

*The original document was written in Turkish. In case of any discrepancies between the original document and the translation, the Turkish version shall prevail.*

## **DRAFT CONTRACT FOR RENEWABLE ENERGY RESOURCE ZONE (REZ WPP-2024)**

### **SECTION 1 GENERAL PROVISIONS**

#### **1. Parties of the Contract and Definitions**

##### **1.1. Contracting Authority:**

Name : Ministry of Energy and Natural Resources  
Address : Nasuh Akar Mah. Türkocağı Cad. No: 2  
06500, Çankaya / Ankara  
Phone Number : + 90 312 546 54 01  
Fax Number : + 90 312 223 69 84  
Electronic Mail Address : yeka@enerji.gov.tr

Hereinafter referred to as “**Contracting Authority**”.

##### **1.2. Auction Winner:**

Trade Name :  
Tax Office and ID No. :  
Notification Address :  
Phone Number :  
Fax Number :  
Electronic Mail Address :  
Registered Electronic Mail :  
(KEP) Address :

Hereinafter referred to as “**Auction Winner**”.

The Contracting Authority and Auction Winner will hereinafter be referred to as “**Party**” individually and as “**Parties**” collectively.

1.3. The Parties agree that the addresses provided above are their notification addresses. Unless any change of address is not notified to the other party through notary public, any notice to be sent to the most recently declared address shall be deemed to have been made duly to the related party.

1.4. The Parties shall send their notices and notifications using the procedures defined in the applicable legislation.

#### **2. Information on the Auction**

- 2.1. Name of Auction: .....
- 2.2. Connection Capacity: ..... MWe
- 2.3. Unit Electrical Energy Purchase Price: ..... US-Cent/kWh
- 2.4. Contribution Share Amount: ..... USD
- 2.5. Guarantee Amount: ..... USD

### 3. Definitions

3.1. For the purposes of the implementation of this Contract, the definitions provided in Regulation on Renewable Energy Zones published in the Official Gazette no. 29852 dated October 09, 2016, in the Specifications and in the Contract shall be valid, respectively. Where the Contract does not provide a definition of a term, the words, acronyms abbreviations and phrases used in the text of the Contract shall have the meanings ascribed to them in the Regulation, Specifications or their annexes. In case of any discrepancy among these definitions, the definitions provided in the Regulation, Specifications and Contract shall be taken as a basis, respectively. The terms not defined in the Regulation, Specifications and Contract shall have the meaning ascribed to them in their relevant legislation.

3.2. Within the context of the Contract;

**“Ministry”** means Ministry of Energy and Natural Resources of Republic of Türkiye,

**“Electricity Market Licensing Regulation”** means Electricity Market Licensing Regulation published in the Official Gazette no. 28809 dated November 2, 2013 and any amendments to the subject regulation,

**“EMRA”** means Electricity Market Regulatory Authority,

**“Directorate General”** means Energy Affairs Directorate General of Ministry of Energy and Natural Resources of Republic of Türkiye,

**“Related Parties of Contracting Authority”** means EPIAŞ, TEİAŞ and EMRA,

**“Contracting Authority’s Fault”** means the failure of Contracting Authority and the Related Parties of Contracting Authority to fulfill their obligations under this Contract and/or any REZ Project Document in a manner that is compliant with REZ Project Documents,

**“Work”** means the construction/installation and operation, for the respective periods, of the WPP and all other actions specified in the Regulation Specifications and Contract in relation to the work covered by the Contract,

**“Change In Legislation”** means any amendment to the legislation and/or to the incentive mechanisms any time after the Contract signing date, which has the contents and consequences specified in Article 6 of the Contract,

**“Force Majeure”** has the meaning ascribed to it in Article 29 of the Contract,

**“Market Operator”** means Energy Markets Operation Corporation (EPIAŞ),

**“Project”** means each REZ WPP Project,

**“WPP”** means electricity generation facility based on wind energy which is established within REZ,

**“Contract”** means this Contract signed between the Contracting Authority and Auction Winner, including all its annexes as specified in Annex-5,

**“Specifications”** means the document annexed to this Contract, which covers the works and procedures to be carried out, scope, principles and procedures, technical and administrative conditions of the Auction, qualifications required for Bidders, other relevant information, and all annexes including responses given in connection with the Specifications,

**“CBRT”** means Central Bank of Republic of Türkiye,

**“TEİAŞ”** means Turkish Electricity Transmission Corporation,

**“Third Party”** means any person other than the Contracting Authority, Directorate General and Auction Winner,

**“REZ”** means Renewable Energy Zone,

**“REZ Project Documents”** means the legislation concerning REZ scheme, including the primarily Regulation, the Specifications, this Contract and the questions and responses published by the Contracting Authority in relation to the Specifications during the Auction process,

**“Renewable Energy Resources Support Mechanism (YEKDEM)”** means the support mechanism covering principles and procedures concerning (i) prices, (ii) provisions and (iii) payments, which are applicable to legal entities holding Generation License and engaged in electricity generation activity based on renewable energy resources without license under Regulation on Unlicensed Electricity generation in the Electricity Market, published in the Official Gazette no. 307712 dated 12/05/2019,

**“Regulation”** means the Regulation on Renewable Energy Zones, published in the Official Gazette no. 298520 dated October 09, 2016, and any amendments thereto.

#### **4. Interpretation of the Contract**

- 4.1. Headings provided in the Contract do not form a part of the text of Contract. Headings do not affect the interpretation, meaning and validity of provisions in the Contract and the rights and obligations of the Parties.
- 4.2. Persons referred to herein in the singular form shall be deemed to include the plural form, and vice versa, as the context of Contract so requires.
- 4.3. Each provision of the Contract is severable and is separate from others. If a particular provision of Contract has become invalid and nonexecutable within the framework of any rule of law, all other provisions of the Contract shall remain fully valid and effective. The validity, legality and executability of the entire Contract shall not be affected from any such section that has become nonexecutable. In relation to the part(s) of Contract that has/have become invalid, the Parties may, through mutual agreement, may conclude a written arrangement supplementary to this Contract, taking into consideration their will at the Contract signing stage.
- 4.4. References made in connection with related legal provisions or agreements shall cover all their secondary legislation including bylaws and regulations.

- 4.5. Unless provided otherwise in this Contract, the fact that any of the Parties has not actually exercised or claimed any of its other contractual rights for a long or short period of time or that they have not been claimed through a valid notification method shall not be construed as the waiver/renunciation of rights by the related Party (including the Contracting Authority's claims for enforcement of penal clauses). A waiver by any of the Parties under the Contract can only be valid if such waiver is clearly made in writing. The declaration of any Party to clearly waive a right or provisions calling for waiver of a right are subject to a narrow-scope interpretation and cannot be construed to be affecting the entirety or other provisions of the Contract, beyond the specific subject matter it concerns.
- 4.6. The fact that the performance of an act has been dependent on a condition or that the fulfillment of a condition of private or public entities is awaited while performing a contractual act cannot be construed as that the provisions and consequences of the entire Contract have been dependent on that condition.
- 4.7. The statements used during communications exchanged between the Parties through fax, e-mail, phone and similar channels throughout the duration of Contract shall not be construed as that the provisions of Contract have been amended, abolished or new provisions have been added to the Contract. Unless stipulated in the Contract, no amendment to the Contract shall be deemed effective until it is signed mutually by the Parties in writing.
- 4.8. The signing of Contract between the Contracting Authority and the Auction Winner shall not result in the Contracting Authority being encumbered with the direct or indirect obligations of the Auction Winner towards its employees.

## **5. Annexes of the Contract and Order of Precedence of Documents**

- 5.1. The Specifications and the documents submitted by the Auction Winner pursuant to the Regulation and Specifications shall form annexes of the Contract. These documents are integral parts of the Contract and are binding upon the Parties. In case of any discrepancy or contradiction between the provisions of Contract and the annexes of the Contract, or between the provisions in the annexes of the Contract, the provisions of documents with higher precedence shall prevail, according to the order of precedence given in Article 5.2.
- 5.2. Order of precedence of REZ Project Documents shall be as follows:
1. Imperative provisions of Turkish Law, primarily including the Regulation, YEKDEM Regulation and EMRA legislation
  2. Specifications
  3. Responses to the Specifications and documents submitted to the Contracting Authority along with the bid
  4. Contract
- 5.3. Addenda shall have the precedence order of the document for which they are issued.

## **6. Change In Legislation**

- 6.1. In the event that any amendment that may be made to the legislation and/or incentive mechanism after the Contract signing date could result in;
- a. an increase or decrease of more than three percent in the total investment cost during the investment period,

- b. an increase or decrease of more than ten percent in operating costs within a calendar year, from the acceptance of Facility till the end of duration of Contract,

all information and documents evidencing the impact of such amendments on the investment cost or operating costs shall be submitted by the Auction Winner to the Contracting Authority upon the request of the Contracting Authority or upon the application of Auction Winner without the request” of the Contracting Authority.

If the review of such evidence by the Contracting Authority reveals an increase or decrease in the specified rates;

- i. The exceeding amount of increase or decrease of more than 3% (three percent) in the total investment cost during the investment period shall be paid to the Auction Winner by the Contracting Authority in case of increase, and to the Contracting Authority by the Auction Winner in case of decrease.
- ii. The exceeding amount of increase or decrease of more than 10% (ten percent) in operating costs within a calendar year, from the acceptance of Facility till the end of duration of Contract, shall be paid to the Auction Winner by the Contracting Authority in case of increase, and to the Contracting Authority by the Auction Winner in case of decrease.

These payments shall be made to the related Party (Auction Winner or Contracting Authority) all at once within 3 (three) months from the date of notification of decision about increase or decrease. However, no other payment shall be made under the name of interest, etc. other than the amount of payment.

The financial values indicated in the documents evidencing the total investment amount spent during the investment period and the financial values indicated in the documents evidencing increase or decrease in the total investment amount shall be determined as of the date when the entire WPP is commissioned. For the expenses expressed in foreign currency in the documents, the amounts shall be converted to Turkish Lira using the foreign exchange sale rates of CBRT as of the same date.

In the calculation of the amount of increase or decrease in the operation cost within a calendar year; if the first and last years do not correspond to a full calendar year, the months to be taken into account in calculating the operating cost of these years shall be determined on a *pro rata* basis.

- 6.2. In relation to all types of taxes, duties, charges, tariffs, fees, etc., the “increases” to be applied according to the revaluation rate to be determined by the Ministry of Treasury and Finance within the framework of tax and all other related legislation, including the Tax Procedural Law, shall not be regarded as change in legislation and such increases shall not be considered in the context of this article.

## **7. Transfer of Contractual Rights and Obligations and Transfer of Shares**

- 7.1. The contract can be transferred to Third Parties with the same rights and obligations after the Preliminary License is obtained, subject to the approval of the Ministry, by signing a transfer contract. The conditions required in process of application for Auction shall be required also for the Third Parties to take over the contract.
- 7.2. The Contracting Authority agrees that, in case of transfer of the Contract within the scope of this article, it will cooperate in good faith with the Auction Winner or the transferee in carrying out the necessary procedures with the Energy Market Regulatory

Authority to transfer the Preliminary Licenses obtained by the Auction Winner to Third Parties.

- 7.3. Changes in direct shareholding structure of the Auction Winner are subject to the approval of the Ministry.

## **8. Duration of Contract**

This Contract shall remain in force until the end of the Purchase Period set forth in the Specifications, provided that the Auction Winner has fulfilled all of its obligations.

## **9. Rule of Written Notice**

When a permit, approval, document, consent needs to be provided to one of the Parties or factfinding, notification, call or invitation needs to be performed in relation to the execution of the Work, these or similar transactions shall be carried out as specified in Article 1.4, unless the Parties decide otherwise

## **SECTION 2 PROVISIONS ABOUT THE WORK**

## **10. Subject of Work**

The subject of Work is the installation of WPP with characteristics specified in the Specifications and its operation for the period specified in the Contract, in return for the allocation of the Connection Capacity referred to in Article 2 and the associated REZ as a result of the Auction in accordance with the procedures stipulated in the Specifications.

## **11. Duration of Work**

- 11.1. The WPP shall be installed within a maximum of ... (...) **months** from the date when the Generation License is obtained and shall be operated in accordance with the provisions of the Specifications, Contract and relevant legislation
- 11.2. The Auction Winner agrees and undertakes that it will not claim any compensation from the Contracting Authority if the Work is not completed for any reason within the periods specified in the Specifications and Contract.

## **12. Circumstances and Conditions Under Which Extension of Time Can Be Granted**

- 12.1. The durations of the Auction Winner's obligations under the Specifications and Contract may be extended in accordance with the provisions of the REZ Project Documents.
- 12.2. Without prejudice to the provisions of this Contract, granting a time extension to the Auction Winner for any reason shall not be construed as that the Auction Winner is granted any right under any name other than the time extension, or that compensation payment will be made or price difference will be applied in favor of the Auction Winner.
- 12.3. The parties shall endeavor to minimize the delays that may occur by fulfilling their obligations in cases requiring the granting of an extension of time.

- 12.4. Since the periods when weather conditions are not suitable for work, official holidays, the time required to fulfill the obligations under the Specifications and Contract, and the time required for obtaining the necessary permits and licenses are already taken into account in the calculation of contractual periods, no additional time extension shall be granted to the Auction Winner for these reasons. The provisions of the Regulation and Specifications regarding the extension of time are reserved.
- 12.5. Without prejudice to the provisions of this Contract, the Auction Winner hereby agrees and undertakes that it has completed the necessary feasibility studies, that it has obtained information and developed a foresight about the seasonal and geological conditions of Türkiye, technical and administrative conditions, time periods for the fulfillment of obligations arising from the applicable legislation, and the procedures to be carried out to proceed with the work, and that it will take the necessary measures to fulfill its obligations completely and perfectly, within the periods stipulated in the Specifications and Contract.
- 12.6. Auction Winner shall be liable for any negative consequence that may occur in the future in terms of meteorological, hydrological, geological, technical, environmental, social and economic aspects due to insufficient studies and evaluations.
- 12.7. The following cases shall entitle the Auction Winner to claim an extension of time:
- a) Change in Legislation,
  - b) Force Majeure,
  - c) Circumstances which cause the Contract to be partially or fully null and void and unenforceable or Project implementation to be suspended or Project construction or operation activities to be ceased, by public agencies and organizations or for a reason that may be attributable to public agencies and organizations or due to court judgment, provided that none of the aforementioned arising from a negligence or fault of the Auction Winner.

Auction Winner shall submit a report on justification for request of extension of time to the Contracting Authority. If the report is found acceptable by the Contracting Authority, an extension of time may be granted to the Auction Winner. The extension of time granted under (c) cannot exceed 12 months.

- 12.8. Without prejudice to the provisions of Article 6 of this Contract, the Auction Winner irrevocably agrees and undertakes that it completely releases the Contracting Authority for any reason other than the breaches arising from Contracting Authority's Fault, that it will not claim any right other than the extension of time it will be entitled to within the framework of the REZ Project Documents, and that it will hold the Contracting Authority harmless from any legal sanction or in case of such a risk, from these risks. The Auction Winner shall be liable for the damages it has caused to the Contracting Authority due to its defaults within the scope of REZ Project Documents. Auction Winner shall pay such damages to the Contracting Authority immediately, in cash and all at once, as of the date they occur.

### **13. Place of Performance of Work**

- 13.1. The WPP shall be installed and operated in the area declared as REZ by the Directorate General in compliance with the Specifications and relevant legislation.

#### **14. Work Program**

- 14.1. The Work program regarding the WPP shall be submitted to the Contracting Authority in accordance with the Specifications.
- 14.2. The work program shall be prepared in such a way and with such level of detail that it includes the work items, parts of the work, distribution of the work by months, timelines, construction timeframes and work completion dates, and the WPP capacity to be commissioned each month.
- 14.3. The Contracting Authority shall review the Work program submitted to it and notify the Auction Winner of its comments and requests for correction, if any. In order for the Auction Winner to complete its obligations in accordance with the provisions of the REZ Project Documents, the required revisions shall be made in the Work program within the specified period of time.
- 14.4. Provisions of the Specifications shall apply to other aspects concerning the preparation and implementation of the work program.

#### **15. Acceptance of Work**

- 15.1. Commissioning of the WPP shall be carried out in accordance with the provisions of the Specifications and the applicable legislation.
- 15.2. The Contracting Authority agrees and represents that upon the commissioning of the entire WPP, the WPP will be deemed to have been installed and commissioned within the framework of the REZ Project Documents and in line with the purposes of this Contract.

#### **16. Works Not Compliant with the Contract and Its Annexes**

- 16.1. Without prejudice to the provisions of this Contract, the Work items which are found to be non-compliant with the REZ Project Documents and the applicable legislation, and found to be incomplete and defective, have to be replaced or corrected free of charge by the Auction Winner until the completion of the acceptance procedures of the WPP.
- 16.2. The works proposed by Auction Winner to be executed differently from the conditions of the Contract can only be accepted if it is approved by the Contracting Authority that they comply with the rules of science and art and the required characteristics and have better characteristics than the existing ones. However, even in this case, the Auction Winner cannot claim additional payment.

### **SECTION 3 OBLIGATIONS OF PARTIES**

#### **17. Obligations of the Contracting Authority**

- 17.1. The Contracting Authority shall be obliged to carry out the works and procedures specified in the Regulation, Specifications and Contract to be under its responsibility in accordance with the provisions of the REZ Project Documents.

- 17.2. The Contracting Authority shall cooperate with the Auction Winner in good faith so that all permits and approval letters required to be obtained from public institutions and organizations in accordance with the relevant legislation to make REZ ready for WPP investment, install and operate it.
- 17.3. The Contracting Authority undertakes to consider the electrical energy to be generated by the WPP in accordance with Article 19.1.
- 17.4. The Contracting Authority ensures necessary coordination regarding the energy transmission facilities and transmission lines to be constructed in accordance with the relevant legislation.

## **18. Obligations of the Auction Winner**

- 18.1. The Auction Winner shall fulfill its obligations under the Contract in accordance with the rules of international law, international conventions and standards, REZ Project Documents and provisions of the legislation.
- 18.2. The Auction Winner shall allow the Contracting Authority and/or the supervision firm to conduct technical inspections and site visits during the installation and operation stages of the WPP.
- 18.3. The Auction Winner shall be obliged to generate electricity and supply it to the electricity transmission system until the end of the duration of Contract.
- 18.4. Without prejudice to the provisions of this Contract, the fact that the WPP has been constructed under the supervision of supervision professionals and other similar supervision organizations shall not relieve Auction Winner from its obligation to perform the Work undertaken fully in compliance with the Specifications and Contract, its designs and the provisions of the relevant legislation, nor from any liability that may arise in this regard.
- 18.5. The Auction Winner shall be held liable for not duly fulfilling the obligations set forth in the Specifications, the Contract, their annexes and the relevant legislation, in connection with the WPP, for using materials not compliant with technical criteria as set out in these provisions and/or fraudulent materials, and for any loss or damage caused for these reasons.
- 18.6. The Auction Winner shall take the necessary measures to prevent any damage to the movable and immovable properties belonging to the public, real persons and legal entities, to all kinds of structures and facilities, and the environment during the performance of the Work. All liability arising from such damages shall be lie with the Auction Winner.
- 18.7. The Auction Winner agrees and undertakes that it has carefully and diligently reviewed the REZ Project Documents and is aware of their contents, that it knows about the obligations contained in these documents, and that it has the ability, experience and skills required to perform the Contract accordingly.

**SECTION 4**  
**PROVISIONS ABOUT FINANCIAL MATTERS**

**19. Electrical Energy Purchase Period, Price and Payments**

- 19.1. Without prejudice to the provisions of the Regulation and Specifications about extension of time, the Contracting Authority undertakes that the unit electrical energy purchase price determined for the electrical energy generated at the WPP as a result of the Auction and indicated in Article 2 of this Contract shall be paid under YEKDEM mechanism throughout the Purchase Period specified in the Specifications. Auction Winner cannot benefit from any other payment system other than this payment system and cannot claim payment under any name. The Contracting Authority undertakes that the unit electrical energy purchase price shall be paid in case of any change in YEKDEM.
- 19.2. The Contracting Authority shall send the required notice on EPIAŞ for the signing of market participation contracts.
- 19.3. Domestic product support shall not be provided to the Auction Winner under Law No. 5346.
- 19.4. The Auction Winner cannot claim a price increase for any reason within the scope of the REZ Project Documents and cannot request any adjustment to the Contract, without prejudice to the provision of Article 19.1.

**20. Duration of License**

- 20.1. Without prejudice to the provisions regarding the termination of this Contract for any reason, the Duration of License to be granted for each WPP to be installed within the scope of the Contract shall be **49 (forty-nine)** years.

**21. Guarantee and Return of Guarantee**

- 21.1. As a guarantee to cover the obligations arising from the Specifications, the Contract, their annexes and the applicable legislation, the Auction Winner has furnished the Contracting Authority with a definite, out-of-limit, fully and partially cashable letter of guarantee with a duration of **10 (ten)** years, in the amount indicated in Article 2, in compliance with the Annex-5-Form-2 of the Specifications. The provisions about the guarantees required to be provided by the Auction Winner to EMRA and other administrative authorities pursuant to the applicable legislation are reserved and independent from this Contract.
- 21.2. In the event that the Auction Winner violates its obligations under the REZ Project Documents, the guarantee shall be fully or partially recognized as revenue in accordance with the REZ Project Documents. In case the guarantee is partially recognized as revenue for any reason the Auction Winner shall be obliged to complete the deficient guarantee amount up the current guarantee amount within **1 (one)** month at the latest.
- 21.3. The Contracting Authority may encash the letter of guarantee to compensate for the damages that may arise under the Work and to collect the fines that may be imposed.

21.4. In case the Auction Winner performs his obligations in accordance with the REZ Project Documents, the letter of guarantee shall be returned in accordance with the relevant provisions of the Specifications.

## **22. Taxes, Duties, Fees and Other Expenses**

22.1. The liability for all types of direct or indirect tax, duty, fee, levy, deduction, rate, charge, customs duty, additional fee, royalty payments relating to the fulfillment of obligations arising from the Specifications, Contract, their annexes and the applicable legislation, and other mandatory expenses of any kind, which are required by the legislation (transportation, rental, right of use, accommodation, stamp duty, permit, approval, insurance, etc.) shall be borne by the Auction Winner.

22.2. Any expenditure to be incurred due to the installation of the WPP shall be paid by the Auction Winner only and the Contracting Authority shall not make any advance payment to the Auction Winner under no circumstances.

22.3. The Auction Winner shall be responsible for all costs associated with establishing the right of use for the area where the WPP will be installed.

## **23. Penalty Clauses**

23.1. In the event that Auction Winner fails to fulfill its obligations in accordance with the provisions of the Specifications, the Contract, their annexes and relevant legislation or does not complete the Work on time, the penalties determined in the Regulation, Specifications and the Contract shall be applied.

23.2. The imposition of any penal clause stipulated in the Specifications, Contract and Regulation on the Auction Winner shall not be dependent on the Contracting Authority's suffering of any damage.

23.3. Any fine to be collected from Auction Winner shall be paid by Auction Winner, in cash and all at once, to the bank account to be notified by the Contracting Authority within **15 (fifteen)** days following the written notice to be served by the Contracting Authority after the fine accrues.

23.4. The penalties stipulated in this article may be claimed both along with the performance of Contract and even after there remains no possibility to perform the Contract, depending on the preference of the Contracting Authority.

23.5. The Contracting Authority's claim of a penalty clause is reserved by the provisions of this article, without any further need for a separate notification or reservation.

23.6. Without prejudice to the extensions of time granted within the scope of REZ Project Documents, in addition to the penalty clauses stipulated in the Regulation and Specifications, the Auction Winner shall be obliged to pay the following penalties to the Contracting Authority in the following cases:

- 1) In case the Domestic Good Certificates for Components, documents evidencing that the Components satisfy the domestic content rate requirements, which will be required by the Directorate General, procurement plan, procurement contracts, and Work program, which are required to be submitted under the Contract

- (excluding those that may be covered by Intellectual Property Rights and Confidentiality provisions) are not submitted to the Contracting Authority within the required timeframe; 1,000 (one thousand) USD for each day during the first 30 (thirty) days, and 2,000 (two thousand) USD for each day after 30 (thirty) days,
- 2) In case the installation of WPP is not completed within the construction period specified in the Specifications, 10,000 (ten thousand) USD for each day of delay,
  - 3) In case the deficient amount of guarantee is not completed in accordance with Article 21.2, 2,000 (two thousand) USD for each day of delay.

## **SECTION 5 TERMINATION OF CONTRACT**

### **24. Termination of Contract**

- 24.1. The provisions of the Contract, Regulation and Specifications shall apply in relation to the termination of Contract. If the Auction Winner fails to fulfill any of his obligations other than those specified as grounds for termination in the Regulation and Specifications, the Contracting Authority shall serve a notarized notice on the Auction Winner calling for the remedy of the breach and grant a period of not less than 60 (sixty) days to remedy the breach. If the breach is not partially or completely remedied within the period specified in the notice and the breach continues, the Contracting Authority shall send a notarized notice to the Auction Winner, urging that the breach be remedied within 30 (thirty) days, otherwise the Contract will be terminated. If the breach of the principles of Contract is not remedied despite this notice, the Contracting Authority shall terminate the Contract and register the guarantee as revenue.
- 24.2. The Contracting Authority shall have the right to terminate the Contract without the need to grant any further time in cases specified below:
  - a) If the Auction Winner notifies the Contracting Authority in writing that it will not be able to partially or fully fulfill its contractual obligations due to financial insolvency, along with supporting documents
  - b) If the Auction Winner's direct or indirect shareholders submit, use or attempt to submit and use false documents regarding the Auction or the Contract during the Auction process or the performance of the Contract, and rig or attempt to rig the contracting process through fraud, promise, threat, exerting influence, ingratiating, agreement, extortion, bribery or other means.
  - c) If the Auction Winner is convicted of crimes falling within the scope of the Anti-Terrorism Law No. 3713 dated 12/4/1991 or of organized crimes.
- 24.3. If any form of finance is provided to the Auction Winner in relation to the Project, the Auction Winner's receivables can be transferred to financiers and other Third Parties subject to the approval of the Ministry, and its movable and immovable properties, accounts and shares can be pledged. The Auction Winner can transfer shares subject to the approval of the Ministry and within the framework of the provisions of Electricity Market Licensing Regulation.
- 24.4. Financiers may request that the Contract and the subject Work be transferred to another legal entity to be proposed by filing a justified application to the Contracting Authority and by observing the conditions imposed upon the Bidders by the Regulation, Specifications and Contract, where:
  - a) a default has occurred under the related loan agreement and has not been remedied within the period of time specified in the loan agreements for the elimination of the

default, if such remedy time has been provided in the loan agreement, although a notice has been sent by the financiers to the Auction Winner for the remedy of the subject default, or

b) a notice has been sent by the Contracting Authority to the Auction Winner and the financiers that a termination condition has occurred under this Contract;

The Contracting Authority shall give an additional time of not less than 60 (sixty) days to the financiers regarding the subject transfer. This period may be extended upon the request of the financiers and the approval of the Contracting Authority. If the Contracting Authority finds the legal entity proposed by the financiers to be suitable within 15 (fifteen) days, then the Contracting Authority shall sign a new Contract with the said legal entity as an extension of the Contract it signed with Auction Winner, with the same conditions and contents.

## **25. Consequences of Termination of Contract**

25.1. Provisions of Article 25.2 shall apply to the termination of the Contract, without prejudice to the provisions of the Regulation and the Specifications.

25.2. If the Contract is terminated under Article 24;

- 1) The current state of Works shall be determined by a commission to be appointed by the Contracting Authority at the contract termination date or soon after such date, in the presence of the Authorized Representative of the Auction Winner, and a "Status Report" shall be prepared. If the Authorized Representative of the Auction Winner is not present during such determination, then the commission shall determine the state of Work and prepare a status report on its own.
- 2) Regardless of whether the Contracting Authority has suffered a loss or damage, the letter of guarantee and any additional guarantees shall be recognized as revenue by the Contracting Authority.
- 3) All registered or unregistered rights granted to the Auction Winner on the REZ shall automatically expire. EMRA shall be notified for the cancellation of the Auction Winner's Preliminary License/License. The Auction Winner is obliged to carry out the necessary procedures for the termination of the rights as soon as possible.
- 4) The Auction Winner irrevocably agrees and undertakes that it will indemnify the Contracting Authority for any and all damages and losses suffered or to be suffered by the Contracting Authority due to the Work.
- 5) The Auction Winner cannot claim any right, damage or loss from the Contracting Authority.
- 6) The Contracting Authority shall not have any legal or financial liability for the termination of Auction Winner's contracts with staff and contractors.

25.3. In the event that the contractual relationship is terminated, the provisions in the Contract's provisions about settlement of disputes, confidentiality, termination and consequences of termination shall continue to have legal effect between the Parties.

## **SECTION 6 OTHER PROVISIONS**

### **26. Employees**

- 26.1. The Agreement can under no condition be construed to be establishing an employment contract between the Parties. Auction Winner irrevocably agrees that the Contracting Authority is not a primary employer in terms of both its own employees, contractors and their staff.

### **27. Intellectual and Industrial Property Rights**

- 27.1. In case the intellectual or industrial property rights of Third Parties are violated by the Auction Winner during or due to fulfilling its obligations set out in the Specifications, the Contract, their annexes and the relevant legislation, all administrative, legal, penal and financial liabilities arising from this violation shall be borne by the Auction Winner. The Auction Winner cannot make any claim from the Contracting Authority in this regard. If the Contracting Authority still faces a legal sanction, it shall recourse such sanction to the Auction Winner, without prejudice to its other rights.
- 27.2. The Auction Winner agrees that the studies developed during the declaration of REZ and the installation of the WPP can be used by the Contracting Authority free of charge.

### **28. Sub-Contractors, Occupational Health and Safety**

- 28.1. The works covered by the Contract may be subcontracted.
- 28.2. The Auction Winner shall be liable for any negative incident caused by subcontractors. No extension of time shall be granted for reasons attributable to subcontractors
- 28.3. Auction Winner and its subcontractors shall be obliged to take all necessary occupational health and safety measures within the scope of the relevant legislation, at their own expense.
- 28.4. The Contracting Authority shall have no legal liability in connection with the persons who directly or indirectly provide services to Auction Winner, such as workers, consultants, subcontractors, employed by Auction Winner these persons. In the event that the work is partially subcontracted, the Auction Winner and the subcontractor shall be severally liable for all kinds of administrative, financial, legal, penal and other consequences of the failure to take the occupational health and safety measures as required and for the resulting damages on the properties and lives of Third Parties. Auction Winner shall be directly, unconditionally and definitively liable to its own personnel, Contracting Authority, Third Parties and related institutions and organizations for occupational accidents that may occur despite taking the necessary precautions during the execution of the Work and for the compensations payable in connection with them. The Auction Winner shall have no right to recourse such liability to the Contracting Authority.

### **29. Force Majeure**

- 29.1. **Definition and Scope of Force Majeure**

29.1.1. Force majeure consists of the following circumstances which do not arising from the negligence or fault of the Auction Winner, without prejudice to the provisions of the Regulation concerning Force Majeure conditions:

- 1) Explosion, fire, chemical and other hazardous wastes,
- 2) Imposition of an embargo by or against the Republic of Türkiye that will directly affect the execution of the Project or adoption of a sanction decision that will result in the prohibition of export to Türkiye of the materials, systems, equipment and installations to be procured within the scope of the Project,
- 3) Extraordinary meteorological conditions prevailing during the WPP installation stage, preventing the execution of Work and lasting for more than 15 (fifteen) days beyond seasonal norms.

29.1.2. The provisions of the Regulation concerning Force Majeure shall apply in relation to the consequences of Force Majeure.

### **30. Insurance**

30.1. The Auction Winner shall take out third person financial liability insurance.

30.2. The Auction Winner shall take out necessary insurance policies required within the scope of the current legislation.

30.3. If the Auction Winner is entitled to an insurance indemnity, the Contracting Authority agrees that the proceeds of such indemnity will be paid first to financiers before they are used for any reconstruction or repair work, if insurance cover has been provided for financiers in insurance policies taken out for the WPP and if the covers have been executed under loan agreement, provided however that insurance proceeds will in any case be subject to the Reconstruction Test mentioned below.

30.4. In case of any loss or damage to the WPP at any time, the Auction Winner shall use the relevant insurance proceeds for the repair or reconstruction of the WPP, as the case may require, provided that the following facts are proven by objective criteria:

- (a) The Auction Winner is able to repair or reconstruct, as the case may require, the lost or damaged part or parts of the WPP in accordance with the technical requirements and qualification provisions regarding WPP in REZ Project Documents,
- (b) The Auction Winner has fully fulfilled its payment obligations scheduled under the loan agreements and due by that date and is capable of paying the debt services specified in the loan agreements in full and on the expected due dates until final maturity (to the extent the Auction Winner can prove by objective criteria, by taking into consideration the additional finance provided or to be provided to it, including but not limited to actual and projected cash flow, account balances and insurances for delay in inception of work or work deduction),
- (c) In relation to the amounts referred to in (b), it has received amounts sufficient to make required payments, as insurance proceeds, or the insurance company has accepted its obligation to pay such amount or additional funds are available to cover the portion of such amount that is not paid by the insurance company.

Sub-clauses (a), (b) and (c) are collectively called “Reconstruction Test”.

In the event that the sum of related insurance proceeds are smaller than the amount to be determined by financiers, the Auction Winner can use such insurance proceeds for the purposes of repairing or reconstructing the respective loss or damage that has occurred in the WPP, on the condition that the requirements of “Reconstruction Test” are satisfied, however, without requirement to obtain confirmation from financiers that they are satisfied that the requirements of “Reconstruction Test” are met.

- 30.5. In case all requirements of “Reconstruction Test” are not satisfied, the Auction Winner shall use such insurance proceeds to pay the outstanding payment obligations under the loan agreement to be signed by the Auction Winner with the financiers.

### **31. Protection of Renewable Energy Zones (REZ)**

- 31.1. The Contracting Authority undertakes that zoning plans affecting the public and Treasury-owned immovables and privately owned immovables within REZ shall not be adopted so that their use and efficiency as REZ will not be done.
- 31.2. The Contracting Authority undertakes that it shall not provide positive opinions for other settlement development plans that will affect the resource efficiency of REZ’s and the performance of WPP.

### **32. Governing Law and Settlement of Disputes**

- 32.1. This Contract is a private law contract that is subject to Turkish Law.
- 32.2. Any dispute that may arise from or in connection with the implementation of this Contract, the Specifications and their annexes shall be settled within the framework of Rules of Arbitration of Istanbul Arbitration Center (ISTAC) in accordance with the referred rules. The place of arbitration shall be Istanbul/Türkiye. The language of arbitral proceedings shall be Turkish.<sup>1</sup>

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<sup>1</sup> *In case of where there is a foreign element the text of this Article may be revised as follows:*

Any dispute that may arise from or in connection with the implementation of this Contract, the Specifications and their Annexes shall be settled within the framework of Rules of Arbitration of ICC-International Chamber of Commerce in accordance with the referred rules. The place of arbitration shall be Geneva/Switzerland. The language of arbitral proceedings shall be English.

*The existence of any of the following circumstances demonstrates that the dispute has a foreign element and, under such circumstances, arbitration is considered as international:*

- 1. where the parties to the arbitration agreement have their domiciles or habitual residences or places of business in different States;*
- 2. where one of the following is situated outside the State in which the parties have their domiciles or habitual residences or places of business;*
  - a. the place of arbitration, which is determined in, or pursuant to, the arbitration agreement; [or]*
  - b. a place where a substantial part of the obligations arising from the underlying contract is performed or a place where the dispute has the closest connection;*
- 3. where a shareholder of the company which is a party to the underlying contract that constitutes the basis for the arbitration agreement has brought foreign capital [into Türkiye] in accordance with the laws concerning the encouragement of foreign capital or where a loan and/or guarantee agreement needs to be signed for the execution of the underlying contract;*
- 4. where, in accordance with the underlying contract or with the underlying legal relationship, the movement of capital or of goods shall be made from one country to another.*

32.3. In resolving disputes arising from or in connection with this Contract, the Specifications and their Annexes, the substantive law rules of Turkish Law shall be applied strictly.

### **33. Confidentiality**

33.1. Information and documents shared by the parties by stating that they are confidential shall be recognized as confidential information. The conditions for storing and returning confidential information and documents shall also be indicated when delivering such information and documents.

33.2. The following information and documents shall not be recognized as confidential if;

- 1) the confidential information has to be disclosed pursuant to the Regulation, Specifications, laws or a binding court decision or order or by a competent public authority,
- 2) the confidential information needs to be provided securely to employees or professional advisors of a party or its affiliate for a justified reason in relation to matters stipulated in the Contract,
- 3) the confidential information becomes public without the fault of the party receiving the confidential information,
- 4) the confidential information has previously been received by the receiving party from another Third Person without being subject to any obligation of confidentiality,
- 5) the confidential information has previously been disclosed by the party having the confidential information to the persons who have no confidentiality obligation towards him,
- 6) the confidential information is not included in the confidential information shared between the Parties within the scope of the Contract, and has been obtained independently,
- 7) the party receiving the confidential information already knows the confidential information before it is disclosed to him and proves this through a written document.

As the Auction Winner has declared and undertaken that it is a prudent merchant with capacity and experience sufficient to perform the Work covered by the Contract in compliance with the conditions stipulated in the Regulation, Specifications, Contract and their annexes; has submitted its bid regarding the performance, completion and warranty of the Work to the Contracting Authority, having read the Contract and the provisions of relevant legislation referred to in these documents, including all technical details; the Contracting Authority has accepted the Auction Winner's financial bid for the performance, completion and warranty of the Work; and the Auction Winner has agreed to be liable in accordance with the provisions of Contract, due to the performance of the Work,

This "Renewable Energy Zone (REZ-WPP-2024) Contract", consisting of **33 (thirty-three)** articles and its annexes has been signed between the Contracting Authority and Auction Winner with full agreement, in Turkish and in two copies, on .../.../20.... One copy shall be held by the Contracting Authority and the other copy by the Auction Winner. This Contract shall become effective as of its date of signing.

CONTRACTING AUTHORITY

AUCTION WINNER