of this Agreement]*

**APPENDIX 2: PROJECT DEVELOPER’S TECHNICAL AND FINANCIAL FEASIBILITY STUDY**

*[Attach Project Developer’s Technical and Financial Feasibility Study submitted as part of its Bid prior to execution of this Agreement]*

## **ANNEX H: INSURANCE**

The Project Developer shall ensure that the following insurances are effected and maintained in full force and effect in accordance with this Agreement and the Power Purchase Agreement.

Each policy of insurance shall include a loss waiver clause and shall, where available, not include any other exclusions pursuant to which insurers may purport that their liability to make termination payments under this Agreement or payments under Power Purchase Agreement.

### **1. CONSTRUCTION PHASE**

**1.1** Erection/Construction All Risks, based on full contract value and including:

- 1.1.1 Strike, Riot & Civil Commotion;
- 1.1.2 Debris Removal;
- 1.1.1 Strike, Riot & Civil Commotion;
- 1.1.3 Extra Expenses;
- 1.1.4 Extended Maintenance Period; and
- 1.1.5 Third Party Liability.

**1.2** Marine Cargo (including war) on transportation of key plant/equipment

each as further described in Schedule 1 to this Annex, and with such additional requirements as specified in Schedule 1 to this Annex.

### **2. OPERATIONS PHASE**

- 2.1** Property All Risks;
- 2.2** Political Violence;
- 2.3** Business interruption following events insured under items 2.1 and 2.2; and
- 2.4** Third Party Liability.

and each as further described in Schedule 1 to this Annex, and with such additional requirements as specified in Schedule 1 to this Annex.

**3. AT ALL TIMES**

All insurances required by applicable laws and regulations under the Laws of Kosovo.

SCHEDULE 1 to ANNEX H:

**Additional Insurance Requirements**

<b>1.1 Contractors' All Risks ("CAR")</b>	
<b>Cover:</b>	All risks of physical loss or damage to the permanent and temporary works executed and in the course of execution, including materials, plant, equipment and machinery for incorporation into the Project, while on the Site or temporarily stored off-site.
<b>Insured:</b>	<ul style="list-style-type: none"> <li>• Market Operator</li> <li>• Privileged Producer</li> <li>• Ministry</li> <li>• Contractor, subcontractors of any tier</li> <li>• Manufacturers, suppliers, consultants, O&amp;M Contractor and or sub-contractors for their on-site physical activities only</li> <li>• Lenders</li> <li>• Consultants – for their Site activities only</li> <li>• Other parties as required by contract</li> </ul> <p>each for their respective rights and interests</p>
<b>Sum Insured:</b>	The insurable contract value for the Project on a reinstatement value basis.
<b>Period of Insurance:</b>	From the Effective Date until the Commercial Operations Date and thereafter in respect of defects liability until expiry of a 12-months defects liability period.
<b>Maximum Deductibles:</b>	75,000 Euro each and every occurrence.
<b>Territory:</b>	Kosovo including off-site storage and during inland transit.
<b>Principal Extensions (sub-limits as agreed by insurers)</b>	<ul style="list-style-type: none"> <li>a) Terrorism;</li> <li>b) Strikes, riots and civil commotion;</li> <li>c) Lost/damaged plans, documents and computer records extension;</li> <li>d) Additional costs of complying with public/local authority requirements;</li> <li>e) Automatic reinstatement of sum insured;</li> <li>f) Professional fees Clause;</li> <li>g) Debris removal expenses;</li> </ul>

	<p>h) Expediting expenses;</p> <p>i) Free issue materials;</p> <p>j) Extended maintenance;</p> <p>k) Marine 50/50;</p> <p>l) Temporary repairs;</p> <p>m) Preventative measures;</p> <p>n) Inland transit / off-site storage; and</p> <p>o) LEG Multiple Insured Clause (deleting paragraph (vii)).</p>
<b>Principal Exclusions:</b>	<p>a) War and civil war;</p> <p>b) Nuclear / radioactive contamination;</p> <p>c) Political Risks;</p> <p>d) Wear and tear, oxidation, corrosion, erosion or similar;</p> <p>e) liquidated damages, penalties, and consequential loss;</p> <p>f) Repairing or replacing or rectifying works which are defective in material, workmanship, design, plan or specification (LEG2 1996) or equivalent;</p> <p>g) Damage to any marine vessel, craft or aircraft;</p> <p>h) Cyber;</p> <p>i) Contractor's plant and equipment; and</p> <p>j) Unexplained shortages</p>
<b>1.2 Delay in Start Up</b>	
<b>Cover:</b>	Loss of any part of the Guaranteed Purchase Price and/or increased cost of working following a delay to the Scheduled Commercial Operations Date as a direct result of physical loss or damage covered under Section 1.1.
<b>Insured:</b>	<ul style="list-style-type: none"> <li>• Privileged Producer</li> <li>• Lenders</li> </ul> <p>each for their respective rights and interests</p>
<b>Sum Insured:</b>	An amount sufficient to cover the sums the subject of the indemnity for the Minimum Indemnity Period.
<b>Minimum Indemnity</b>	No less than 24 months



<b>Period:</b>	
<b>Period of Insurance:</b>	As per the Contractor's All Risks Insurance, excluding the defects liability period.
<b>Maximum Deductible:</b>	30 days
<b>Principal Extensions:</b>	<ul style="list-style-type: none"><li>a) Terrorism</li><li>b) Professional fees</li><li>c) Suppliers' / customers' premises</li><li>d) Utilities</li><li>e) Denial of access</li><li>f) Automatic reinstatement of sum insured</li></ul>
<b>Principal Exclusions:</b>	<ul style="list-style-type: none"><li>a) Restrictions imposed by public authorities</li><li>b) Non-availability of funds</li><li>c) Fines and penalties</li></ul>

<b>1.3 Marine Transit</b>	
<b>Cover:</b>	Physical loss or damage in accordance with Institute Cargo Clauses (A) to materials, plant, equipment and machinery of every description required for the construction of the Project (but excluding Contractor's Equipment).
<b>Insured:</b>	<ul style="list-style-type: none"> <li>• Market Operator</li> <li>• Privileged Producer</li> <li>• Contractor, subcontractors of any tier</li> <li>• Lenders</li> <li>• Any other parties as required by contract</li> <li>• Any Insured's subsidiary companies and their respective officers, directors, employees</li> </ul> <p>each for their respective rights and interests</p>
<b>Sum Insured:</b>	A sum to cover the maximum value any one transit, conveyance or storage.
<b>Period of Insurance:</b>	From the earliest of financial close, construction notice to proceed or the date of first shipment until completion of delivery of all marine cargo shipment to the works site.
<b>Maximum Deductible:</b>	75,000 Euro each and every occurrence
<b>Territory:</b>	Worldwide, but primarily from the point of origin at manufacturer's site including loading and until arrival including unloading at the construction site and vice versa.
<b>Applicable Clauses:</b>	<ul style="list-style-type: none"> <li>a) Institute Cargo Clauses (A) CL 252;</li> <li>b) Institute Cargo Clauses (Air) (excluding sendings by Post) CP 259;</li> <li>c) Institute Strikes Clauses (Cargo) CL 256;</li> <li>d) Institute Strikes Clauses (Air Cargo) CL 260;</li> <li>e) Institute War Clauses (Cargo) CL 255;</li> <li>f) Institute War Clauses (Air Cargo) (excluding sendings by Post) CL 258;</li> <li>g) Institute War Clauses (sendings by Post) CL 257;</li> <li>h) Institute Classification Clause CL 354;</li> <li>i) Institute Radioactive Contamination Exclusion Clause CL 356;</li> <li>j) Institute Replacement Clause CL 161;</li> </ul>

	<p>k) Termination of Transit Clause (Terrorism) JCC 2001 CL 056;</p> <p>l) Institute Cargo Clauses (B) - including Piracy CL 253; and</p> <p>m) Institute Cargo Clauses (C) - CL 254.</p>
<b>Extensions:</b>	<p>a) Accumulation Clause;</p> <p>b) Air Freight Replacement Clause;</p> <p>c) Bills of Lading Clause;</p> <p>d) Concealed Damage Clause;</p> <p>e) Debris Removal Clause;</p> <p>f) Packing Clause;</p> <p>g) Error and Omission Clause;</p> <p>h) Unseaworthiness and Unfitness Exclusion Clause;</p> <p>i) Inland Transits; and</p> <p>j) 50/50 Clause.</p>
<b>Principle Exclusions:</b>	As contained in the Institute Clauses mentioned above.
<b>1.4 Marine Delay in Start Up</b>	
<b>Cover:</b>	Loss of any part of the Guaranteed Purchase Price and/or increased cost of working following a delay to the Scheduled Commercial Operations Date as a direct result of physical loss or damage covered under Section 1.3.
<b>Insured:</b>	<ul style="list-style-type: none"> <li>• Privileged Producer</li> <li>• Lenders</li> </ul> <p>each for their respective rights and interests</p>
<b>Sum Insured:</b>	A sum adequate to meet the relevant part of the Monthly Energy Payment Amount for the Indemnity Period.
<b>Indemnity Period:</b>	The indemnity period is to be based on the period of interruption following the worst case loss scenario.
<b>Period of Insurance:</b>	From the earliest of financial close, construction notice to proceed or the date of first shipment until completion of delivery of all marine cargo shipment to the works site.
<b>Maximum Deductible:</b>	30 days in the aggregate or any longer time deductible as accepted by the Lenders.

<b>1.5 Third Party Liability</b>	
<b>Cover:</b>	To indemnify the Insured in respect of their legal liability to pay damages, costs and expenses in respect of accidental:  (a) death or bodily injury, illness, disease contracted by any person; or  (b) loss or damage to third party property,  occurring during the Period of Insurance and arising out of or in connection with the works.
<b>Insured:</b>	<ul style="list-style-type: none"> <li>• Market Operator</li> <li>• Privileged Producer</li> <li>• Ministry</li> <li>• Contractor, subcontractors of any tier</li> <li>• Manufacturers, suppliers, consultants, O&amp;M Contractor and or sub-contractors for their on-site physical activities only</li> <li>• Lenders</li> <li>• Consultants – for their site activities only</li> <li>• Other parties as required by contract.</li> </ul> <p>each for their respective rights and interests</p>
<b>Minimum Limit of Liability:</b>	Not less than 10,000,000 Euro in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.
<b>Period of Insurance:</b>	From the Effective Date until the Commercial Operations Date and thereafter in respect of defects liability until expiry of the relevant defects liability period.
<b>Maximum Deductibles:</b>	10,000 Euro each and every occurrence of property damage. (Personal injury claims will be paid in full.)
<b>Territory:</b>	Kosovo and worldwide for non-manual visits
<b>Jurisdiction</b>	Worldwide
<b>Principal Extensions:</b>	<ul style="list-style-type: none"> <li>a) Sudden, unintended and unexpected pollution;</li> <li>b) Cross-liability clause; and</li> <li>c) Legal defense costs</li> </ul>

<b>Principal Exclusions:</b>	<ul style="list-style-type: none"><li>a) Liability for death, illness, disease or bodily injury sustained by employees of the Insured;</li><li>b) Liability insured under statutory motor insurances;</li><li>c) Marine or aircraft liability;</li><li>d) Fines, penalties, punitive or exemplary damages imposed by a statutory body, regulator or the courts; liquidated or ascertained damage;</li><li>e) Liability arising out of technical or professional advice furnished by the insured for a separate and specific fee;</li><li>f) Radioactive contamination;</li><li>g) Gradual pollution;</li><li>h) Political risks; and</li><li>i) Asbestos</li></ul>
<b>1.6 Miscellaneous</b>	
The Contractor will also provide such other insurances as required under any applicable local laws or statute for the duration of the works.	

<b>2.1 Property All Risks</b>	
<b>Cover:</b>	All assets comprising the Project, including but not limited to, buildings and their contents, machinery, stock, fixtures, fittings and all other personal property, against "all risks" of physical loss or damage, including fire, lightning, explosion, natural hazards (including storm, flood, earthquake, etc.), strike, riot & civil commotion, and machinery breakdown.
<b>Insured:</b>	<ul style="list-style-type: none"> <li>• Market Operator</li> <li>• Privileged Producer</li> <li>• Ministry</li> <li>• Manufacturers, suppliers, consultants, O&amp;M Contractor and or sub-contractors for their on-site physical activities only</li> <li>• Lenders</li> <li>• Consultants – for their Site activities only</li> <li>• Other parties as required by contract</li> </ul> <p>each for their respective rights and interests</p>
<b>Sum Insured:</b>	Full reinstatement value, or an amount sufficient to reinstate the property
<b>Period of Insurance:</b>	From the Commercial Operations Date but no later than the expiry of the construction insurances, and to be renewed annually.
<b>Maximum Deductible:</b>	100,000 Euro each and every occurrence
<b>Territory:</b>	Kosovo including off-site storage and during inland transit.
<b>General:</b>	<ul style="list-style-type: none"> <li>a) Automatic reinstatement of sum insured;</li> <li>b) Professional fees Clause;</li> <li>c) Debris removal expenses;</li> <li>d) Expediting expenses;</li> <li>e) Extended maintenance;</li> <li>f) Temporary repairs;</li> <li>g) Machinery and Electrical Breakdown</li> <li>h) Preventative measures;</li> <li>i) Inland transit / off-site storage; and</li> <li>j) LEG Multiple Insured Clause (deleting paragraph (vii)).</li> </ul>

<b>2.2 Political Violence</b>	
<b>Cover:</b>	All assets comprising the Project, including but not limited to, buildings and their contents, machinery, stock, fixtures, fittings and all other personal property, against act of terrorism, sabotage, riots, strikes and/or civil commotion, malicious damage, insurrection, revolution or rebellion, mutiny and/or coup d'etat.
<b>Insured:</b>	<ul style="list-style-type: none"> <li>• Market Operator</li> <li>• Privileged Producer</li> <li>• Ministry</li> <li>• Manufacturers, suppliers, consultants, O&amp;M Contractor and or sub-contractors for their on-site physical activities only</li> <li>• Lenders</li> <li>• Consultants – for their Site activities only</li> <li>• Other parties as required by contract</li> </ul> <p>each for their respective rights and interests</p>
<b>Sum Insured:</b>	A sum adequate to meet the relevant part of the Guaranteed Purchase Price for the Indemnity Period.
<b>Period of Insurance:</b>	From the Commercial Operations Date but no later than the expiry of the construction insurances, and to be renewed annually.
<b>2.3 Business Interruption</b>	
<b>Cover:</b>	Loss of any part of the Guaranteed Purchase Price and/or increased cost of working as a direct consequence of loss of or damage to the Project covered under Section 2.1 and/or 2.2 above.
<b>Insured:</b>	<ul style="list-style-type: none"> <li>• Privileged Producer</li> <li>• Lenders</li> <li>• Other parties as required by contract</li> </ul> <p>each for their respective rights and interests</p>
<b>Sum Insured:</b>	An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.
<b>Minimum Indemnity Period:</b>	24 months

<b>Period of Insurance:</b>	As per the Property All Risks 2.1 and Political Violence Insurance 2.2 above
<b>Maximum Deductible:</b>	30 days
<b>Principal Extensions:</b>	<ol style="list-style-type: none"> <li>1) Suppliers' / customers' premises</li> <li>2) Utilities</li> <li>3) Denial of access</li> <li>4) Automatic reinstatement of sum insured</li> </ol>
<b>Principal Exclusions:</b>	<ol style="list-style-type: none"> <li>a) Restrictions imposed by public authorities</li> <li>b) Non-availability of funds</li> <li>c) Fines and penalties</li> </ol>
<b>2.4 Third Party Liability</b>	
<b>Cover:</b>	Legal liability of the Insured parties for death or bodily injury to third parties or loss or damage to their property arising out of the ownership, operation, use or maintenance of the Project.
<b>Insured:</b>	<ul style="list-style-type: none"> <li>• Market Operator</li> <li>• Privileged Producer</li> <li>• Ministry</li> <li>• Contractor, subcontractors of any tier</li> <li>• Manufacturers, suppliers, consultants, O&amp;M Contractor and or sub-contractors for their on-site physical activities only</li> <li>• Lenders</li> <li>• Consultants – for their site activities only</li> <li>• Other parties as required by contract.</li> </ul> <p>each for their respective rights and interests</p>
<b>Minimum Limit of Liability:</b>	Not less than 10,000,000 Euro in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.
<b>Period of Insurance:</b>	From the Effective Date until the Commercial Operations Date and thereafter in respect of defects liability until expiry of the relevant defects



	liability period.
<b>Maximum Deductibles:</b>	10,000 Euro each and every occurrence of property damage. (Personal injury claims will be paid in full.)
<b>Territory:</b>	Kosovo and worldwide for non-manual visits
<b>Jurisdiction</b>	Worldwide
<b>Principal Extensions:</b>	<ul style="list-style-type: none"> <li>a) Sudden, unintended and unexpected pollution;</li> <li>b) Cross-liability clause; and</li> <li>c) Legal defense costs</li> </ul>
<b>Principal Exclusions:</b>	<ul style="list-style-type: none"> <li>a) Liability for death, illness, disease or bodily injury sustained by employees of the Insured;</li> <li>b) Liability insured under statutory motor insurances;</li> <li>c) Marine or aircraft liability;</li> <li>d) Fines, penalties, punitive or exemplary damages imposed by a statutory body, regulator or the courts; liquidated or ascertained damage;</li> <li>e) Liability arising out of technical or professional advice furnished by the insured for a separate and specific fee;</li> <li>f) Radioactive contamination;</li> <li>g) Gradual pollution;</li> <li>h) Political risks; and</li> <li>i) Asbestos</li> </ul>