



**GOVERNMENT OF THE REPUBLIC OF ALBANIA**  
**Ministry of Economy, Trade and Energy**

**DUE DILIGENCE MEMORANDUM**

**RELATED TO**

**THE TENDER PROCEDURES FOR**  
**THE SALE OF 100% OF THE SHARE CAPITAL OF**  
**“HEC BISTRICA 1 AND BISTRICA 2” SH.A**

**2012**

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**DUE DILIGENCE MEMORANDUM  
RELATED TO THE TENDER PROCEDURES FOR THE SALE OF 100% OF THE  
SHARE CAPITAL OF THE COMPANY  
“HEC BISTRICA 1 AND BISTRICA 2” SH.A**

This Due Diligence Memorandum (including the Annexes hereto) has been prepared by the Albanian Ministry of Economy, Trade and Energy (METE) for the selection of the strategic investors interested in purchasing 100 % of the share capital of “HEC BISTRICA 1 AND BISTRICA 2” Sh.a pursuant to Decision of the Council of Ministers no. 152, dated 29.2.2012, “On the criteria and procedures for the selection of the strategic investor for the sale of 100% of the shares of the capital of the joint stock company “HEC BISTRICA 1 AND BISTRICA 2 Sh.a”.

This Due Diligence Memorandum (including the Annexes hereto) is also based on Law No. 8306 dated 14/03/1998 "On the Privatization of Strategic Sectors", article 3 and 8 of Law no.10 430, dated 9.6.2011 “On the creation of the companies “HEC ULËZ SHKOPET” Sh.a, “HEC TIRANË, LANABREGAS” SHA and “HEC BISTRICA 1 BISTRICA 2” Sh.a, and the definition of the form and structure and formula for the Privatization Formula of the Companies “HEC ULËZ SHKOPET” Sh.a and “HEC BISTRICA 1 BISTRICA 2” Sh.a as well as the Decision of the Council of Ministers No. 329, dated 12/7/1999 “On the tender procedures for the selection of strategic investors and on the transfer of shares owned by the state to private companies in sectors of special importance” as amended and shall therefore be read in conjunction with these documents.

## **1. INTRODUCTION**

The Government of Albania (“GoA”) has undertaken several initiatives in the energy sector, including the process of liberalization and privatization of the energy market, deriving from the adherence in the Treaty establishing the Energy Community signed on 25 October 2005 in Athens.

The main measures taken by the GoA, on the side of the liberalization of the energy market, between others, are:

- the unbundling from KESH of the Transmission System Operator (TSO);
- the unbundling from KESH of the Distribution System Operator (DSO);
- the introduction of new liberalized rules for the energy market, by approving the new Power Market Model (Decision of the Council of Ministers No. 338, dated 19 March 2008 On the approval of the Power Market Model”) and new Power Market Rules (Energy Regulator (ERE) Decision No. 68 dated 23 June 2008);
- the privatization of the Distribution System Operator (DSO), unbundled from KESH.

The GoA plans to further develop its already initiated strategy, by attracting further foreign investments in the Albanian energy sector, and specifically in hydropower generation projects.

The GoA, through the METE wishes to privatize 100% of the share capital of the joint stock company “HEC BISTRICA 1 AND BISTRICA 2” Sh.a hereinafter the Target Company, having its registered office in: Vlorë, Mesopotam, Bisticë, Sarandë, Albania, registered at the Albanian commercial registry with unique company identification number L17106501F.

The Target Company is engaged in the business of hydro generation and sale of electrical power. The privatization of the Target Company shall be realized by the sale of one hundred percent (100%) of its share capital held by METE, to the strategic investor selected pursuant to the Tender Procedures.

In order to attract the optimal strategic investors to operate and develop the Target Company, METE has decided to initiate the Bidding Process for the execution and completion of the Share Purchase Agreement to be entered into by and between METE and the Winning Bidders selected pursuant to the Tender Procedures.

## 2. DEFINITION OF TERMS

Terms used in this Due Diligence Memorandum (including the Annexes hereto), unless the context otherwise requires, have the same meaning as defined in the Instructions to Bidders and Tender Procedures and shall therefore be read in conjunction with these documents.

## 3. SCOPE

This Due Diligence Memorandum (including the Annexes hereto) (the “**Memorandum**”) contains the instructions for interested investors invited by METE to participate in the Bidding Process pursuant to the terms and conditions of the Instructions to Bidders and Tender Procedures (the “**Bidder**”) on rules applicable to their due diligence, on how to use the electronic data room accessible at the internet address contained in Annex 2 attached herein (the “**Electronic Data Room**”) and to participate in site visits at the hydropower plants operated by “HEC BISTRICA 1 AND BISTRICA 2” SH.A (the “**Project’s Sites**”).

Bidders shall be allowed to conduct the following process (collectively the “**Due Diligence Process**”):

- (a) examine the materials provided in the Electronic Data Room by the METE and its advisors related to the Project (collectively referred to as the “**Data**” as further defined in the Confidentiality Agreement);
- (b) visit and examine the Project’s Sites and related facilities; and
- (c) meet with the METE's officials and their advisors for questions and clarifications.

pursuant to the terms and conditions of this Memorandum, after the Bidder has completed the admission procedures required herein.

## 4. ADMISSION TO DUE DILIGENCE PROCESS

Bidder shall be allowed to access the Due Diligence Process subject to the completion of the following terms and conditions:

- (a) the following documents (collectively the “**Due Diligence Documents**”) have been duly executed by the Bidder;
  1. Data Room Application Form (as contained in Annex 1 attached hereto)
  2. Data Room Rules (as contained in Annex 2 attached hereto);
  3. Disclaimer Statement (as contained in Annex 3 attached hereto), and

4. Confidentiality Agreement (as contained in Annex 4 attached hereto);
- (b) a non refundable amount of EUR 1000 (one thousand) (the “**Due Diligence Fee**”) is duly paid in immediately available funds by means of a bank transfer to the following Bank Account:

[bank account of METE to be notified]

- (c) the duly executed Due Diligence Documents and the bank statement attesting the payment of the Due Diligence Fee are delivered to the Project Coordinator, as described in Section 9.1;

## **5. ACCESS TO THE ELECTRONIC DATA ROOM**

Without delay following to the completion of condition under Section 4(c), the Project Coordinator shall make available to the Bidder up to 2 (two) user accounts with relevant passwords, which shall be sent in hardcopy or through e-mail communication to the Bidder, through the means and at the address indicated in the Data Room Application Form submitted to the Project Coordinator pursuant to Section 4(c).

METE cannot guarantee that e-mail communications are secure or free from errors/viruses. E-mail communication is not recommended for the transmission of confidential information as they could be intercepted, corrupted, amended or otherwise. Accordingly, the METE does not guarantee the confidentiality of such communications. Therefore, should the Bidder choose to receive the user accounts with relevant passwords for accessing the Electronic Data Room through e-mail communications, then the confidential and safe transmission of the user accounts with relevant passwords shall be made under the responsibility of the Bidder, and METE accepts no liability whatsoever in case of interception, corruption, amendment or similar of any e-mail communication with Bidder, containing confidential information.

Bidder shall choose at its sole discretion the person to whom the user accounts with relevant passwords for accessing the Electronic Data Room shall be made available, provided however that any access and use of any Data through the user accounts for accessing the Electronic Data Room transmitted to the Bidder, shall be covered by terms and conditions of the Confidentiality Agreement (as contained in Annex 4 attached hereto).

## **6. SITE VISITS AND MEETING WITH OFFICIALS**

Following to the completion of condition under Section 4(c), the Bidder shall be allowed to attend, pursuant to the Estimated Time Table:

1. Visit to each of the Project's Sites and related facilities (the “**Site Visits**”);
2. Meetings with the METE's officials;

### **6.1 Conditions for Site Visits**

The Bidders shall be allowed to attend the Site Visits with up to the number of representatives that may be notified by the Project Coordinator together with the scheduled timetable for such site visits, and provided that:

- (a) Bidders will be responsible for arranging their own transportation for site visits;
- (b) Bidders shall comply with all applicable health and safety rules and regulations; and
- (c) Bidders should conduct themselves in such a manner so as not to interfere with the operation of the Project's Sites and facilities.

## **6.2 Scheduled Meetings**

METE intends to organize meetings between Bidders and METE, KESH and Target Company officials pursuant to the Estimated Timetable. These meetings are open to all Bidders complying with the above requirements.

Bidders may choose to submit written questions to the METE, through the Project Coordinator. METE may at its own discretion request Bidders to submit additional questions in writing in lieu of follow-up meetings. All written questions should be sent by e-mail to the Project Coordinator, with a copy to the IFC Project Team. If the Bidder does not copy the IFC Project Team in its e-mails, METE reserves the right not to respond to such questions. Otherwise the METE will make reasonable efforts to reply in writing but shall not be bound to do so. In those cases where the METE replies in writing, copies of the written questions and answers will be distributed to all Bidders via e-mail.

## **7. RESTRICTIONS ON ACCESS TO THE ELECTRONIC DATA ROOM**

Bidders withdrawing from the Bidding Process at any time will have their access to the Electronic Data Room revoked.

Bidders withdrawing from the Bidding Process at any time will not be allowed to attend Site Visits.

Consequently, withdrawing Bidders shall destroy any copies or documents containing any confidential information obtained during the Due Diligence Process, provided however that a withdrawal from the Bidding Procedures shall not cause the termination of the Confidentiality Agreement signed by the Bidder. The same obligation shall apply if the Bidder withdrawing from the Bidding Process, the Bidder is disqualified in any way from the Bidding Process, its Bid is rejected and/or in any other case where METE and/or GoA decide to terminate the Due diligence Process and/or the Bidding Process.

## **8. RESERVATIONS AND DISCLAIMER**

METE shall have the right at any time to:

- modify, abandon or terminate the Bidding Process; and
- terminate the due diligence inquiries of any Bidder;

Any notice of such termination will be in writing. Upon termination or closure of the Due Diligence Process, each Bidder will, upon a request by METE, dispose of the Data subject to and in accordance with the terms of the Confidentiality Agreement accepted and executed by Bidder.

METE reserves the right to modify the rules and procedures set out in this Memorandum at any time by notice to the Bidders and the same shall be binding on all the Bidders.

The Disclaimer Statement contained in Annex 3 of this Memorandum shall apply to all documents and/or information provided to a Bidder and/or its advisors/consultants in relation to the Due Diligence Process or Bidding Process, including all Data.

GoA, METE, the Project Coordinator, IFC, Target Company and their respective officers, employees, advisors and consultants do not take any liability or responsibility whatsoever for any and all expenses of whichever nature which any or all Bidders made at the time the Bidding Process is modified, abandoned or terminated, the due diligence inquiries are terminated or the rules and procedures set out in this Memorandum are modified. For the avoidance of doubt, Bidders shall not request the refund of the Due Diligence Fee or any part thereof if the Bidding Process is modified, abandoned or terminated, the due diligence inquiries are terminated or the rules and procedures set out in this Memorandum are modified.

## **9. MISCELANEOUS**

### **9.1 Project Coordinator**

Ms. Dhurata Hoxha has been appointed as the Project Coordinator on behalf of the METE. The Project Coordinator shall supervise the due diligence and will use all reasonable endeavors so that all Interested Investors will have an equal treatment and access to the Data.

**Ms. Dhurata Hoxha**

Ministry of Economy, Trade and Energy

Blvd. Dëshmorët e Kombit

Tirana, Republic of Albania

Tel: + 355 4 2222245/ 74183

Email: [dhurata.hoxha@mete.gov.al](mailto:dhurata.hoxha@mete.gov.al)

The copies of the executed originals of the Due Diligence Documents mentioned in Section 4(c) shall be first submitted to the Project Coordinator by e-mail, followed by the originals sent by post, at the above address.

### **9.2 IFC Project Team**

Any correspondence from Bidders relating to the Project, the Memorandum, the Electronic Data Room, the Data or any other relevant issue should be addressed to the Project Coordinator with a copy to the Project Team of the International Finance Corporation (“IFC”), the METE’s advisor on this Project. If a Bidder does not copy the IFC Project Team on any of its correspondence with the METE, the METE reserves the right not to respond to such correspondence.

The email address of the IFC Project team is as follows:

Email: [albaniahpps@ifc.org](mailto:albaniahpps@ifc.org)

### **9.3 Language**

All correspondence relating to the matters dealt with in the present Memorandum will be in English. The meetings with METE, KESH and Target Company officials will be conducted in English.

METE does not guarantee the knowledge of the English language by all its representatives, nor the attendance of interpreters of any language during the meetings with METE, KESH and Target Company officials.



## ANNEX 1 – DATA ROOM APPLICATION FORM

[Letterhead of Bidder / or on behalf of Consortium]

Place [ ● ], Date [ ● ]

**To:** Ms. Dhurata Hoxha  
 Ministry of Economy, Trade and Energy  
 Blvd. Dëshmorët e Kombit  
 Tirana, Republic of Albania  
 Email: [dhurata.hoxha@mete.gov.al](mailto:dhurata.hoxha@mete.gov.al)

**cc:** IFC Project Team  
[albaniahpps@ifc.org](mailto:albaniahpps@ifc.org)

**Ref:** Data Room Application Form - Privatization of “HEC BISTRICA 1 AND BISTRICA 2” Sh.A

Dear Madam/Sir,

By the present, the undersigned.....[*insert name of Bidder – or Bidders, if the Bid is submitted as a Consortium*] having been invited by Albanian Ministry of Economy, Trade and Energy (METE) to participate in the Bidding Process for the Privatization of “ BISTRICA 1 AND BISTRICA 2” Sh.A, hereby requests to be allowed to access the Electronic Data Room of said project, for the following representatives:

No.	First Name	Last Name	Passport Number	Signature	Team Leader
1					<input type="checkbox"/>
2					<input type="checkbox"/>

Please also send the relevant user account and password as well as other communication with regard to the Project, to the following address:

By e-mail, at the following address: \_\_\_\_\_

By hardcopy mail, at the following address: \_\_\_\_\_

Please also address all other communications to the above address (unless otherwise informed. Please also find attached the:

1. Duly signed Data Room Rules;
2. Duly signed Disclaimer Statement;
3. Duly signed Confidentiality Agreement;
4. Copy of bank statement attesting the payment of the Due diligence Fee

Sincerely,

\_\_\_\_\_  
 [Signature]

## ANNEX 2 – ELECTRONIC DATA ROOM RULES

This Annex sets out the Rules for the Electronic Data Room (the "Rules") that must be complied with by each Bidder and/or its directors, representatives, employees, advisors and other person to whom Bidder grants access thereto (the "User"), as required under Section 5 of the Due Diligence Memorandum related to the Bidding Process for the privatization of 100% of the share capital of "HEC BISTRICA 1 AND BISTRICA 2" Sh.a, having its registered office in: Vlorë, Mesopotam, Bistricë, Sarandë, Albania, registered at the Albanian commercial registry with unique company identification number L17106501F.

1. The Electronic Data Room is accessible, prior authentication, at the following internet address (<https://www.imprimairooms.net/login.asp>). The Electronic Data Room will be open at all times except when temporary (pre - notified) suspension is required for maintenance and/or repair of the website.
2. Access of the Electronic Data Room through any internet browser software is not guaranteed. Users may therefore be required to install a different internet browser software than the one currently in use.
3. Each Bidder will be granted a username and access password for the Electronic Data Room pursuant to Section 5 of the Due Diligence Memorandum.
4. Each User accepts and acknowledges that these Rules apply to every single access to the Electronic Data Room and every User commits to respect these Rules in their entirety.
5. Access to the Electronic Data Room by a single User implies its complete acceptance of all the terms and conditions of these Rules. It will be Bidder's sole responsibility to ensure that each User abides by these Rules.
6. The documents displayed in the Electronic Data Room are classified by topic in folders and are listed in an index.
7. Whilst all reasonable efforts have been made to ensure the completeness and accuracy of the contents of the Data, this cannot be guaranteed and neither the METE or the Project Coordinator, nor any of its officers or employees, nor any of their respective advisors or consultants accept any liability or responsibility for any failure to ensure the completeness and accuracy of the contents of the Data.
8. During the course of the Due Diligence Process additional documentation may be added and existing documents may be updated.
9. Bidders should direct requests for documents not available in the Electronic Data Room to the Project Coordinator by e-mail, with a copy to the IFC Project Team. Requests for additional information shall only be made for information which is material and significant for the Project. Any document requested by a Bidder that is produced by the METE, shall be added to the Electronic Data Room, and all Bidders will receive periodic notice of such additions. The METE reserves the right to deny any request for additional information or to refuse to provide a response to a question.
10. The Electronic Data Room will contain Confidential Information. The use of this Confidential Information shall be limited to the conduct of the Due Diligence Process and document that be copied, printed, photographed, saved, removed shall be subject to the terms and Conditions of the Confidentiality Agreement accepted and executed by Bidder.
11. Documents will be available in the language in which they were originally drafted and executed (mostly Albanian language). Some of the documents may be in English language or with an English translation thereof. Translations are not available upon request, and therefore Bidders shall translate, if they deem it necessary, the documents under their sole responsibility.
12. Documents will be primarily available in .pdf format however METE may upload documents in other formats as well. Users may therefore be required to install software such as Adobe Acrobat Reader if it is not yet installed on the computer, or any other device used by Users to access the Electronic Data Room. If in doubt, Users are invited to contact their system administrator.

13. METE, IFC and/or the Electronic Data Room service provider and their representatives are not liable for any damage that Users may encounter during the download or installation of any software needed to view the documentation in the Electronic Data Room.
14. Users requiring technical assistance in accessing or browsing the Electronic Data Room shall contact the Project Coordinator and IFC Project Team.
15. By accessing the Electronic Data Room, each User commits to: (i) refrain from sharing their login information (USER ID and PASSWORD) with third parties unauthorized by Bidder pursuant to Section 5 of the Due Diligence Memorandum; (ii) refrain from disabling or trying to disable the Electronic Data Room's security protections; (iii) not leave their computer or any other device through which they access the Electronic Data Room unattended; (iv) log-out from the Electronic Data Room at the end of each consultation session; (v) not to use the Electronic Data Room in any way which would constitute a breach of any applicable law.
16. The METE and the provider of the Electronic Data Room may monitor every single user's activity carried out in the Electronic Data Room and may record their logins.

[**THE BIDDER**], represented by [ ● ], in the capacity of [ ● ] hereby agrees to comply with such Rules.

Place [ ● ], Date [ ● ]

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### ANNEX 3 - DISCLAIMER STATEMENT

With respect to the Bidding Process for the privatization of 100% of the share capital of “HEC BISTRICA 1 AND BISTRICA 2” Sh.a having its registered office in: Vlorë, Mesopotam, Bistricë, Sarandë, Albania, registered at the Albanian commercial registry with unique company identification number L17106501F, The Ministry of Economy, Trade and Energy (METE), the Government of Albania, and their respective ministers, directors, partners, officers, employees, consultants and advisers, and sub-contractors (the “**Relevant Persons**”) do not make any representation or warranty as to the accuracy, completeness, currency or reliability of any Data, regardless of whether it is contained in the Electronic Data Room or otherwise, including all written or oral information made available to the Bidder or its advisers during the Due Diligence Process, and responses to requests for information and questions raised by any Bidders.

The Relevant Persons do not accept:

- (a) any responsibility arising in any way for any errors in or omissions from any information or for any lack of accuracy, completeness, currency or reliability of any Data; or
- (b) any liability for any loss or damage suffered or incurred by the recipient or any other person as a result of or arising out of that person placing any reliance on the Data or its accuracy, completeness, currency or reliability.

By accepting the opportunity to conduct Due Diligence Processes and access the Data, the Bidder agrees that:

- (c) it will conduct its own investigation and analysis regarding any information, statements or representations contained in the Data and will rely on its own enquiries and seek appropriate professional advice in deciding whether to further investigate any information related to the Project;
- (d) it does not rely on any representation or warranty (express or implied) by a Relevant Person as to the accuracy, completeness, currency or reliability of the Data; and
- (e) no refund of the Due Diligence Fee shall be requested by Bidder and/or accepted by Relevant Persons in case of bidder’s withdrawal from the Due Diligence and/or Bidding Process, the Bidder is disqualified in any way from the Bidding Process, its Bid is rejected and/or in any other case where METE and/or GoA decide to terminate the Due diligence Process and/or the Bidding Process.

The provisions of this Annex 3 are without prejudice and in addition to the provisions of the Confidentiality Agreement.

[**THE BIDDER**], represented by [ ● ], in the capacity of [ ● ] hereby agrees to this Disclaimer Statement.

Place [ ● ], Date [ ● ]

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#### ANNEX 4: CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIAL DISCLOSURE AGREEMENT (the “Agreement”) is made this [ ● ] day of [ ● ] 20[ ● ] (the “**Effective Date**”) by and between [ ● ] (the “Bidder or Receiving Party”) represented by [ ● ], in the capacity of [ ● ] and the Ministry of Economy, Trade and Energy, represented by the Minister, of Albania acting on behalf of the Republic of Albania (“METE” or “Disclosing Party”) who shall also be jointly referred to also as the “Parties”;

**WHEREAS:** The Government of Albania (GoA), through the Ministry of Economy, Trade and Energy (“METE” or the “Seller”) of the Republic of Albania wishes to purchase the 100% of the share capital of the joint stock company “HEC BISTRICA 1 AND BISTRICA 2” Sh.a (the “**Target Company**”), having its registered office in: Vlorë, Mesopotam, Bistricë, Sarandë, Albania, registered at the Albanian commercial registry with unique company identification number L17106501F, (the “**Project**”);

**WHEREAS:** Bidder has been invited by METE to participate in the Bidding Process for the privatization of the Target Company, and with such regard shall be entitled to participate in the Due Diligence Process under the terms and conditions of the Tender Procedures approved by GoA and Instructions to Bidders issued by METE;

**WHEREAS:** Bidder may access during the Due Diligence Process certain information related to the Target Company and its business, which may be confidential and/or privileged;

**NOW THEREFORE,** in consideration of the above recitals, the Parties agree on the following:

1. Definitions. For the purpose of this Agreement, and unless differently provided, the following terms shall have the meanings specified herein.
  - (a) “**Confidential Information**” means any and all Data that was disclosed to the Receiving Party directly or indirectly by or on behalf of Disclosing Party in connection with the Project, unless such Data is proved to: (i) have been in the Receiving Party's possession before its receipt from the Disclosing Party and obtained from a source other than the Disclosing Party, without breaching any confidentiality obligation; (ii) is or becomes a matter of public knowledge through no fault of the Receiving Party; (iii) is rightfully received by the Receiving Party from a Third Party without a duty of confidentiality; (iv) is independently developed by the Receiving Party;
  - (b) “**Data**” shall mean any data, information or documents, in oral, written, graphic, photographic, recorded or other form and other information relating to the Project, including any of such Data received, discussed and/or disclosed during Site Visits, meetings with officials and advisors of Disclosing Party and/or through access to the Electronic Data Room;
  - (c) “**Confidentiality Period**” means, with respect to Confidential Information, the time until the expiry of the second anniversary after the Effective Date of this Agreement;
  - (d) “**Disclosing Party**” means the party disclosing the relevant Confidential Information, being METE acting on behalf of the Republic of Albania, through

METE, its subsidiaries, the Target Company, their respective personnel, lawyers, accountants and other professional advisers and representatives as applicable;

- (e) “**Receiving Party**” means recipient of the relevant Confidential Information, being the Bidder acting either through its appointed personnel, lawyers, accountants and other professional advisers and representatives of the above, as applicable. The above persons acting on Bidder’s behalf shall be deemed as included in the provisions of paragraph 2.2 of this Agreement;
  - (f) “**Third Party**” means a party other than the Disclosing Party and the Receiving Party.
2. Confidentiality Obligation. Starting from the Effective Date, the Receiving Party irrevocably commits and agrees to: (i) use the Confidential Information exclusively for the purpose of the participation in the Bidding Process, and, unless the Project is awarded to Bidder, destroy any copies or documents containing any Confidential Information upon first written request of Disclosing Party and/or in all other cases where the destruction of documents and copies is required by the Due Diligence Memorandum; (ii) protect the Confidential Information of the Disclosing Party by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Receiving Party uses to protect its own confidential information of a like nature; and (iii) not to disclose such Confidential Information to any Third Party, except as expressly permitted under this Agreement.
  3. Permitted Disclosures. The Receiving Party may disclose the Confidential Information to Third Parties only with the express prior written consent of the METE (the “**Permitted Third Party**”), provided however that the Receiving Party shall inform the Permitted Third Party of the confidential nature of the Confidential Information, and shall require such Permitted Third Party to be bound to the terms of this Agreement to the same extent as if such Permitted Third Party were a party hereto, and that the Receiving Party shall be responsible for any breach of the Confidentiality Obligation under this Agreement by Permitted Third Parties;
  4. Compelled Disclosure. Notwithstanding the above provisions, the Receiving Party shall not be liable for breach of the Confidentiality Obligations under this Agreement if Receiving Party is compelled under a specific legal obligation to disclose any Confidential Information: (i) based on a subpoena or other similar court proceedings; (ii) at the express direction of any authorized government agency having jurisdiction over Receiving Party, provided however that the Receiving Party shall (iii) inform in writing the Disclosing Party on such obligation to disclose Confidential Information, together with reasonable reference to the compelling legal requirement as soon as such obligation comes to the attention of the Receiving Party but in any event prior to the disclosure, and (iv) disclose to the requesting authority only that part of the Confidential Information which is compulsory under the law.
  5. Disclosure Record. Receiving Party shall keep record of the Confidential Information that has been disclosed by Receiving Party, and provide copy of such record to Disclosing Party upon its written request.

6. Validity. This Agreement shall be valid and binding for the whole Confidentiality Period.
7. Termination. This Agreement shall be terminated upon occurrence of the earlier of: (i) the Project is awarded to Receiving Party; (ii) the termination is agreed in writing between the disclosing Party and the Receiving Party; (iii) the Confidentiality Period expires.
8. Liability. Disclosing Party and Receiving Party acknowledge that any violation of this Agreement in respect of any Confidential Information will cause the Disclosing Party immediate and irreparable harm, which shall be fully and without any limitation or delay be compensated by Receiving Party.
9. Waiver of Warranties. Receiving Party acknowledges and agrees that all Confidential Information is provided on an "as it is, where it is" basis and that Disclosing Party, its personnel, lawyers, accountants and other professional advisers and representatives as applicable have not made and will not make any warranty whatsoever, express, implied or statutory, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, title, enforceability or non-infringement as to the accuracy or completeness of the Confidential Information. Receiving Party also acknowledges that the METE acting on behalf of the Republic of Albania, and relevant personnel, lawyers, accountants and other professional advisers and representatives as applicable shall not have any liability to Receiving Party and/or any Permitted Third Parties, and their personnel, lawyers, accountants and other professional advisers and representatives as applicable, resulting from the use of the Confidential Information or any other document or information disclosed according to this Agreement.
10. Entire Agreement. This Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof, except however the Due Diligence Memorandum and the annexes thereto.
11. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Republic of Albania.
12. Assignees and Successors. Receiving Party may not, directly or indirectly, in whole or in part, whether by operation of law or otherwise, assign or transfer this Agreement, without the express prior written consent of the Disclosing Party. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto and their respective heirs, representatives, successors and assigns.
13. Severability. If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of law, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

14. Amendments. This Agreement may not be amended, modified, or cancelled other than by a written instrument signed by the parties hereto. This Agreement may be executed in counterparts, each of which shall be considered an original document but all of which shall be considered as one and the same original document. The parties agree that the signature of a party hereto delivered by facsimile shall be valid and binding with the same effect as if it were an original signature, provided that an original copy follows.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

THE BIDDER, represented by [ ● ], in the capacity of [ ● ]

\_\_\_\_\_ Place [ ● ], Date [ ● ]

THE MINISTRY OF ECONOMY, TRADE AND ENERGY  
OF THE REPUBLIC OF ALBANIA, represented by the Minister:

\_\_\_\_\_ Place: Tirana, Albania,  
Date [ ● ]