

# **ELECTRICITY MARKET RULES**

## **ANNEX NO. 1**

### **EXCHANGE MEMBERSHIP AGREEMENT IN THE ALBANIAN POWER EXCHANGE FOR ALBANIAN MARKET**

**by and between**

**ALPEX j.s.c**

**and**

**XXXX (name of Exchange Member)**

## THE PARTIES

This Exchange Membership Agreement (hereinafter: the **Agreement**) is entered on the latest date as indicated at the signatures page, by and between

1. BURSA SHQIPTARE E ENERGJISË ELEKTRIKE SH.A a company organised and existing under the laws of Albania, having its registered office at Rruga Liman Kaba, Residencë Olympic, Shkalla 3, Kati 1, zyra 1, Tiranë, Albania, and registered with in the National Business Center under the NUIS M02223006B (hereinafter: ALPEX), legally represented by Mr. Sokol Dishnica

**and**

2. XXX (Exchange Member data)

jointly referred to as the "Parties" and separately as the "Party".

The relationship between the Parties shall be regulated by this Agreement and by the documents referred therein.

### 1. Priority of Documents:

- 1.1. The documents forming the contractual agreement are to be taken as mutually explanatory of one another. For the purpose of interpretation, as it is written in the Electricity Market Rules - General Terms, the priority of the documents shall be as follows (collectively referred to henceforth as the "**Documents**"):
  - a) Electricity Market Rules - General Terms
  - b) The Procedures as defined in the Electricity Market Rules - General Terms
  - c) The Exchange Membership Agreement; and
  - d) The Clearing Framework Agreement

## 2. DEFINITIONS AND INTERPRETATIONS

- 2.1. As used in this Agreement, unless expressly stated otherwise or evident in the context, the following terms shall have the meanings given in Electricity Market Rules Glossary, the singular (where appropriate) shall include the plural and vice versa.

## 3. GENERAL

- 3.1. ALPEX is the responsible operator for managing and administrating Day-Ahead and Intraday electricity markets (ALPEX Markets) in Albania based on Licence No. 525, Series No. O22, dated 29.09.2022 issued by ERE, fully in compliance with the Electricity Market Rules - General Terms and the Electricity Market Rules - Procedures.
- 3.2. According to the Electricity Market Rules - General Terms, each Exchange Member must enter into an Agreement with ALPEX in order to perform Trading and the related transactions on any or each of the ALPEX Markets.
- 3.3. By signing this Agreement, the Exchange Member has the right to conclude Trading and Transactions in ALPEX Markets. The trade and transactions are subject to the provisions

of the Documents.

- 3.4. By signing this Agreement, the Exchange Member hereby accepts to be a subject of, and to fulfil the obligations arising from, the Documents listed in Clause 1.1 of this Agreement, as amended from time to time by ALPEX, as well as from any decision of any nature (including technical decisions), measure and act and/or document adopted or issued by ALPEX based on, in implementation of, or referenced in, such Documents.
- 3.5. Access rights of the Exchange Member to the ALPEX Markets are defined by Annex 1 to this Agreement.
- 3.6. The Exchange Member expressly accepts and acknowledge herein, that all the Trading and related Transactions regarding sale and purchase, payments and delivery, transfer of title over electricity and all the rights and obligations associated with such transactions are created, and concluded and therefore become binding on the parties to the transaction upon the occurrence from auctions or from the matching of the orders in Continuous and the announcement by ETSS to EMCS of such matching thereby creating an enforceable Contract according to the requirements of the Electricity Market Rules - General Terms and the Procedures;
- 3.7. The Exchange Member hereby accepts to pay every fee, charge, tariff, statutory default interest or any applicable taxes according to the Law, as the case may be, which is foreseen in, or is established due to, the provisions of the Documents;
- 3.8 The Exchange Member hereby undertake that for the entire duration of the present Agreement it will engage in the Trading and Transaction procedures only duly trained and certified personnel as per the requirements of the Documents;
- 3.9 The Exchange Member hereby agree to create, register and perfect in favour of ALPEX all the necessary rights granted in favour of third parties, over collateral and margin as provided in the Documents;
- 3.10 The Exchange Member hereby accepts and authorizes ALPEX or its General Clearing Member to apply any netting, set-off or compensation to the Exchange Member's financial obligations deriving from the Exchange Member's Transactions;
- 3.11 The Parties agree that the payments between them as a result of transactions concluded on the ALPEX Markets, regardless of the market segment on which they have been concluded, shall be settled by compensation of payments and mutual obligations (netting);
- 3.12 The Exchange Member agrees that, in order to have access to the ALPEX Markets, will fulfil and be in compliance with all the requirements of the Albanian legislation, the provisions of the Energy Regulatory framework, the Documents, and with the related commercial requirements and all related liabilities as specified within the Documents and this Agreement;
- 3.13 ALPEX agrees to provide access to the ALPEX Markets in compliance with relevant applicable laws and regulations and in particular the relevant obligations under clause 3.1 and the Documents and to adhere to commercial requirements and liabilities as specified within this Agreement.
- 3.14 In the cases in which the Exchange Member wishes to undertake trading through an OTC Portfolio in the ALPEX Markets, then the Exchange Member shall enter into an separated agreement with ALPEX for such purpose and such agreement shall be approved by the Regulatory Authority in advance.
- 3.15 In case of breach of this Agreement and of the provisions of the Documents, the breaching party shall be liable for compensation of the damages caused to the other

party, in compliance with, and within the limitations set out in the Documents.

#### **4. ENTRY INTO FORCE**

- 4.1 This Agreement shall become effective upon signing (the "Commencement Date") and remain in force until termination in accordance with Section 9 ("Termination") of this Agreement. In case of parties not signing on the same date, this Agreement will enter into force on the latest date.

#### **5. MARKET BEHAVIOUR OF EXCHANGE MEMBER**

- 5.1 Respecting of the requirements for transparency and exercising electricity market monitoring competencies, ALPEX is entitled and obliged to monitor and sanction any Exchange Member not complying with the Documents and Regulatory requirements.
- 5.2 ALPEX is entitled to publish and disclose any related facts regarding Exchange Members breach of the Documents.

#### **6. STATEMENTS**

##### *6.1. Statements by the Exchange Member*

6.1.1 The Exchange Member hereby states and warrants to ALPEX that:

- a. it is established and existing under the applicable laws of the country of incorporation and its activity is pursued based on valid existing licenses and/or approvals and/or authorizations and/or consents, as applicable;
- b. it is in good standing and there are no legal, technical and financial circumstances existing, or threatened to exist, in its commercial activity which would obstacle or prohibit the signing of this Agreement, compliance and implementation of its provisions and compliance and implementation of the provisions of the Electricity Market Rules - General Terms and of the Electricity Market Rules - Procedures;
- c. all the information, statements and undertakings provided or made as part of the application for being accepted as an exchange member and/or provided or made as part of any other, application, certification, procedures related to obtaining an approval or consent or authorization, or as part of any other communication of any form with ALPEX, for the purpose of participating into, and/performing, Trading, are true, correct and binding;
- d. the Clearing Framework Agreement for Direct Clearing Member or General Clearing Member as applicable, has been entered with ALPEX in accordance with the Documents;
- e. it knows and understands the characteristics of each Product and of the Trading and the risks associated;
- f. it understands the rights and obligations under the present Agreement and its participation in such Agreement shall be interpreted as the participation of a commercial party having all the contractual and industry knowledge and information that a company operating in an electricity market and trading activity shall have and it accepts and

acknowledges that the hereby contractual position shall not in any case be, or interpreted to be, as a consumer contractual position.

- g. it has taken all necessary actions to authorise the signing of this Agreement as supplemented by the Electricity Market Rules - General Terms and the Electricity Market Rules - Procedures; and
  - h. the signing of this Agreement and its compliance with this Agreement and the Electricity Market Rules - General Terms does not violate any law, rule, regulation, agreement, document or instrument binding on or applicable to the Exchange Member.
- 6.1.2 The Exchange Member is deemed to accept and repeat the Statements and Warranties which are contained in the Electricity Market Rules - General Terms.
- 6.1.3 The Exchange Member is deemed to repeat the Statements and Warranties as per clause 6.1.1 to 6.1.3 of this Agreement any time it submits an order, offer, demand and/or any time a Transaction is initiated and/or a Contract is concluded as per the Electricity Market Rules - General Terms and the Electricity Market Rules- Procedures. The Exchange Member hereby acknowledges that such statements and warrants being true and correct are considered as essential conditions to the intention and will of ALPEX to enter into such Agreement with the Exchange Member.
- 6.1.4 The Exchange Member acknowledges that he is obliged to immediately notify ALPEX in the event that he becomes aware of any breach of a Statement or Warranty, as provided further in the Electricity Market Rules or the Procedures. The Exchange Member's failure to comply with such notice will result in the Exchange Member's obligation to indemnify ALPEX for all costs and damages incurred, as well as the occurrence of the Non-Compliance Event or Material Non-Compliance Event, as the case may be.

## 6.2. *Statements by ALPEX*

- 6.2.1. By entering into this Agreement, ALPEX hereby states and warrants to the Exchange Member that:
- a. it has taken all necessary actions to authorise the signing of this Agreement as supplemented by the Electricity Market Rules - General Terms and Electricity Market Rules - Procedures; and
  - b. the signing of this Agreement and its performance under this Agreement and the Electricity Market Rules - General Terms does not violate any law, rule, regulation or agreement, document or instrument binding on or applicable to ALPEX.

## 7. **CONFIDENTIALITY**

- 7.1. ALPEX shall ensure that no third-party gains access to or knowledge of any matters relating to the business or personal affairs of the Member which it becomes aware of through the Exchange Member's Transactions in the ALPEX Markets, and ALPEX shall not make use of such information for any other purposes than those related to Transactions in the ALPEX Markets and related activities of ALPEX.
- 7.2. The Exchange Member undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or other Members of ALPEX.
- 7.3. Notwithstanding the other provisions of this Section 7:

- a. the Exchange Member acknowledges that ALPEX shall be allowed to provide information regarding the traded volumes data (but not their prices) to any other person or entity advising or assisting ALPEX in its operations. In transactions involving any future transfer/sale of business/equity, there are no restrictions on the information provided, provided these persons and entities are subject to a corresponding confidentiality obligation.
  - b. the Exchange Member acknowledges ALPEX' rights to use and distribute Transaction information as set out in the Electricity Market Rules - General Terms.
  - c. the duty of confidentiality shall not extend to information which is or becomes public through no breach of a Party's confidentiality obligations hereunder.
  - d. either Party shall be allowed to disclose any information as may be required by Applicable Law, court order or a request by any governmental or Regulatory Authority within the territory ALPEX operates; and
  - e. neither Party is required to keep confidential the fact that it has entered into this Agreement nor the fact that the Agreement ceased to exist or was terminated.
- 7.4. This Section shall not limit either Party's confidentiality obligations under Applicable Law.

## **8. CHANGES TO THE AGREEMENT**

- 8.1. Except for what is provided in paragraph 8.2 below, any Amendment to this Agreement, including changes to its Annex, requires the approval of Regulatory Authority, as the case may be.
- 8.2. Any changes of the Electricity Market Rules and changes in the primary and secondary legislation and regulatory acts shall apply automatically to this Agreement and ALPEX shall notify the changes to the Exchange Member. The Exchange Member by signing the present Agreement hereby agrees, accepts and acknowledge to be bound from the changes as per this paragraph and by the Agreement as will be amended by any such changes from time to time.

## **9. TERMINATION OF THE AGREEMENT**

### *9.1. Termination due to the Resignation of the Exchange Member*

- 9.1.1. This Agreement may be unilaterally terminated by the Exchange Member in accordance with the provisions on the resignation of the Exchange Member as set out in the Documents;

### *9.2. Termination by ALPEX*

9.2.1 This Agreement may be unilaterally terminated by ALPEX:

- a) any time ALPEX issues a Termination Order as per the Documents;

- 9.3. In any case, if termination is caused due to breach of this Agreement and of the provisions of the Documents, the breaching party shall be liable for compensation of

the damages caused to the other party, in compliance with, and within the limitations set out in the Documents.

## **10. FORCE MAJEURE**

- 10.1. Neither Party shall be liable for any faulty or partly failure or delay in performance of its duties under this Agreement (other than for delay in the payment of charges due and payable) to the extent that the failures or delays are caused by Force Majeure including, without limitation, failure of the Party, or any other parties acting on its behalf, to substantially meet its performance obligations under this Agreement.
- 10.2. The Party affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon the Agreement and to fulfil its obligations under the Agreement, but without prejudice to either Party's right to terminate the Agreement as per Section 8 above.
- 10.3. As a condition to the claim of non-liability, the Party experiencing the difficulty in implementation shall give the other Party prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met shall be extended for a period equal to the time lost due to any delay so caused.

## **11. MISCELLANEOUS**

### *11.1. Notices*

- 11.1.1. Any notice required to be given under this Agreement or the Electricity Market Rules - General Terms and the Electricity Market Rules - Procedures by the Exchange Member shall be given in writing by the Parties or the authorised representatives of the Parties to authorised representatives of ALPEX, unless as otherwise prescribed in the Electricity Market Rules - General Terms and the Electricity Market Rules - Procedures.

### *11.2. Entire Agreement*

- 11.2.1. This Agreement and the Documents contain the whole agreement between ALPEX and the Exchange Member relating to the subject matter of this Agreement and the Documents, and they supersede any previous arrangement, understanding or agreement between them relating to that subject matter.
- 11.2.2. ALPEX and the Exchange Member each acknowledge that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in this Agreement and the Documents.
- 11.2.3. Nothing in this Section shall limit or exclude any liability of the Parties for fraud.

### *11.3. Severability*

- 11.3.1. In the event that any one or more provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions shall remain valid and enforceable.

### *11.4. Assignment*

11.4.1. The Exchange Member may not transfer, replace or assign this Agreement or any right deriving from this Agreement or under the Documents without the prior written consent of ALPEX.

#### 11.5. *Counterparts*

11.5.1. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

11.5.2. This Agreement is concluded in Albanian or English language. Constituent parts of this Agreement are the Electricity Market Rules - General Terms and the Electricity Market Rules - Procedures.

#### 11.6. *Waiver*

11.6.1. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy.

### **12. COMMUNICATIONS**

12.1. Any communication between the parties, relating to the performance of the present Agreement, must be sent in writing; by the means stated in article 12.2 of this Agreement.

12.2. Communication between the parties may be made by telephone, or e-mail, provided that there is a written acknowledgement of receipt.

12.3. The Trading Responsible is the person appointed by the Exchange Member for its representation to ALPEX on behalf of the Exchange Member. The Trading Responsible shall notify the Exchange Member for any case and issue regarding ALPEX. He will act as the contact person for all communication between the parties. The Exchange Member may change its Trading Responsible upon written notice to ALPEX.

12.4. According to the Electricity Market Rules - General Terms, Exchange Members must appoint at least one (1) Certified Trader for the Exchange Member's Trading on ALPEX Markets in which it participates, subject to the approval of ALPEX not to be unreasonably withheld. The Certified Trader may also be the same person as the Trading Responsible. The Trading Responsible personal data shall be registered in Annex 2 of this Agreement. The Exchange Member shall provide that the Certified Trader authorizes ALPEX for the processing and treatment of the personal data by signing the related authorization provided by ALPEX for such purpose.

### **13. RIGHTS OF ALPEX FOR SUSPENSION OF EXCHANGE MEMBER FROM ALPEX MARKETS**

13.1. ALPEX shall maintain the right to suspend except the Exchange Member from ALPEX Markets if:



- (i) it is instructed to suspend by an instruction from the Energy Regulatory Authority and/or the TSO;
- (ii) the Exchange Member is in breach of major obligations under the Documents or this Agreement.

#### **14. CHOICE OF LAW**

14.1. This Agreement shall be governed by, construed and take effect in accordance with the Albanian legislation.

#### **15. RESOLUTION OF DISPUTES**

15.1 Either Party shall have the right to institute the dispute resolution proceedings in accordance with the Electricity Market Rules - General Terms in relation to disputes related to matters arising from the interpretation and performance of the rights and obligations of the present Agreement.

15.2 If the parties fail to reach the settlement of the Dispute within the Dispute Process Timetable according to the Electricity Market Rules, such dispute shall be sent for review to the relevant Regulatory Authority and will be reviewed according to the procedures set forth in the Regulation for Handling the Complaints Submitted by the Customers and Settling the Disputes Between the Licensee, on Power and Natural Gas Sectors.

15.3 The parties hereby agree that only after exhausting the proceedings as per 15.1 and 15.2 they shall submit the dispute to the competent courts of Tirana having final exclusive jurisdiction to settle any claim, dispute or difference that may arise out of or in connection with this Agreement, including any question as to its existence, validity or termination.

15.4 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any proceedings in the Albania and any claim that any such proceedings have been brought in an inconvenient court, and further irrevocably agrees that a judgement in any proceedings brought in the Albanian courts shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction in accordance with the law of that jurisdiction.

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IN WITNESS OF THEIR AGREEMENT each Party has authorized its representative to execute this Agreement, which will become effective on the date of signature by both Parties. This Agreement has been made in two (2) originals in the chosen language, and each Party shall keep one (1).

**For and on behalf of the Exchange Member**

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\_\_\_\_\_  
Signature and stamp

\_\_\_\_\_  
Name and function (capital letters)

\_\_\_\_\_  
Place

Date of signing: \_\_\_\_\_

**For and on behalf of ALPEX**

\_\_\_\_\_  
Signature and stamp

\_\_\_\_\_  
Name and function (capital letters)

\_\_\_\_\_  
Place

Date of signing: \_\_\_\_\_

**Annex 1: Trading DAM Portfolios and Member Authorisations for Trading and Clearing**

**Annex 2 : Trading Responsible for the Exchange Member**

1. Trading Responsible for the Exchange Member

		Alternate contact
Full Name & Designation		
Business Telephone / Mobile Phone Nos.		
Business Email Address		
Business Fax Nos.		

2. Certified Trader for the Exchange Member

		Alternate contact
Full Name & Designation		
Business Telephone / Mobile Phone Nos.		
Business Email Address		
Business Fax Nos.		