

## CONTRACT

### ON THE PROVISION OF SERVICES OF THE COMPLIANCE OFFICER

No [●]

[●] [●] [2017], [Tirana]

[*Name of the TSO* ], a company validly established and operating under the laws of the Republic of Albania, registered under the registration No [●], having its official seat at [●] (hereinafter – “the TSO”), duly represented by its [General Manager] [●], acting in accordance with the [*basis of a mandate/ authorisation*], and

**{ALTERNATIVE A}**<sup>1</sup> [*Name of the Compliance Officer*], a company validly established and operating under the laws of the Republic of Albania, registered under the registration No [●], having its official seat at [●] (hereinafter – “the Compliance Officer”), duly represented by its [General Manager] [●], acting in accordance with the [*basis of a mandate/ authorisation*],

**{ALTERNATIVE B}**<sup>2</sup> [*Name and last name of the Compliance Officer*], personal code [●], residing at [●] (hereinafter – “the Compliance Officer”),

hereinafter collectively referred to as the “Parties” and each individually as a “Party”, taking into account that:

- **{ALTERNATIVE A}**<sup>3</sup> The TSO will be authorised for the transmission of natural gas and certified as a properly unbundled transmission system operator for natural gas under the terms and conditions stipulated in the Law No

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<sup>1</sup> **Energy Community Secretariat:** Shall be filled if it is necessary that a Compliance Officer to be a legal person. Please delete if not relevant.

<sup>2</sup> **Energy Community Secretariat:** Shall be filled if it is necessary that a Compliance Officer to be a natural person. Please delete if not relevant.

<sup>3</sup> **Energy Community Secretariat:** Relevant should the Contract be signed *before* the authorisation and certification of the TSO. Please delete if not relevant.

102/2015 “On the Natural Gas Sector” and other applicable legal acts;

- **{ALTERNATIVE B}**<sup>4</sup> The TSO is authorised for the transmission of natural gas pursuant to the license No [●] issued by the Energy Regulatory Authority (hereinafter – “ERE”) on [●] and is certified as a properly unbundled transmission system operator for natural gas based on the Decision No [●] of the Board of Commissioners of ERE dated [●];
- The TSO established its Compliance Programme as adopted by the Decision No [●] of the [*competent corporate body*] of the TSO dated [●] and approved by ERE based on the Decision No [●] of the Board of Commissioners of ERE dated [●];
- The candidacy of the Compliance Officer is approved by ERE based on the Decision No. [●] of the Board dated [●]; and
- The Compliance Officer was appointed by the [*competent corporate body*]<sup>5</sup> of the TSO based on its Decision No [●] dated [●],

Have concluded this Contract for the Provision of Services of the Compliance Officer (hereinafter – “the Contract”) under the following terms and conditions.

## 1. SUBJECT OF THE CONTRACT

- 1.1. The Parties hereby agree that the Compliance Officer shall provide its services to the TSO acting within the competence and in accordance with the mandate established by the Law No 102/2015 “On the Natural Gas Sector” (hereinafter – “the Law”), other applicable legal acts, the Compliance Programme and this Contract, whereas the TSO shall ensure the implementation of necessary measures for the Compliance Officer to be able to provide its services and shall pay for such services.
- 1.2. The Compliance Program shall be enclosed as [Annex I] to this Contract and by signing hereto, the Compliance Officer confirms that it understands and agrees with the provisions of the Compliance Program, its binding nature, the obligations and rights of the Compliance Officer and the effects of implementing

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<sup>4</sup> **Energy Community Secretariat:** Relevant should the Contract be signed *after* the authorisation and certification of the TSO. Please delete if not relevant.

<sup>5</sup> **ECS:** Please specify references to corporate bodies of the TSO, including their respective competences, after the final corporate setup of the TSO will be known.

the Compliance Program.

1.3. This Contract shall be deemed as a commercial contract for the provision of services concluded under the terms and conditions stipulated in the Civil Code of the Republic of Albania and other applicable legal acts. General provisions regulating civil and commercial relations between the Parties shall be applied to this Contract without any prejudice to the implementation of special requirements established by the Law.

1.4. In cases where the Compliance Officer is employed by the TSO for the provision of its services under this Contract, the employment contract between the TSO and the Compliance Officer shall be in full compliance with the provisions of this Contract and shall not impose any restrictions on the status and/or activities of the Compliance Officer or introduce any exemptions from the rights and/or obligations of the Parties as agreed hereto.<sup>6</sup>

## 2. QUALIFICATIONS AND INDEPENDENCE OF THE COMPLIANCE OFFICER

2.1. The Compliance Officer shall satisfy minimum requirements for its professional qualities and other relevant selection criteria established by the TSO's [*competent corporate body*] and approved by ERE, and which were applied for selection of the Compliance Officer. The Compliance Officer shall fully satisfy respective professional qualities and other selection criteria during the entire term of validity of this Contract. Professional qualities and other selection criteria, as established by the TSO's [*competent corporate body*] and approved by ERE, shall be enclosed as [Annex II] to this Contract.

2.2. The Compliance Officer shall be independent in providing its services to the TSO. Independence of the Compliance Officer shall be ensured during the entire term of validity of this Contract and following its termination, as specified herein below, by application of the following requirements:

2.2.1. The Compliance Officer shall not perform any other professional duty and shall not be allowed to either directly or indirectly perform any other function or participate in business or be a business partner with any part of the vertically integrated undertaking or with its majority shareholders,

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<sup>6</sup> **Energy Community Secretariat:** This provision, as referring to possible employment relations between the TSO and the Compliance Officer, may be deleted in case of concluding this Contract with a legal person who provides services of the Compliance Officer.

or with any undertaking engaged in activity on the natural gas market other than transmission of natural gas (including combined operator, as the case may be):

2.2.1.1. during the entire term of validity of this Contract;

2.2.1.2. for a period of at least 3 (three) years before conclusion of this Contract; and

2.2.1.3. upon termination of this Contract, for a period of at least 4 (four) years;

2.2.2. the Compliance Officer shall hold no economic interest in activities of or receive any financial benefit, directly or indirectly, from the vertically integrated undertaking or any part thereof, or from any undertaking engaged in activity on the natural gas market other than transmission of natural gas (including combined operator, as the case may be).

2.3. The Compliance Officer shall refuse any instruction or request from the TSO, its corporate bodies, managers, employees, and/or any other representatives which are or potentially may be in conflict with the mandate and/or independence of the Compliance Officer.

2.4. In cases where the required status of independence, minimum professional qualities and/or other selection criteria of the Compliance Officer change during the term of the validity of this Contract, the Compliance Officer shall without delay, but in any case not later than the next business day after it became aware of such change, inform the TSO's General Manager on the respective change and provide written explanations, justifying documentation and, where necessary remedying solutions.

2.5. In case referred to in Paragraph 2.4, the Compliance Officer shall temporarily withdraw from its position until the TSO's [*competent corporate body*] makes its decision on further cooperation with the Compliance Officer or application to ERE to approve the dismissal of the Compliance Officer. Where necessary, the TSO's [*competent corporate body*] may consult ERE before making its decision.

- 2.6. Failure by the Compliance Officer to comply in full scope with the requirements for its qualification and/or independence specified under this Section 2 shall be considered as material breach of this Contract.

### 3. SERVICES OF THE COMPLIANCE OFFICER

- 3.1. The Compliance Officer shall be in charge of monitoring the implementation of the Compliance Program and for reporting on such implementation under the terms and conditions stipulated in the Law and the Compliance Program. In particular, the Compliance Officer shall provide the TSO with the following services:<sup>7</sup>
- 3.1.1. continuous monitoring of the implementation of the Compliance Programme;
  - 3.1.2. elaboration of an annual report, setting out the measures taken in order to implement the Compliance Programme, and submission of this report to ERE and the Energy Community Secretariat within the deadlines set in the Compliance Programme;
  - 3.1.3. continuous reporting to competent corporate bodies of the TSO and issuing recommendations on the Compliance Programme and its implementation;
  - 3.1.4. investigation of and reporting to competent corporate bodies of the TSO on any alleged violations with regard to the implementation of the Compliance Programme, and submission of proposed solutions for necessary remedial measures;
  - 3.1.5. investigation of potential or existing conflict of interest of the TSO managers and employees, provision of consultations with regard to the prevention of such potential and remedying existing conflict of interest, as well as provision of proposed solutions for necessary remedial measures.
  - 3.1.6. notifying ERE of any substantial breaches with regard to the implementation of the Compliance Programme;

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<sup>7</sup> **Energy Community Secretariat:** Services (obligations) of the Compliance Officer stipulated in this Paragraph 3.1 are written down in accordance with the draft Compliance Programme (ECS's initial draft of 7 December 2016). Should the draft Compliance Programme be changed, please reflect respective changes in this draft Contract.

- 3.1.7. reporting to ERE on any commercial and/or financial relations between the TSO and the vertically integrated undertaking or any part thereof;
- 3.1.8. attending the meetings of the TSO's corporate bodies and, where relevant, consulting participants at respective meetings on the requirements of the Compliance Programme, in cases where such meetings address the following matters:
  - 3.1.8.1. conditions for access to the transmission system and use of the transmission network, in particular regarding prices and services related to access to the transmission system and use of the transmission network, as well as regarding capacity allocation and congestion management, transparency, balancing and secondary markets;
  - 3.1.8.2. projects undertaken in order to manage the transmission system and to maintain and develop the transmission network, including investments in cross-border interconnection lines and connections; and
  - 3.1.8.3. purchases or sales of energy necessary for the operation of the transmission system, including ancillary services and balancing service.
- 3.1.9. submitting proposals to the TSO's competent corporate bodies, following prior approval by ERE, as regards the ten-year transmission network development plan or individual investments in the transmission network;
- 3.1.10. monitoring the TSO's compliance with the provisions of the Law and the Compliance Programme regulating confidentiality in the TSO's activities;
- 3.1.11 . monitoring legislative and regulatory changes relevant for the application and implementation of the Compliance Programme;
- 3.1.12. providing consultations in relation to drafting and approving TSO internal acts and reflecting the legal and regulatory changes in these acts;

- 3.1.13. elaborating, maintaining and monitoring the list of active authorizations for access to the online transactions or actions (including access to the TSO's databases) posing a risk of disclosure of commercially sensitive information possessed by the TSO;
  - 3.1.14. responding to the questions of the TSO's managers and employees regarding the Compliance Program;
  - 3.1.15. instructing the TSO managers and employees for the Compliance Program, its implementation and where relevant its amendments;
  - 3.1.16. coordinating communication with ERE, other competent authorities, participants of natural gas market and/or third parties with regard to the implementation of the Compliance Program.
- 3.2. The list of services to be provided by the Compliance Officer, as elaborated in Paragraph 3.1, shall be considered as finite. Any other services may be included only if clearly based on the provisions of the Law or the Compliance Programme by amending this Contract.
  - 3.3. The Compliance Officer, while providing its services to the TSO, shall be bound by the confidentiality obligations equal to those of the TSO's managers and employees as established under the Compliance Programme. Confidentiality obligations shall be fully valid during the entire mandate of the Compliance Officer and for the period of 4 (four) years after the termination of this Contract. Failure by the Compliance Officer to comply with the confidentiality obligations shall be considered as a material breach of this Contract.
  - 3.4. All results of the services provided by the Compliance Officer pursuant to Paragraph 3.1 shall be presented in a written or oral form, as required by the essence of respective services, unless a specific form of reporting by the Compliance Officer is required under the Compliance Programme or this Contract.
  - 3.5. All documents prepared by the Compliance Officer shall be in Albanian. Annual report elaborated by the Compliance Officer shall be translated to English for its submission to the Energy Community Secretariat.

## 4. THE RIGHTS OF THE COMPLIANCE OFFICER

- 4.1. In order to comply with its obligations for the provision of services to the TSO pursuant to paragraph 3.1, the Compliance Officer shall have the right to:<sup>8</sup>
- 4.1.1. demand for adequate financial and organisational conditions enabling the Compliance Officer to provide its services in an efficient manner;
  - 4.1.2. require for cooperation from the TSO's managers and employees where necessary for due implementation of the Compliance Programme;
  - 4.1.3. access to all relevant data and to the premises of the TSO, and to all the information necessary for carrying out its obligations. The Compliance Officer shall have access to the premises of the TSO without prior notice;
  - 4.1.4. access to all contracts concluded by the TSO with other participants of the natural gas market, network users and other third parties, and to relevant source documents (commercial offers, statements of acceptance, memoranda, invoices, *etc.*);
  - 4.1.5. attend all meetings of the TSO's corporate bodies, apart from those referred to in Paragraph 3.1.8 where the Compliance Officer is obliged to attend;
  - 4.1.6. attend all meetings of the TSO's managers and employees, including operational meetings;
  - 4.1.7. provide its opinion regarding any proposed TSO's internal document or action with regard to their compliance with applicable legal acts, including any legal and regulatory changes at stake, and with the Compliance Programme.
- 4.2. Rights of the Compliance Officer which are not expressly referred to in Paragraph 4.1, but which are prudently deriving from its obligations established in the Law

<sup>8</sup> **Energy Community Secretariat:** Rights of the Compliance Officer stipulated in this Paragraph 4.1 are written down in accordance with the draft Compliance Programme (ECS's initial draft of 7 December 2016). Should the draft Compliance Programme be changed, please reflect respective changes in this draft Contract.



and/or the Compliance Programme as necessary for due performance by the Compliance Officer and provision of its services shall be fulfilled under mutual consent between the Parties.

4.3. The Parties shall ensure through the mutual cooperation that all rights of the Compliance Officer are duly fulfilled in line with the objectives of the Compliance Programme.

## 5. RIGHTS AND OBLIGATIONS OF TSO

5.1. Members the TSO's [*competent corporate body/ bodies*] and its General Manager shall have a right to require from the Compliance Officer to provide its services in a due and timely manner under the terms and conditions stipulated in the Law, the Compliance Programme and this Contract.

5.2. The TSO's corporate bodies referred to in Paragraph 5.1 may at any time require from the Compliance Officer to submit written explanations or reports on the provision of any of its services and the status of implementation of the Compliance Programme.

5.3. The TSO, its managers, employees and/or other authorised representatives shall have a right to submit requests to the Compliance Officer with regard to the practical application and implementation of the Compliance Programme.

5.4. The TSO, its managers, employees and/or other authorised representatives shall refrain from any instructions or requests, or any other actions which would be in conflict or potentially may be in conflict with the mandate and/or independence of the Compliant Officer.

5.5. In order to ensure the adequate conditions for the Compliance Officer to carry out its duties and fulfill its rights under this Contract, the TSO is obliged:<sup>9</sup>

5.5.1. provide the Compliance Officer with a fully equipped office at the TSO's premises and ensure that the Compliance Officer receives all office tools (including stationary, computer, telecommunication equipment, *etc.*) and administrative support necessary for the provision of its services;

<sup>9</sup> **ECS:** Please specify additional obligations of the TSO, should this be necessary taking into account the final text of the Compliance Programme to be approved by ERE.

- 5.5.2. pay for the services provided by the Compliance Officer as required under Section 6;
  - 5.5.3. instruct its managers and employees on the obligation to cooperate with the Compliance Officer as necessary for the implementation of the Compliance Programme. This obligation shall be clearly spelled out in respective contracts and/or instructions of the TSO's managers and employees;
  - 5.5.4. provide the Compliance Officer with an unrestricted access to all relevant data, contracts and to the TSO's premises, and to all the information necessary for carrying out its obligation;
  - 5.5.5. support the Compliance Officer by providing necessary data, information and assistance in an accurate and timely manner;
  - 5.5.6. inform the Compliance Officer of scheduled and unscheduled meetings of the TSO's corporate bodies, managers and/or employees, and provide with all materials necessary to participate at those meetings. Such information and materials shall be provided in due time before the meetings;
  - 5.5.7. involve the Compliance Officer to discussions on the ten-year transmission network development plan, drafting of internal acts and other operational issues, as well as any structural or corporate changes of the TSO;
  - 5.5.8. inform the Compliance Officer on any alleged violations of the Compliance Programme, existing or potential conflict of interest of the TSO's managers or employees, alleged violations of the confidentiality obligations and other occurrences which may have an effect on due implementation of the Compliance Programme.
- 5.6. Obligations referred to in Paragraph 5.5 shall be carried out by the TSO's General Manager or its other managers or employees (namely, senior management and heads of units) in compliance with their competence and mandate. Each TSO's manager and employee shall have a right to refer to the Compliance Officer with regard to the implementation of the Compliance Programme and shall be obliged to report any alleged violations thereto.

5.7. Rights and obligations of the TSO which are not expressly referred to in this Section 5, but which are prudently deriving from the Law and/or the Compliance Programme as necessary for due performance by the Compliance Officer and provision of its services shall be fulfilled under mutual consent between the Parties.

## **6. REMUNERATION OF SERVICES FOR THE COMPLIANCE OFFICER**

6.1. Remuneration for services provided by the Compliance Officer shall not be based on any performance evaluations by the TSO's managers. The Compliance Officer shall be remunerated under the terms and conditions of this Contract. Any other remuneration policies applied by the TSO shall have no effect on the remuneration for services provided by the Compliance Officer.

6.2. Monthly payment for the services of the Compliance Officer shall be equal to [●]  
ALL.

6.3. Payment referred to in Paragraph 6.2 shall be free of any taxes or other deductions. If so required under applicable legal acts, any taxes, levies and deductions, including those related to employment relations, where relevant, shall be separately compensated by the TSO<sup>10</sup>

6.4. All costs incurred by the TSO due to the performance of its obligations under Section 5 shall be borne by the TSO and shall have no effect on the remuneration for the services provided by the Compliance Officer.

6.5. All payments to the Compliance Officer shall be made on monthly basis not later than by the 10<sup>th</sup> (tenth) calendar day of each following month. In case of a delayed payment, the TSO shall be bound by a default interest equal to [0.02%] of the delayed payment.

## **7. LIABILITIES AND DISPUTE SETTLEMENT**

7.1. The Parties shall be liable for due implementation of this Contract under the terms and conditions stipulated in the Law, the Compliance Programme and hereto.

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<sup>10</sup> **ECS:** Please specify any tax or related duties, if necessary.

- 7.2. In case of a material breach of this Contract, each Party may claim for the direct losses incurred to be compensated by the guilty Party. Such losses shall be calculated and justified under the terms and conditions stipulated in applicable legal acts.
- 7.3. All disputes arising out of this Contract or otherwise related to its implementation shall be settled in an amicable manner following mutual consultations by the Parties.
- 7.4. In case the Parties fail to settle their dispute under Paragraph 7.3, each of the Parties shall have a right to refer for the settlement of their dispute to ERE, based on its dispute resolution procedures, or to a competent court of the Republic of Albania.
- 7.5. Both Parties agree that, for the purposes of this Contract, commercial arbitration shall be excluded as a form of dispute settlement.

## **8. VALIDITY OF THE CONTRACT**

- 8.1. This Contract shall come into force on the day of its approval by ERE, as specified herein below. The mandate of the Compliance Officer shall start the next business day following the above referred approval.
- 8.2. This Contract shall remain valid for the period of 3 (three) years from the date of its approval by ERE.
- 8.3. All amendments to this Contract shall be made following a mutual agreement between the Parties, *inter alia* taking into account relevant legislative changes. Any amendments to this Contract whatsoever shall come into effect subject to their approval by ERE.
- 8.4. This Contract may be terminated before the end of the term of its validity, as specified in Paragraph 8.2, only in the following cases:
- 8.4.1. at request of the Compliance Officer following its written notification to the TSO's General Manager at least 2 (two) months prior to the notified date of termination;

- 8.4.2. by initiative of the TSO in case the Compliance Officer does not satisfy the requirements for its qualification and/or independence, as established by the Law, the Compliance Programme and this Contract; or
- 8.4.3. based on a mutual agreement between the Parties.
- 8.5. In the case of the employment relations between TSO and the Compliance Officer, no conditions allowed by the labor law of the Republic of Albania may be applied for dismissal of the Compliance Officer other than those corresponding to Paragraph 8.4.<sup>11</sup>
- 8.6. Before the end of its mandate, whether due to the end of the term of validity of this Contract or its premature termination in line with Paragraph 8.4, the Compliance Officer shall prepare a comprehensive list of the documents under its possession, necessary written explanations and final report of its activities for the takeover by the TSO's General Manager.
- 8.7. Decision on termination of this Contract and, therefore, dismissal of the Compliance Officer shall be adopted by the TSO's [*competent corporate body*] clearly indicating the reasons of such termination and approved by ERE.

## 9. FINAL PROVISIONS

- 9.1. This Contract shall be governed, construed, interpreted and enforced in accordance with the laws of the Republic of Albania.
- 9.2. This Contract is concluded in Albanian, in 3 (three) equally binding copies, i.e. one copy for each of the Parties and one for submission to ERE.
- 9.3. The following annexes shall be enclosed to this Contract:
- 9.3.1. Annex I. Compliance Program;
- 9.3.2. Annex II. Professional qualities and selection criteria of the Compliance Officer.

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<sup>11</sup> **ECS:** This provision, as referring to possible employment relations between the TSO and the Compliance Officer, may be deleted in case of concluding this Contract with a legal person who provides services of the Compliance Officer.

9.4. Following the entry into force of this Contract, the Compliance Officer shall provide the Energy Community Secretariat with a copy of this Contract and its annexes in English.

## 10. THE NECESSARY CONDITIONS (REQUISITES ) AND THE SIGNATURE FROM THE PARTIES

10.1. All communication between the Parties shall be processed based on the following contact and the necessary conditions (requisites):

### TSO

[*address*]

[*phone number, fax number, and email address*]

### Compliance Officer

[*address*]

[*phone number, fax number, email address*] [*bank account and bank details*]

**On behalf of TSO company:**

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**On behalf of the Compliance Officer:**

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**Approved by ERE:**

ERE Board Decision No.78 of date 26.05.2017

