



**REPUBLIKA E KOSOVËS**  
**REPUBLIKA KOSOVA / REPUBLIC OF KOSOVA**  
**QEVERIA E KOSOVËS / VLADA KOSOVA / GOVERNMENT OF KOSOVA**  
MINISTRIA E ZHVILLIMIT EKONOMIK / MINISTARSTVO EKONOMSKOG RAZVOJA / MINISTRY OF ECONOMIC DEVELOPMENT

## **Kosovo Electricity Distribution and Supply Privatisation**

### **IMPLEMENTATION AGREEMENT**

**October 2012**

Dated

17 October 2012

- (1) **THE GOVERNMENT OF THE  
REPUBLIC OF KOSOVO (GoK)**
- (2) **KOSOVO ENERGY  
CORPORATION J.S.C. (KEK)**
- (3) **Çalik Enerji Sanayi ve Ticaret A.Ş.,  
Çalik Elektrik Dağıtım A.Ş. and  
Limak Yatırım Enerji Üretim İşletme  
Hizmetleri ve İnşaat A.Ş (Investors)**
- (4) **Kosovo Çalik Limak Energy Sh.A.  
(Purchaser)**
- (5) **KOMPANIA KOSOVARE PER  
DISTRIBUIM DHE FURNIZIM ME  
ENERGJI ELEKTRIKE  
SH.A.(KEDS)**

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**IMPLEMENTATION AGREEMENT  
relating to  
KEDS DISTRIBUTION AND SUPPLY**

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THIS AGREEMENT is entered to on October 17, 2012, by and between:

- (1) **THE GOVERNMENT OF THE REPUBLIC OF KOSOVO** (the "GoK"), represented by represented by the Ministry of Economic Development whose principal office is at Ministria e Zhvillimit Ekonomik, ish-Toscana Rr, Nena tereze, Prishtina 10000, Kosove;
- (2) **KOSOVO ENERGY CORPORATION J.S.C.**, a joint stock company incorporated in Kosovo and having registration number 70325399, with its registered office at 36, Mother Theresa Street, Pristina, Kosovo ("KEK");
- (3) **Çalik Enerji Sanayi ve Ticaret A.Ş., Çalik Elektrik Dağıtım A.Ş. and Limak Yatırım Enerji Üretim İşletme Hizmetleri ve İnşaat A.Ş.** ("Investors");
- (4) **Kosovo Çalik Limak Energy Sh.A.** ("Purchaser"); and
- (5) **KOMPANIA KOSOVARE PER DISTRIBUTIM DHE FURNIZIM ME ENERGJI ELEKTRIKE SH.A.** a company incorporated in Kosovo and having registration number 70606119, with its registered office at No.3 Bill Clinton Boulevard, Pristina, Republic of Kosovo ("KEDS").

Each a "Party" and collectively the "Parties".

#### WHEREAS

- (A) KEK is a joint stock company established in accordance with the Laws of Kosovo, all shares in which are wholly owned by GoK;
- (B) KEK has established KEDS as a joint stock company in accordance with the Laws of Kosovo, all shares in which are wholly owned by GoK.
- (C) KEK shall transfer to KEDS, KEK's business in the distribution and supply of electricity in the Republic of Kosovo;
- (D) GoK, through the Privatisation Commission, has undertaken a competitive tender process for selecting private sector investors to acquire the shares owned by it, and generally to participate, in KEDS;
- (E) the Investors have submitted an offer to acquire all the issued share capital of KEDS through the Purchaser and this offer has been accepted by the GoK, subject to the terms of a Share Sale and Purchase Agreement of the same date as this Agreement, a copy of which is set out in Schedule 2, Part 1 of this Agreement;
- (F) KEK has further entered into a Bulk Supply Agreement and an Import Supply Agreement with KEDS, of the same date as this Agreement, copies of which are respectively set out in Schedule 2, Part 2 and 3 respectively of this Agreement; and
- (G) in consideration of these arrangements and in furtherance of their objectives, assurances are given and/or relied on under this Agreement, subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED as follows:

#### 1. Definitions, Interpretation and Language

- 1.1 Defined terms used in this Agreement have the meaning given to them in Schedule 1, Part 1.

- 1.2 Certain rules of interpretation which apply to this Agreement are set out in Schedule 1, Part 2.
- 1.3 The language of negotiation of this Agreement has been English, this Agreement is executed in English, and the English text shall prevail for all purposes of determining the intention of the Parties and in any construction of this Agreement.
2. **Effectiveness and Term**
- This Agreement shall come into full force and effect on and from the date of the signing of this Agreement and shall then continue in full force and effect until terminated in accordance with Clause 8.
3. **Obligations of GoK**
- 3.1 The GoK shall provide the following in support of KEDS and shall continue to do so with respect to any reorganisation of the KEDS's Business which sees KEDS separate its functions with respect to the electricity distribution system from the supply of electrical energy, including by way of separate legal entities. So long as such entities remain Affiliates of KEDS, the GoK's obligations under this Clause 3 and this Agreement shall continue in effect to the benefit of and as may be relevant to such Affiliates, in which respect KEDS shall have the right to enforce such obligations on their behalf:
- 3.1.1 **Licences and Work Permits**
- (a) Subject to applicable law and KEDS and its contractors complying with the conditions for grant of a licence, permit or consent, the GoK agrees to provide all reasonable assistance to KEDS in obtaining all such licences, permits or consents of whatever kind and nature and their contractors, as the case may be, from any Competent Authority in connection with KEDS's Business, provided that any prescribed fee or costs of such licence, permit or consent shall be payable by KEDS as the case may be; and
- (b) subject to applicable laws the GoK agrees to provide all reasonable assistance to the Investors, the Purchaser and KEDS in granting Work Permits and Visas for KEDS's Foreign Personnel engaged in KED's Business.
- 3.1.2 **Non-Discrimination**
- Neither the GoK nor any Competent Authority shall take any action or combination of actions, unless permitted by this Agreement, which, in comparison to other entities engaged or who may become engaged in the distribution and supply of electrical energy in Kosovo or in the sale of electrical energy for distribution and supply, is discriminatory against KEDS.
- 3.1.3 **Performance of KEK**
- Subject to applicable law, for so long as it subscribes to any shareholding in KEK, the GoK shall ensure the proper performance by KEK of any of KEK's contracted obligations arising directly between KEK and KEDS, including but not limited to those arising under the BSA and ISA.
- 3.1.4 **Foreign currency accounts and repatriation**



- (a) Neither the GoK nor any Competent Authority shall impose any limitation on KEDS in opening, maintaining and operating foreign currency accounts in or outside Kosovo necessary for KEDS's Business.
- (b) The GoK shall ensure that KEDS will be able, without restriction, to purchase foreign currency, through commercial entities permitted by the laws of Kosovo to supply foreign currency, for:
  - (i) meeting KEDS's obligations, if any, of repayment of amounts associated with loans taken to finance any repairs or improvements to KEDS's Business (including, without limitation, repayments of principal and interest and other financing costs);
  - (ii) the repatriation by KEDS, of interest, loan repayments, dividends, or other distributions to KEDS; and
  - (iii) the repatriation of salaries of expatriate personnel employed by KEDS.
- (c) The GoK shall ensure the availability of foreign currency for conversion to the extent required for the purposes described in paragraph (b).
- (d) To meet its obligations set out in paragraphs (b) (i) to (b) (iii) (inclusive), KEDS shall be permitted to repatriate required amounts from Kosovo in foreign currency.
- (e) Neither the GoK nor any Competent Authority shall prevent KEDS from receiving, from outside of Kosovo, funds necessary for KEDS's Business.

#### 3.1.5 Maintenance of Shareholdings

Subject to Clause 8.4 and applicable law, neither the GoK nor any Competent Authority shall take any action which makes it unlawful for KEDS to hold or continue to hold shares in any Affiliate undertaking any part of KEDS's Business including any reorganised business which separates the functions of electricity distribution system ownership and operation from the purchase and supply of electrical energy.

#### 3.1.6 Assurances Relating to KEK, KOSTT and certain PPA's

- (a) Subject to ERO licence requirements, the GoK shall work with KEK and the ERO to ensure that KEK remains licensed to import electrical energy into the Republic of Kosovo so long as there is a GoK subsidy available to KEK to procure such imports.
- (b) The GoK shall ensure that the arrangements contemplated by the BSA, ISA and any other arrangements are permitted by KOSTT and no barriers to such arrangements arise in as much as connection and use of the KOSTT system and arrangements for system balancing arise.
- (c) With respect to all technical codes relating to the grid, connection, metering, modification of equipment and with respect to market rules and as applied by KOSTT as the transmission system and market operator in Kosovo, the GoK shall ensure that KOSTT provide KEDS with all the support and assistance that KEDS may reasonably require in implementing such arrangements.

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- (d) Subject to the terms of Clause 4.3, the GoK shall work with the relevant parties in any negotiation and the finalisation of the agreements which are the subject of that Clause.

**4. Investors' Change in Control and KEDS's Rights and Obligations**

**4.1 Change in Control**

Subject always to the lawful requirements of the ERO, the following provisions shall apply to control over the majority of voting share in KEDS, any Affiliate and the creation of any security or pledge over the shares in KEDS:

- 4.1.1 Subject always to the lawful requirements of the ERO, the Investors may not dispose of or otherwise transfer their shares in the Purchaser and/or the Purchaser may not dispose of or otherwise transfer its shares in KEDS in any one or a series of transactions, by which the Investors cease to be able to exercise the majority of the voting shares in the Purchaser and/or the Purchaser ceases to be able to exercise the majority of voting shares in KEDS without the prior written agreement of the GoK. Such agreement may be withheld in the sole discretion of the GoK unless the acquiring entity or entities can otherwise demonstrate to the reasonable satisfaction of the GoK that it has or they have available the technical and/or financial competence to ensure that the KEDS Business and any part of it can be properly discharged. This restriction in the disposal or transfer of shares shall have effect until the seventh (7<sup>th</sup>) anniversary of Completion (as that is defined) under the Share Sale and Purchase Agreement. In addition it shall be a condition of any disposal or transfer of shares and whether or not resulting in the cessation of the exercise of the majority of voting share, that the entity acquiring the shares enters into a legally binding agreement with the GoK, by which the acquiring entity undertakes to the GoK in the same terms as the Investor and/or the Purchaser as are set out in this Clause 4.1 and Clause 8.4 and no transfer and/or disposal may be effected without such an agreement first being in force to the satisfaction of the GoK; and/or
- 4.1.2 in relation to any Affiliate engaged in any part of KEDS's Business, the Investors and/or the Purchaser and KEDS may not dispose of or otherwise transfer their shares in such an Affiliate in any one or a series of transactions, by which the Investors and/or the Purchaser and/or KEDS, as the case may be, cease to be able to exercise the majority of the voting shares in such Affiliate without the prior written agreement of the GoK. Such agreement may be withheld in the sole discretion of the GoK unless the acquiring entity or entities can otherwise demonstrate to the reasonable satisfaction of the GoK that it has or they have available the technical and/or financial competence to ensure that the KEDS Business in which the Affiliate is engaged can be properly discharged. This restriction in the disposal or transfer of shares shall have effect until the seventh (7<sup>th</sup>) anniversary of Completion (as that is defined) under the Share Sale and Purchase Agreement. In addition it shall be a condition of any disposal or transfer of shares and whether or not resulting in the cessation of the exercise of the majority of voting share, that the entity acquiring the shares enters into a legally binding agreement with the GoK, by which the acquiring entity undertakes to the GoK in the same terms as the Investor and/or the Purchaser as are set out in this Clause 4.1 and Clause 8.4 and no transfer and/or disposal may be effected without such an agreement first being in force to the satisfaction of the GoK; and/or
- 4.1.3 the provisions of Clauses 4.1.1 and 4.1.2 apply with respect to any entity which may take shares including but not limited to financial institutions and any entity



which is the subject of this Clause 4.1.3 whether or not listed in Schedule 3. Provided however in the case of an entity agreed by the GoK under this Clause 4.1.3 or set out in Schedule 3, the provisions of Clauses 4.1.1 and 4.1.2 shall be qualified by the extent to which any security, charge, restriction or pledge requires the transfer of shares to such entity in the event of a payment default under that instrument by KEDS. Notwithstanding the foregoing, where such entity has obtained the transfer of shares as a consequence of a payment default under any security, charge, restriction or pledge then such entity shall hold those shares strictly in accordance with 4.1.1 and 4.1.2. The Investors and/or Purchaser may not grant, create or permit any security, charge, restriction or pledge (whether or not relating to ownership, control, acquisition or disposal or any other matter), over any shares in KEDS and/or any Affiliate engaged in any part of KEDS's Business or which may affect the KEDS Business without the prior agreement of the GoK unless the institution taking the benefit of any security, charge, restriction, or pledge is one listed in Schedule 3. Subject always to the provisions in Clause 8.4, such agreement may not be withheld unreasonably. This restriction in any security, charge, restriction or pledge over shares shall have effect until the seventh (7<sup>th</sup>) anniversary of Completion (as that is defined) under the Share Sale and Purchase Agreement.

#### 4.2 KEDS Reorganisation

In any reorganisation of KEDS such that it is intended any part of KEDS Business will be undertaken taken by a legal entity other than KEDS then it shall be undertaken by an Affiliate. In any event and no later than the first anniversary of Completion Date under the Share Sale and Purchase Agreement, KEDS (and the Investors and/or the Purchaser shall ensure that KEDS), shall separate the ownership and operation of the electrical distribution system such that its licensed activity as a distribution system operator is undertaken by an Affiliate independent from all other activities not relating to distribution and it shall do so in accordance with the Laws of the Republic of Kosovo.

#### 4.3 Future PPA's

The Investors, the Purchaser and/or KEDS are aware of the KRPP PPA and the Kosovo B (Retrofitted) PPA without prejudice to their right to negotiate entirely these documents. With respect to these and any subsequent power purchase agreement(s) as may arise from alternative power project(s), the Investors and the Purchaser shall ensure and KEDS shall enter into good faith negotiations (including as may relate to any exception(s) made under clause 4.2 and Appendix 2 of the Bidding Rules) and conclude such agreement(s) as negotiated, provided that:

- 4.3.1 there is a competitive and transparent tender process relating to the KRPP PPA and Kosovo B (Retrofitted) PPA and for any relevant alternative power projects;
- 4.3.2 the Investors, the Purchaser and/or KEDS are consulted on the terms of the applicable KRPP PPA and Kosovo B (Retrofitted) PPA or alternative power purchase agreement(s), as the case may be, in which regard the Investors, the Purchaser and/or KEDS shall engage with the GoK's relevant transaction advisers in good faith in the development of the power purchase agreement(s); and
- 4.3.3 the terms of the KRPP PPA and Kosovo B (Retrofitted) PPA or alternative power purchase agreement(s) are commercially reasonable with regard to:
  - (a) the ability of KEDS to fulfil its licensed public electricity supply obligations;

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- (b) the ability of the generator(s) to finance new generating capacity and/or assume the operation and/or retrofit of existing generation capacity;
- (c) a price per MWh that has resulted from the competitive tendering process for the construction of new generating capacity and/or assumption of the operation and/or retrofit of existing generation capacity;
- (d) on terms of up to 20 years;
- (e) have a net nominal capacity that does not exceed 1,300MW; and
- (f) the ERO approving the inclusion of the impacts of the KRPP PPA and Kosovo B (Retrofitted) PPA or alternative power purchase agreement(s) in the relevant tariffs in KEDS's Business and under applicable licenses and/or other terms and conditions of service and if not, such agreement(s) also incorporate commercially acceptable mechanisms which address any adverse financial consequences to KEDS of ERO not approving the impact of the KRPP PPA and Kosovo B (Retrofitted) PPA or alternative power purchase agreement(s) in the relevant tariffs in KEDS's Business and under applicable licenses and/or other terms and conditions of service.

#### 4.4 Finance

KEDS shall bear and be solely responsible at its cost and risk for arranging all necessary financing for the purpose of KEDS's Business and for the performance of its obligations under the Project Agreements.

#### 4.5 To Provide all Information Under Approvals

Without prejudice to the GoK's undertaking in Clause 3.1.2(b), KEDS shall provide all information and supporting documentation required by any Competent Authority in respect of any application for the grant of or under any licence, permit or consent in respect of KEDS's Business.

#### 4.6 Compliance with Licences

KEDS shall at all times comply with the terms and conditions of the Distribution and Supply Licences, respectively, and any other licence, permit or consent applying to them and shall be responsible for the compliance by their officers, employees, directors, agents, contractors and Affiliates with any such licence, permit or consent applying to them in relation to their undertaking duties relating to the Facilities and KEDS's Business.

#### 4.7 Duty to Keep Facilities Secure

KEDS shall at all times have the benefit of the rights enjoyed by Kosovar registered companies in relation to the protection of property in law and shall at all times take all reasonable precautions to keep the Facilities which are under its control secure from the risks of unlawful interference to its operation or of damage by third parties.

#### 4.8 Compliance with Laws

The Investors in relation to the Purchaser's conduct in acquiring and owning KEDS and/or the Purchaser in relation to its interest in KEDS and KEDS shall at all times comply with the laws of the Republic of Kosovo and shall be responsible for the compliance with these laws by its officers, employees, directors, agents, contractors and Affiliates.

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4.9 Procurement of Goods and Services

- 4.9.1 Without prejudice to KEDS's right to import without restriction all goods and services required for the conduct of KEDS's Business and subject to always to requirements for procurement in law, KEDS will procure goods and services from suppliers within Kosovo to the extent practicable and if available at the required quality, standard, time and price.
- 4.9.2 KEDS shall procure goods and services on commercial terms and on an arm's length basis.

4.10 Rights of Transferred Employees

KEDS undertakes not to make material changes to the terms and conditions of employment of any of its employees existing as at the date the Share Sale and Purchase Agreement except with the prior consent of the relevant employees, unless otherwise permitted by the terms of their appointment and/or as required by law. Subject to (i) Chapter VIII (Termination of Employment Relationship), but excluding Article 76 (Collective Dismissals) of that Chapter, in Law No. 03/L – 212 On Labour of the Republic of Kosovo, as may be amended or superseded from time to time; and (ii) KEK's policies and provisions relating to employment as transferred and / or adopted by KEDS:

- 4.10.1 KEDS shall continue to provide employment to all its employees at the date of Completion (as that term is defined in the Share Sale and Purchase Agreement), for a minimum period of three years on and from such date: and
- 4.10.2 notwithstanding anything to the contrary in such Law No. 03/L – 212 On Labour any employee on a fixed period employment contract which would expire within three years on and from such date of Completion shall be entitled to an extension in that term until the third anniversary of such date of Completion.

4.11 Compliance with specified procedures and performance standards

- 4.11.1 KEDS shall at all times comply with the legal Kosovar law and the applicable environmental and social standards and guidelines to which Equator Principles refer.
- 4.11.2 KEDS shall conduct any ESIA, as and when required after the Completion Date, in compliance with the laws of Kosovo and the applicable environmental and social standards and guidelines to which Equator Principles refer, (as these may be amended and/or restated from time to time). Pursuant to any ESIA, if KEDS identifies specific issues requiring mitigation, it shall prepare an action plan and submit this to GoK for review. Further to such submission, KEDS shall take all reasonable necessary mitigation measures as set out in the Action Plan to ensure KEDS and KEDS's Business operates in continued compliance with the laws of Kosovo, and the Equator principles.
- 4.11.3 KEDS shall operate KEDS's Business with formal documented environmental, health and safety and social management systems following the requirements of the Equator principles, and shall obtain and maintain ISO14001 and OHSAS 18001 Management System Certifications.

4.12 Conduct

4.12.1 The Investors and/or the Purchaser and KEDS undertakes that it and its Affiliates have not at any time made, offered, or authorized and will not at any time make, offer, or authorize with respect to the matters which are the subject of this Agreement, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to or for the use or benefit of any public official (i.e., any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organization) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate:

- (a) the applicable laws of Kosovo;
- (b) the laws of the country of incorporation of Investors or such Investors' ultimate parent company and of the principal place of business of such ultimate parent company;
- (c) the principles described in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December 17, 1997, which entered into force on February 15, 1999, and the Convention's Commentaries; or
- (d) the provisions of the FCPA (as defined below). For the purposes of this clause 4.10.1 "FCPA" means United States Foreign Corrupt Practices Act, generally codified in 15 U.S.C. 78, as amended from time to time; and

with respect to the foregoing KEDS shall be responsible for the compliance with these requirements by its officers, employees, directors, agents, contractors and Affiliates and their officers, employees, directors, agents and contractors.

4.12.2 KEDS shall defend, indemnify and hold the other Parties harmless from and against any and all claims, damages, losses, penalties, costs and expenses arising from or related to, any breach by KEDS of such warranty. Such indemnity obligation shall survive termination or expiration of this Agreement.

4.12.3 KEDS agrees to (i) maintain adequate internal controls; (ii) properly record and report all transactions; and (iii) comply with the laws applicable to it. KEDS must rely on the other Parties' systems of internal controls, and on the adequacy of full disclosure of the facts, and of financial and other data regarding KEDS's Business.

#### 4.13 GoK Step in Rights

The Investors and/or the Purchaser and KEDS shall at all times ensure for the benefit of the GoK, that the GoK Step in Rights can be exercised by the GoK with respect to the KEDS promptly and without hindrance, and that all is done that is necessary in the legal and registered documentation constituting KEDS, that the GoK Step in Rights are ensured and protected.

4.14 KEDS, the Purchaser and the Investor, collectively agree to invest Euro 300 million (three hundred million) during the 15 years period starting from the Completion Date, provided always that the ERO has granted its approval and approves the inclusion of the impact of these investments into the relevant tariff in KEDS Business.



5. **Force Majeure**

*Events of Force Majeure*

- 5.1 For the purpose of this Agreement, an "Event of Force Majeure" or a "Force Majeure Event" shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that materially and adversely affects the performance by such affected Party of its obligations under or pursuant to this Agreement (including a Party's ability to supply or receive electrical energy); provided, however, that such material and adverse effect could not have been prevented, overcome, or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care (and according to Prudent Utility Practices in the case of KEDS), it being understood and agreed that reasonable care includes acts and activities that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Provided that all times the foregoing requirements for defining an Event of Force Majeure or a Force Majeure Event are satisfied, the following may include but not be limited to such events:
- 5.1.1 fire, flood, lightning, storm, tornado, earthquake, landslide;
  - 5.1.2 epidemic illness;
  - 5.1.3 war, civil war, acts of public enemies; and/or
  - 5.1.4 strike, lockout or other industrial disturbances.
- 5.2 Force Majeure Events shall expressly not include the following conditions, except and to the extent that such events or circumstances occur directly as a consequence of a Force Majeure Event:
- 5.2.1 Failure by GoK to exercise its lawful powers; or
  - 5.2.2 lack of funds and in the case of KEDS, KEDS and/or KEDS lack of funds due to any commercial, economic or financial reason including either Party's inability to make a profit or achieve a satisfactory rate of return.
- 5.3 Subject to compliance with Clause 5.5, either Party shall be excused from performance and shall not be in default in respect of any obligation hereunder to the extent that the failure to perform such obligation is due to a Force Majeure Event.
- 5.4 If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:
- 5.4.1 give the other Party notice of the Force Majeure Event(s) as soon as practicable, but in any event, not later than forty-eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event(s);
  - 5.4.2 give the other Party a second notice, describing the Force Majeure Event(s) in reasonable detail and, to the extent that can be reasonably determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than seven (7) Days after the initial notice of the occurrence of the Force Majeure Event(s) is given by the affected Party. When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide

further notices to the other Party more fully describing the Force Majeure Event(s) and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it shall be unable to carry out any of its affected obligations due to the Force Majeure Event(s);

5.4.3 the affected Party shall then provide notice to the other Party:

- (a) with respect to an ongoing Force Majeure Event, of the cessation of the Force Majeure Event, and
- (b) of its ability to recommence performance of its obligations under this Agreement

as soon as possible and in any event not later than seven (7) Days after the occurrence of each of Clause (a) and (b) above; and

5.4.4 Failure by the affected Party to have given written notice of a Force Majeure Event to the other Party within the forty-eight (48) hour period shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case the affected Party shall not be excused for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If said notice is given within the forty-eight (48) hour period required by Clause 5.8, the affected Party shall be excused for such failure or delay pursuant to Clause from the time of commencement of the relevant Force Majeure Event.

5.5 The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure Event, including, but not limited to, the payment of reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures

5.6 If an Event of Force Majeure which arises from war, civil war and/or acts of public enemies occurs that causes damage which renders any part of the Facilities a total loss such that following reinstatement, KEDS's earnings would not be sufficient to cover its costs of reinstating and operating the affected part of the Facilities, taking into account available insurance proceeds, then KEDS shall not be obligated to rebuild or reinstate that part of the Facilities, unless and until the Parties have agreed upon the terms for such reinstatement.

## 6. Indemnities

### 6.1 GoK Indemnity

The GoK shall compensate in full, indemnify defend and hold KEDS harmless against any loss, cost damage and expense suffered by KEDS including any third party claims for loss damage and expense (whether or the consequence of the negligence or breach of legal obligation by the GoK and whether or foreseeable at the date of this Agreement), arising out of or in relation to:

- 6.1.1 any non-compliance by GoK and/or KEK with any Environmental Standard affecting any part of KEDS's Business prior to the date on which the Completion Date or environmental conditions affecting any part of KEDS's Business pertaining at the Completion Date which are subsequently found not to comply with any relevant Environmental Standards; or
- 6.1.2 KEK's performance of the BSA and the ISA resulting from any act or omission or breach of legal duty of the GoK in relation thereto; or

#### Right to Defend Action

- 6.2 The GoK shall have the right, but not the duty, to assume the defence of any third party claim referred to in Clause 6.1. Any Party shall, as soon as practicable after receiving notice of any claim brought against it, deliver to the other indemnifying Party full particulars thereof and shall render all reasonable assistance requested by such Party in the defence of such third party claim. The foregoing obligations, indemnities and liabilities assumed by the Parties hereunder shall not be affected by any limits on insurance held by the Parties.

#### Indemnified Party not to Compromise

6.3

- 6.3.1 Where the GoK has an obligation under Clause 6.1, of indemnifying KEDS, KEDS shall not compromise or in any way settle any claim, lawsuit, action or cause of action without the express written consent of the GoK. Where such consent is not obtained prior to such compromise or settlement, the GoK shall be released and discharged from all obligations under Clause 6.1.1 or 6.1.2, as the case may be.

- 6.3.2 Any payment payable by the GoK to the indemnified Party pursuant to this Article 6 shall be paid within forty five (45) days from the date on which the indemnified Party makes any payment in connection with a third party claim as first agreed in writing by the GoK.

7. Not Used

8. Termination

#### *KEDS Events of Default*

8.1 Each of the events described below shall constitute a KEDS Event of Default:

- (a) the breach by KEDS of any material obligation under this Agreement, which (where capable of remedy) is not remedied within sixty (60) days after a notice from the GoK stating that such a breach has occurred, identifying the breach in question in reasonable detail and demanding remedy thereof provided that, if KEDS has diligently and as quickly as possible commenced the remedial action necessary but is unable to complete it within sixty (60) days after the date of such notice, it shall be allowed such further period as may be reasonable for completing the remedial action not exceeding another sixty (60) days;
- (b) the breach by the Investors, the Purchaser and/or KEDS of any of the provisions of Clause 4.1;
- (c) the dissolution, merger, consolidation, amalgamation, reorganisation or reconstruction of KEDS, except to the extent that it does not affect the ability of the resulting entity to perform its obligations under this Agreement;
- (d) save for the purposes permitted under paragraph (b), the occurrence of any of the following events (other than as a direct result of a GoK Event of Default):



Handwritten initials 'MD' and a signature.



- (i) passing of a resolution or initiation of any proceeding for the bankruptcy, insolvency, winding up, liquidation of or other similar proceedings relating to KEDS;
- (ii) the appointment of a trustee, liquidator, custodian or a similar person in a proceeding referred to in paragraph(c)(i), which appointment has not been set aside or stayed within sixty (60) days of such appointment; or
- (iii) the making by a court having jurisdiction of an order winding up or otherwise confirming the bankruptcy or insolvency of KEDS, which order has not been set aside or stayed within sixty (60) days;

## 8.2 Consequences of KEDS Event of Default

If KEDS commits a KEDS Event of Default, the GoK may, by notice terminate this Agreement with effect from the date specified in such notice, but not earlier than twenty one (21) days from the date of such notice. Provided that in the event of any reorganisation of KEDS under Clause 4.2 and an Affiliate has caused a KEDS Event of Default then GoK may terminate only those rights and obligations arising under or in connection with this Agreement with respect to that Affiliate by such notice of termination.

### Termination

## 8.3

8.3.1 This Agreement shall terminate automatically, without the need for any Party to take any further action:

- (a) if Completion (as that term is defined) under the Share Sale and Purchase Agreement is not reached by Longstop Date as that term is defined in the SPA; or
- (b) whichever occurs later on the termination of public electricity supply licence or the electricity distribution system operator licence granted or transferred at the time of Completion (as that term is defined) under the Share Sale and Purchase Agreement; or
- (c) on the date of termination of this Agreement specified in the notice of termination under Clause 8.2 (but not in the case of the GoK terminating only those rights and obligations arising under or in connection with this Agreement in respect of an Affiliate),

unless such notice of termination has been withdrawn.

8.3.2 Notwithstanding anything contained in this Agreement, the GoK shall not initiate any action against KEDS in relation to a KEDS Event of Default or any other breach by KEDS of its obligations under this Agreement, if KEK has initiated an action under the BSA and/or JSA against KEDS in respect of substantially the same matter.

8.3.3 Subject to Clause 8.4, on termination of this Agreement, neither Party shall have any liability to the other for any damages or loss, whether under this Agreement, at law or otherwise, save in respect of rights accrued to it under this Agreement prior to its termination.

*[Handwritten signatures]*

8.3.4 The events specified in this Article 8 shall be the sole grounds on which this Agreement may be terminated.

#### 8.4 Consequences of Termination.

In the event of the termination of this Agreement for any reason (other than under Clauses 8.3.1 (a) and 8.3.1(b)), then:

8.4.1 GOK shall be entitled to exercise the GOK Step in Rights with respect to KEDS; and

8.4.2 GoK shall be entitled to require the Purchaser to and the Purchaser hereby consents to the transfer the shares then held by the Purchaser in KEDS to the GoK promptly and without payment of any kind by the GoK and the Investors and/or the Purchaser shall be liable to GoK for any and all costs, losses and expenses (including the expense of legal and professional advisers), incurred by the GoK in relation to any delay or failure by the Purchaser to finalise such a transfer; and

for the purposes of this Clause 8.4 the "GoK Step in Rights" shall mean the right of the GoK to appoint members to the boards of KEDS and Affiliates and assume control of the management of KEDS and Affiliates and all activities undertaken by KEDS. The rights of the GoK and the obligations of the Investors and/or the Purchaser under this Clause 8.4 shall survive the termination of this Agreement.

#### 9. Dispute Resolution

9.1 Any dispute, difference, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, not first amicably settled (a "Dispute"), shall exclusively and finally be settled by arbitration in accordance with the United Nations Commission on International Trade Law ("UNCITRAL") Arbitration Rules as at present in force, or, in the absence of any applicable rule or to the extent certain rules of the UNCITRAL Arbitration Rules have been specifically excluded hereunder, with the procedural laws of Switzerland, provided that:

9.1.1 the statement of claim and the notification of the appointment of an arbitrator shall be included in the notice of arbitration;

9.1.2 the appointing authority shall be the President of the Geneva Chamber of Commerce; the number of arbitrators shall be 3 (three);

9.1.3 the place of arbitration shall be Geneva, Switzerland;

9.1.4 the language to be used in the arbitral proceedings shall be English;

9.1.5 Article 22 of the UNCITRAL Rules shall not apply and a Party shall not be allowed to amend or supplement its statement of claim or statement of defence unless the other Party agrees in writing, or the arbitral tribunal considers it appropriate, to allow such amendment or supplement, having regard to the delay in making it and any prejudice caused to the other Party or any other relevant circumstances;

9.1.6 either Party may request an oral hearing, but the arbitral tribunal established pursuant to this Clause 9.10 (the "Arbitration Tribunal") shall have the discretion whether or not to hold such a hearing unless the request is supported by the other Party;

- 9.1.7 the Arbitration Tribunal shall not be authorised to decide as "*amiable compositeurs*" or "*ex aequo et bono*" or to apply Article 27 paragraph 3 or Article 29 paragraph 3 of the UNCITRAL Arbitration Rules insofar as such provisions relate to the inspection or production of documents. The Arbitration Tribunal may ask the Parties to produce documents, exhibits or other evidence which the Arbitration Tribunal considers to be relevant within such a period of time as it shall determine. If any Party having the burden of proving the facts relied upon to support its claim or defence is not willing to disclose such relevant documents, exhibits or other evidence then the Arbitration Tribunal shall be free to consider whether in all circumstances the facts are proven or not;
- 9.1.8 Article 37 and Article 39 of the UNCITRAL Arbitration Rules shall not apply;
- 9.1.9 the Arbitration Tribunal shall not be entitled to make a partial award or an interim award containing the measures described in Article 26 of the UNCITRAL Rules; and
- 9.1.10 the award of the Arbitration Tribunal shall be final and binding upon the Parties, provided that:
- (a) paragraphs (a), (b) and (d) of Article 190(2) of the Swiss Federal Private International Law Act shall be applicable; and
  - (b) paragraph (c) of the said Article 190 (2) shall only apply to an action for setting aside the portion of the award alleged to be beyond the claims submitted to the Arbitration Tribunal; in no other respect may an action be initiated for setting aside an award pursuant to the said paragraph (c).
- 9.2 Such award may if necessary be enforced by any court or other competent authority. Save as aforesaid, all rights of appeal, of annulment, and of application to any court of law whatsoever are hereby excluded in relation to any arbitration hereunder and any award made therein.
- 9.3 The Parties recognise and acknowledge that this Agreement constitutes a commercial transaction in respect of which neither Party is entitled to plead sovereign immunity. Seller and Buyer hereby unconditionally and irrevocably waive sovereign immunity in any action to compel arbitration pursuant to this Agreement or to enforce or execute upon any award rendered in any arbitral proceeding pursuant to this Agreement.
- 9.4 The award rendered in any arbitration commenced hereunder or any order passed by a competent court pursuant to applicable law in relation to an interlocutory matter concerning the Dispute pending the conclusion of arbitration proceedings may be entered in any court having jurisdiction for its enforcement.
- 9.5 No party to the Dispute shall have any right to commence or maintain any suit or legal proceeding concerning a Dispute hereunder in any court, whether in Kosovo or outside, until the Dispute has been determined in accordance with the arbitration procedure provided for herein and then only to enforce or facilitate the execution of the award rendered in such arbitration.
- 9.6 During the course of any arbitration hereunder:
- 9.6.1 the GoK, KEK, the Investors, the Purchaser and KEDS shall continue to perform their respective obligations hereunder; and
  - 9.6.2 neither GoK, KEK, the Investors, the Purchaser and KEDS shall exercise any other remedies hereunder arising by virtue of the matters in Dispute.



- 9.7 Any award rendered pursuant to arbitration hereunder shall constitute a "foreign award" within the meaning of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Enforcement of Foreign Judgments Law No.8 of 1952.

**10. Governing law**

This Agreement shall be governed by and construed in all respects in accordance with the laws of Kosovo.

**11. Currency, Due Date of Payment and Delayed Payments**

- 11.1 All payments under this Agreement shall be due in EUROS/US Dollars and may be made in EUROS/US Dollars in an amount equivalent to the amount due in EUROS/US Dollars at the rate of exchange prevailing on the date of payment, as certified by the Central Bank of Kosovo.
- 11.2 A Party entitled to payment under this Agreement shall raise an invoice on the other Party accompanied by supporting calculations of the amounts claimed and where the sending Party relies on the data and documents maintained by it, such data and documents shall be made available for inspection by the receiving Party on reasonable prior notice.
- 11.3 Unless otherwise specified in this Agreement, any amount payable by one Party to the other Party pursuant to this Agreement shall be paid within forty-five (45) days from the date of the invoice raised by the Party and where disputed, when agreed or determined.
- 11.4 When making payment of a disputed sum, the Party liable to make payment shall pay interest:

11.4.1 at the Reference Interest Rate, if the amount payable is less than the disputed amount; or

11.4.2 at the Default Rate, if the whole of the disputed amount is payable,

from the due date for payment of the Invoice up to, but excluding, the date of payment.

**12. Enforcement**

- 12.1 Subject to any right of appeal, second appeal, revision or any other legal proceeding or remedy available to KEK and KEDS under law, each of KEDS and KEK consents with respect to the enforcement of any final judgment against it in any proceeding, whether in Kosovo or outside, and to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, enforcement or execution against or in respect of any property whatsoever, irrespective of its use or intended use, including property situate outside Kosovo).

**13. Sovereign Immunity**

If GoK and/or KEK may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process in any jurisdiction and if in any such jurisdiction there may be attributed to it or its assets or revenues such immunity (whether or not claimed), then GoK and/or KEK agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction. Further, the GoK unconditionally and irrevocably and to the maximum extent permitted by law:

- 13.1.1 agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;

13.1.2 agrees that, should any proceedings be brought against it in relation to this Agreement or any transaction contemplated by this Agreement, no sovereign immunity from such proceedings shall, to the extent that it would otherwise be entitled to do so under the law, be claimed by or on behalf of itself; and

13.1.3 to the maximum extent permitted by law, waives any right of sovereign immunity which it or any related entity now has or may acquire in the future.

#### 14. Notices

14.1 All notices given under this Agreement are to be in writing in the English language and in the Albanian language and all certificates, notices or written instructions to be given under this Agreement shall be served by sending the same by post, facsimile, or leaving the same as below:

14.1.1 in the case of GoK, Kabineti i Ministrit/ Minister's Cabinet, Ministria e Zhvillimit Ekonomik/ Ministry of Economic Development, Adresa/ Address: Ish-Toskana/ Ex-Toskana; Rr. Nëna Terezë/ Str. Mother Teresa' For the attention of: Minister of Economic Development, Fax: + 381 (0) 38 213 955;

14.1.2 in the case of the KEK, Kosova B Power Plant, Obiliq/Kastriot, Republic of Kosovo, For the attention of: Managing Director, Fax: + 381 (0) 38 527 275;

14.1.3 Çalik Enerji Sanayi ve Ticaret A.Ş., Çalik Elektrik Dağıtım A.Ş. and Limak Yatırım Enerji Üretim İşletme Hizmetleri ve İnşaat A.Ş. - Address:Hafta Sokak No:9 GOP Ankara Turkey, Fax: +90 312 437 3846, For the attention of: Mr. Mesut Serhat Dinç, Deputy General Manager, Energy Group;

14.1.4 Kosovo Çalik Limak Energy Sh.A., Qyteza Pejton, Mbreti Zog I, No. 09 Prishtinë 10000, Kosovë, Fax: +381 38 609 258, For the attention of: Mr. Mesut Serhat Dinç, Deputy General Manager, Energy Group;

14.1.5 In the case of KEDS, Elektrokosova Building, No.3 Bill Clinton Boulevard, Pristina, Republic of Kosovo, For the attention of: Managing Director, Fax: + 381 (0) 38 501 701 1153, and + 381 (0) 38 501 701 1144

or another address or facsimile number notified for the purposes of this Clause; and

14.2 Notices given in writing and delivered by hand or sent by first class prepaid post (airmail if overseas), or facsimile transmission shall be deemed effective and to have been received:

(a) in case of delivery by hand when delivered; or

(b) in the case of first class prepaid post, on the second (2) day following the day of posting, or if sent by airmail outside Kosovo, on the fifth (5) day following the day of posting; or

(c) in the case of facsimile transmission, at the time of actual receipt.

Either Party to the Agreement may change its nominated address/addresses, facsimile number number by prior notice to the other Party.

14.3 In the event of a conflict between the English and Albanian language versions, the text of the English language version shall prevail.

14.4 A Party may notify the other Parties of a change to its name, relevant addressee, address or facsimile number for the purposes of Clause 14.1, provided that such notification shall only be effective on:

14.4.1 the date specified in the notification as the date on which the change is to take place; or

14.4.2 if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date falling five (5) Business Days after notice of any such change has been given.

**15. Confidentiality and Publicity**

The Parties acknowledge that this Agreement will be a publically available document.

**16. Amendments**

This Agreement may only be amended or varied by the written agreement of both Parties.

**17. Waiver**

17.1 No waiver or failure by a Party to insist on the strict performance of this Agreement or to act in respect of the defaults of the other Party and no acceptance of payment or performance during the continuance of any such default precludes any right, relief or remedy under or in connection with this Agreement available to the non defaulting Party and may not be relied on by the defaulting Party as a consent to those defaults or its or their repetition.

**18. Successors**

This Agreement binds and ensures to the benefit of the Parties and their respective successors and permitted assigns.

**19. Assignment and Transfers of Interest**

19.1 The following provisions shall apply to the assignment or transfer of this Agreement:

19.1.1 The GoK shall not assign or transfer all or part of its rights, benefits or obligations under this Agreement except with KEDS's (including KEDS's and KEDS's) and Investors' and/or Purchaser's prior written consent which shall not unreasonably be withheld;

19.1.2 KEK shall not assign or transfer all or part of its rights, benefits or obligations under this Agreement except with KEDS's (including KEDS's and KEDS's) and Investors' prior written consent which shall not unreasonably be withheld;

19.1.3 Subject at all times to the lawful requirements of the ERO, KEDS shall not assign or transfer all or any part of its rights, benefits or obligations under this Agreement except with the GoK's prior written consent, which consent shall be in the sole discretion of the GoK.

**20. Severability**

20.1 If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable, or is declared by any court of competent jurisdiction or any other Competent Authority to be invalid, illegal or unenforceable or if such Competent Authority:



- 20.1.1 refuses or formally indicates an intention to refuse authorisation of, or exemption to, any of the provisions of or arrangements contained in this Agreement (in the case of a refusal either by way of outright refusal or by way of a requirement that this Agreement be amended or any of its provisions be deleted or that a Party give an undertaking or accept a condition as to future conduct); or
- 20.1.2 formally indicates that to continue to operate any provision of this Agreement may expose the Parties to sanctions under any law, order, enactment or regulation, or requests any Party to give undertakings or to accept conditions as to future conduct in order that such Party may not be subject to such sanctions; then

in all cases, whether initially or at the end of any earlier period or periods of exemption, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid, unenforceable or illegal provision which substitute provisions are satisfactory to all relevant Competent Authorities and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

**21. Relationship of Parties**

- 21.1 This Agreement does not create an association, joint venture, or partnership between the Parties.
- 21.2 No Party has any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other.

**22. Good Faith**

The Parties undertake to act in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realisation of its objectives.

**23. Further Assurance**

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be reasonable and necessary for the carrying out of the provisions of this Agreement.

**24. Entirety of Agreement**

This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and excludes all prior representations, negotiations and undertakings.

except in case of fraud, all prior representations, negotiations and undertakings of any nature whatsoever between the Parties with any bearing on the subject matter of this Agreement are superseded and extinguished, and all rights and liabilities arising by reason of them, whether accrued or not at the date of this Agreement, are cancelled, to the extent they have such bearing.

**25. Costs**

Each Party shall bear all costs and expenses incurred by it in connection with entering into this Agreement.

**26. Survival**

Clause 1, 8.3.3, 8.4, 9, 10, 12, 13, 14 and 15 Schedule 1 shall survive the termination of the Agreement without restriction as to the duration of the period of survival unless otherwise specified in the Agreement.

**27. Counterparts**

This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same document.

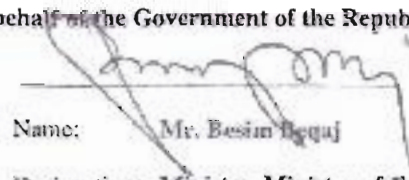
**28. Variation**

This Agreement may only be amended or varied by the written agreement of all Parties.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first written above.

**For and on behalf of the Government of the Republic of Kosovo**

**By:**


  
Name: Mr. Besian Beqaj

Designation: Minister, Ministry of Economic Development

**For and on behalf of KEK in the presence of:**

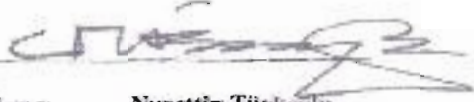
  
Name: Arben Gjakaj

Designation: Managing Director, KEK

  
Name: Fadil Çitaku

Designation: Chairman, Board of Directors, KEK


For and on behalf of the Investors in the presence of:

  
Name: Nurettin Türkoğlu

Designation: Çalık Enerji Sanayi ve Ticaret A.Ş.

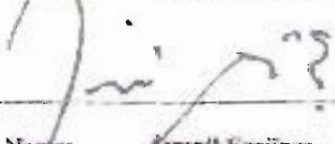
  
Name: Nurettin Türkoğlu

Designation: Çalık Elektrik Dağıtım A.Ş.

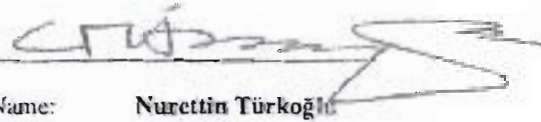
  
Name: Mesut Serhat Dinç

Designation: Limak Yatırım Enerji Üretim İşletme Hizmetleri ve İnşaat A.Ş.

For and on behalf of the Purchaser in the presence of:

  
Name: İsmail Ergüney

Designation: Executive Board Member, Kosovo Çalık Limak Energy Sh.A.

  
Name: Nurettin Türkoğlu

Designation: Chairman of the Executive Board, Kosovo Çalık Limak Energy Sh.A.

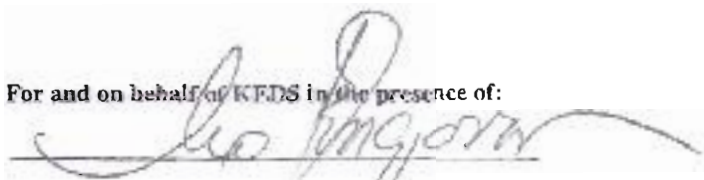
  
Name: Nihat Özdemir

Designation: Chairman of Board, Kosovo Çalık Limak Energy Sh.A.





For and on behalf of KEDS in the presence of:



Name: **Mujë Rugova**

Designation: **Director of Board of Directors, KEDS**



LRP- nr. Rend. 590/2013-----

Vërtetim kopje nga dokumenti origjinal-----

Vërtetohet se ky dokument është kopje e dokumentit origjinal "IMPLEMENTATION AGREEMENT , - Kosovo Electricity Distribution and Supply Privatization", October 2012, e cila është identike me origjinalin e saj, të përcaktuar nga vetë pala si original. Dokumenti përbëhet prej 24 faqe dhe 24 fletë dhe të njejtën e vërtetoj në 1(një) kopje, në vlerë prej 24 Euro --

Noterja vërteton se kjo kopje është bërë në zyrën noteriale, dhe në të gjitha pikëpamjet është konform (kopje autentike) me origjinalin që iu prezantua asaj nga vete pala, **si do qoftë Noterja nuk mban përgjegjësi për përmbajtjen e Dokumentit.** -----

Prishtinë, Merita Kostanica, Notere, me date 01.03.2013. -----



*Merita Kostanica*

