

**OSHEESh.a**

**Tender for purchasing of electrical energy for period 01.01.2016– 31.01.2016. No. Ref.: OSHEE Energy/ 01.04.2016 – 30.04.2016/**

**CONTRACT FOR ENERGY DELIVERY**

**No. Ref.: OSHEE sh.a.01.04.2016– 30.04.2016**

**“the Contract”**

**Between**

**OSHEE sh.a.**

**Street “Andon Zako Cajupi”,**

**Pallati Conad, Kati 3**

**Tirana, Republic of Albania**

**“the Buyer” –**

**AND**

**- “the Seller”–**

**(also referred to jointly as the “Parties” and individually as a “Party”)**

**March ..... , 2016**

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### **Clause 1**

#### **Term and Subject of the Contract**

1.1 The Parties agreed to sell and deliver, and buy and accept electricity during delivery period from **01.04.2016– 30.04.2016**, continuous delivery from Monday to Sunday from hours 00:00 through 24:00 of CET, as follows:

Period: 01.04.2016– 30.04.2016 continuous delivery from Monday to Sunday from hours 00:00 to 24:00 of CET

Power: ..... MW (CBC provided by the Seller)  
Quantity: ..... MWh  
Unit Price: ..... EUR/MWh  
Value: ..... EUR (VAT not included)

### **Clause 2**

#### **Total value of the Contract**

2.1. Total contract value amounts **EUR ..... (without VAT).**

### **Clause 3**

#### **Contractual Obligations**

3.1 Delivery of electricity shall be guaranteed during the full Contract term except where the Seller's Non-performance is excused by an event of Force Majeure and/or non-performance due to Remounts and tripping of the interconnection transmission lines, under Clause 10 and 11, or the Buyer's failure to comply with the terms and conditions of the Contract.

3.2 Buyer shall accept and pay for the electricity delivered by the Seller according to the Clause 1 of the Contract.

### **Clause 4**

#### **Delivery and Acceptance Conditions of Electricity**

4.1 Electricity shall be delivered and accepted at the following delivery/acceptance point(s) inside **Albanian High Voltage Grid**, delivered in base load, 0 – 24 h CET.

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4.2 The cross-border-capacities on the Montenegrin/Serbian/Greek – Albanian border and from Internal Sources shall be provided by the Seller for the whole delivery period in the following arrangement:

Period: **01.04.2016– 30.04.2016** Capacity of .... **MW**

4.3 Title to, and risk of loss of, energy delivered under this contract shall pass from the Seller to the Buyer at the delivery point.

## **Clause 5**

### **Schedules for Electricity Supply**

5.1 Parties shall confirm the schedules of electricity delivery/acceptance with the Administrator of the Contract for the whole electricity supply in accordance with all applicable rules and other customary industry practices and procedures.

The daily schedule shall be agreed between Parties with weekly agreements, i.e. each Thursday up to 12:00 h; daily programs shall be declared and agreed for the next week, Monday till Sunday.

In case that the agreed weekly programs are changed, the Parties are obliged to inform each other thereof until 12:00 h CET on day ahead or intraday basis. The delivery program will be agreed under mutual confirmations.

5.2 In case of changes to the Weekly Delivery Schedules pursuant to above mentioned paragraph, the Daily Delivery Schedules shall be considered fulfilled with a maximum daily tolerance of  $\pm 10\%$  baseload, only under the condition that the total Quantity agreed by this contract is 100% realised.

The delivery/acceptance of electricity shall be carried out in accordance with the common conditions of the Union for the Co-ordination of Transmission of Electricity (UCTE).

## **Clause 6**

### **Invoicing and Payments**

6.1. The Seller of electricity shall transmit to the Buyer in the course of the calendar month following delivery of electricity according to the Delivery Schedule for the previous month an invoice setting forth the total quantities of electricity that were sold by it in the previous calendar month (invoicing period), whereas the respective invoice must bear the issuance date April 30<sup>th</sup>, 2016. The invoice shall clearly state the price and value of delivered electricity in EURO, whereas based on such value of electricity the

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amount of VAT shall be calculated and included in the invoice. In connection with such invoice the Seller may state all amounts then owed between the contracting Parties which are closely connected and derive from the obligations of this Contract. The Buyer is obliged to pay no later than on 90<sup>th</sup> day following the last day of delivery, in this specific case, July 29<sup>th</sup> 2016. In case that the Seller, pursuant to the Clause 14 of this Contract (Assignment), assigns and transfers, in full or in part, the obligation and the rights under this Contract, to its affiliated company ".....", all Albanian fiscal procedures shall be applicable, i.e. the invoice for the quantities and values that will be assigned, will be issued by ..... to OSHEE sh.a., and such invoice shall contain the applicable VAT.

6.2 Overdue payments shall bear interest from and including the due date for payment, up to the date of late payment if such is made, at a rate equal to the one month EURIBOR for 11:00 a.m. on the due date plus 2% per annum.

## **Clause 7**

### **Damages for delayed delivery/Acceptance (Non-performance)**

7.1 In the event of non-performance by the Seller (except due to Force Majeure or owing to circumstances for which the Buyer is responsible), the Seller shall pay to the Buyer the positive difference only between the purchase price at which the Buyer acting in a commercially reasonable manner is able or would be able to purchase or otherwise acquire in the market the quantity of electricity not delivered by the Seller and the contract price for the quantity of undelivered electricity (including any transmission costs and other reasonable and verifiable actual and direct costs and expenses incurred by the Buyer as a result of the Seller's failure to deliver). The Seller is obliged to pay thus calculated damages on or before the third (3<sup>rd</sup>) Business day following receipt of the demand therefore and the Invoice for payment of such damages.

7.2 In the event of non-performance by the Buyer (except due to Force Majeure or owing to circumstances for which the Seller is responsible), the Buyer shall pay to the Seller the positive difference only between the contract price and the price at which Seller is able or would be able to sell in the market, acting in a commercially reasonable manner, the quantity of electricity not offtaken by the Buyer (including any transmission costs and other reasonable and verifiable actual and direct costs and expenses incurred by the Seller as a result of the Buyer's failure to accept). The Buyer is obliged to pay thus calculated damages on or before the third (3<sup>rd</sup>) Business day following receipt of demand therefore and the Invoice for payment of such damages .

**Clause 8**

**Taxes and Charges**

8.1 All taxes resulting from the implementation and execution of this Contract inside Albania shall be borne by the Buyer and outside Albania by the Seller.

8.2 On the request of each Party, the other Party shall provide all necessary and relevant information and documents concerning tax duties to the other party always in due time.

**Clause 9**

**Suspension of Delivery**

9.1 Should a Party (the "Defaulting Party") default on any payment that is due under this Contract or any other contracts between the Parties, the Non-Defaulting Party shall be entitled, no earlier than three (3) Banking Days after sending a written notice to the Defaulting Party to immediately cease further deliveries of electric energy and be released and not merely suspended from its underlying delivery obligations under the Contract until such time as the Non-Defaulting Party has received either the required Letter of Credit /Bank Guarantee or full payment (including all applicable default interest and expenses) of all outstanding amounts owed under this Contract to the Non-Defaulting party.

**Clause 10**

**Non-performance due to Force Majeure**

10.1 Force Majeure means an occurrence beyond the reasonable control of a Party claiming Force Majeure which it could not reasonably have avoided or overcome and which makes it impossible for that Party to perform its delivery or acceptance obligations, including, but without limitation, due to one or more of the following: the failure of communications or computer systems of the relevant Network Operator(s) which prevents the claiming Party from performing its obligations of delivery or acceptance, the relevant Network Operator's suspension (TSO suspension) of delivery or its disregard of the claimant Party's obligations with regard to Scheduling under this Contract, war or revolutions, fire, flood, earthquake, epidemics, quarantine pressure and transit embargo, if such events are confirmed also in writing by a relevant/competent authority. The claiming Party shall as soon as practical after learning of the Force Majeure notify the other Party of the commencement of the Force

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Majeure and, to the extent then available, provide to it a non-binding estimate of the extent and expected duration of its inability to perform. The claiming Party shall use all commercially reasonable efforts to mitigate the effects of the Force Majeure and shall, during the continuation of the Force Majeure, provide the other Party with reasonable updates, when and if available, of the extent and expected duration of its inability to perform. The claiming Party that thus fulfilled its obligations of notification and mitigation of impact of Force Majeure shall be deemed not to have been in breach or default, and it shall be released (and not merely suspended) from its obligations for that period of time and to the extent that such Force Majeure prevents its performance.

10.2 For the purpose of item. 10.1, scheduling shall mean, as applicable, those actions necessary for the Party to effect its respective delivery or acceptance obligations, which may include nominating, scheduling, notifying, requesting and confirming with the other Party, their respective designated agents and authorized representatives, and the Network Operator, as applicable, the contract quantity, contract capacity, delivery point, delivery schedule, total supply period, and any other relevant terms of the contract in accordance with all applicable rules of the Network Operator and other customary industry practices and procedures.

#### **Clause 11**

##### **Non-performance due to Remounts and Tripping of interconnection lines**

11.1 In the event of unplanned remounts and of tripping of the interconnection transmission lines of the Albanian TSO and neighbouring country TSO-s, outage units of TPPs for several hours in neighbouring countries, the parties are not held responsible for the non-fulfilment of the delivery/acceptance of electrical energy obligations.

#### **Clause 12**

##### **Termination Rights**

12.1 In the event that the Seller is in default in any of its material obligations under this Contract (except when the Seller is released from its obligations due to Force Majeure or by the Buyer's default), the Buyer may terminate this Contract with the immediate effect.

12.2 In the event that the Buyer is in default in any of its material obligations under this Contract (except when the Buyer is released from its obligations due to Force Majeure or by the Seller's default), the Seller may terminate this Contract with the immediate effect.

#### **Clause 13**

##### **Confidentiality**

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13.1 The Parties tie to secrecy in relation to the third persons in all matters concerning the signature and content of this Contract and any other related agreements. This obligation of confidentiality is subject to the following exceptions:

- i) Disclosures made by the Company to its parent companies,
- ii) information which becomes publicly available other than by breach of this obligation of confidentiality, and disclosures which are required by law, in which case, the disclosing party shall limit the disclosure to the extent possible for purposes of legal compliance and shall provide as much advance notice to the other party as practicable so as to allow the non-disclosing party an opportunity to contest the disclosure.

#### **Clause 14**

##### **Assignment**

14.1 Rights and obligations of the Seller stipulated under this Contract may be assigned/transferred in part or in their entirety to one or more of its affiliates, including but not limited to the right of issuing of the invoice for deliveries upon prior notification of the Buyer. The Seller shall by e-mail, immediately notify the Buyer of such assignment.

14.2 For the avoidance of doubt, item 14.1. of this clause applies to assignment in accordance with Clause 6.1 above, in which case ..... will deliver electrical energy to OSHEE sh.a. at the entry of the internal transmission system of the Republic of Albania (delivery point for the assigned Part of Delivery).

#### **Clause 15**

##### **Governing Law and Disputes**

15.1 The Parties shall attempt to resolve any misunderstandings and disputes that might arise in amicable way through reconciliation and negotiations.

15.2 Any dispute, controversy or claim arising out of or in relation to this Contract, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The seat of the arbitration shall be in Zurich.

15.3 The language of arbitration is to be English.

15.4 The Parties hereby pledge to respect the arbitration award which is final and

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binding on them.

15.5 This Agreement shall be governed by Swiss law.

**Clause 16**

**Representation of the parties**

16.1 Notices, invoices or other documents sent by one Party to the other in relation to this Contract shall be sent by fax to the numbers specified below and shall be deemed to be received when the sending fax machine shall have confirmed transmission. Either Party may change its number for faxes by giving written notice to the other Party.

16.2 The persons that will be responsible, on the Buyer's behalf, for receipt of statements and representation of the Purchaser in matters related to the execution of the contract are:

**The Administrator of the contract is:**

Mr. Elton SEVRANI  
Head of Energy Trade Directory  
OSHEE sh.a.  
Phone: +355 422 50 508  
Fax: +355 422 50 508  
Mob. +355 69 70 37370  
Email: Elton.sevrani@oshee.al

**For scheduling and dispatching:**

Mr. Elton SEVRANI  
Head of Energy Trade Directory  
OSHEE sh.a.  
Phone: +355 422 50 508  
Fax: +355 422 50 508  
Mob. +355 69 70 37370  
Email: Elton.sevrani@oshee.al

**For financial and economic matters:**

Mr. Ceno Klosi  
Director of Economic Department  
OSHEE sh.a.



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Phone: +355 422 50 508

Fax: +355 422 50 508

16.3 The person that will be responsible, on the Seller's behalf, for receipt of statements and representation of the Seller in matters related to the execution of the contract is:

**The Administrator of the contract is:**

**For scheduling and dispatching:**

**For financial and economical matters:**

**Clause 17**

**Validity**

17.1 This Contract shall come into force on the day of its signing by both Parties.

17.2 Any amendments or additions to this Contract need to be made in writing and signed by the both Parties. This shall also apply to any waiver of the requirement that all variations are made in writing.

17.3 This Contract is made in five originals in English; three copies for OSHEE and two other copies for seller. Also is mandatory that seller should bring another copy in Albanian language translated by a certified translator and notarized too.

**BUYER**  
**OSHEESh.a.**

**SELLER**

**Adrian Cela**

**Administrator**  
**OSHEE Sh.a.**

Street "Andon Zako Cajupi",  
Pallati Conad, Kati 3  
Tirana, Republic of Albania