



**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**

### **IMPORT SUPPLY AGREEMENT**

**October 2012**

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*Handwritten signature*

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**This Agreement** is entered into on October 17, 2012, by and between:

- (1) **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**"); and
- (2) **Kompania Kosovare Per Distribuim 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, Prishtina 10000, Republic of Kosovo ("**KEDS**").

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

**1. Agreement**

- 1.1 Subject to and in accordance with the terms of this Agreement KEK agrees to supply and KEDS agrees to receive and purchase electrical energy.

**2. Definitions**

- 2.1 Defined terms used in this Agreement have the meaning given to them in Schedule 1, Part 1.
- 2.2 Certain rules of interpretation which apply to this Agreement are set out in Schedule 1, Part 2

**3. Commencement and Termination**

- 3.1 On and from the date of this Agreement the provisions of this Agreement coming into full force and effect are limited to:
- (a) Clauses 3.2 and 3.3;
  - (b) Clauses 4.2 and 4.3 (Notification of Effective Date);
  - (c) Clause 5.4 (Declarations of Availability);
  - (d) Clause 5.9 (Nominations);
  - (e) Clause 10 (Force Majeure);
  - (f) Clause 11 (Liabilities and Indemnities);
  - (g) Clause 12 (Termination);
  - (h) Clause 16 (Confidentiality);
  - (i) Clause 18 (Notices): and
  - (j) Clause 28 (Dispute Resolution and Governing Law).
- 3.2 On and from the Effective Date the foregoing provisions shall continue in effect and the remaining provisions of this Agreement shall then come into full force and effect.
- 3.3 Subject to Clauses 3.1 and 3.2, this Agreement shall have effect until terminated in accordance with Clause 12 (Termination).

**4. Effective Date**

4.1 The Effective Date shall be the Completion Date.

4.2 Subject to Clause 4.3, KEDS shall notify KEK at reasonable intervals and otherwise on the reasonable request of KEK as to the date range in which and the date on when KEDS reasonably believes the Completion Date will occur.

4.3 KEDS will give KEK not less than

4.3.1 6 month's prior notice of its good faith best estimate of the likely date or dates on which the Completion Date will occur;

4.3.2 3 month's prior notice of its good faith best estimate of the likely date or dates on which the Completion Date will occur;

4.3.3 1 month's prior notice of its good faith best estimate of the likely date or dates on which the Completion Date will occur;

4.3.4 1 week's prior notice of its good faith best estimate of the likely date or dates on which the Completion Date will occur;

4.3.5 3 Day's prior notice of its good faith best estimate of the likely date or dates on which the Completion Date will occur; and

4.3.6 24 Hours prior notice of when that date occurs;

provided always that should KEDS become aware that any notice given under Clauses 4.3.1 to and including 4.3.5 is incorrect, then it shall notify KEK promptly of its good faith best estimate of the revised date or dates.

**5. Sale and Purchase of Electricity**

5.1 With respect to KEK's existing agreement(s) with any third party and such other agreements as KEK enters into from time to time, for the importation of electrical energy to the Republic of Kosovo, KEK shall:

5.1.1 at all times act to maintain in order and as necessary obtain such licences, permits and approvals as may be required for it to so import electrical energy;

5.1.2 make available to KEDS all electrical energy which KEK has contracted at the Effective Date and so long thereafter as KEK is able to obtain a subsidy from the Government of the Republic of Kosovo to import electrical energy by subsequent agreements at a price acceptable to KEDS, KEK shall enter into such subsequent agreements and make available to KEDS all electrical energy which KEK has so contracted;

5.1.3 assist KEDS when KEDS is in discussion of the annual energy balance required for the supply of electrical energy in the Republic of Kosovo with respect to the availability of electrical energy which KEK can import;

5.1.4 at all times ensure its due performance such agreements for the importation of electrical energy and not breach any such agreement so as permit the suspension of the supply of electrical energy to it or the termination of any such agreement;



- 5.1.5 without limitation to Clause 5.1.3, at all time make all payments due under such agreements when required to do so; and
- 5.1.6 save only as otherwise expressly provided in this Agreement, sell to KEDS, all the electrical energy which can be supplied under those Agreements and which KEDS may from time to time require under this Agreement.
- 5.2 KEDS will purchase electrical energy from KEK on a non exclusive basis in accordance with the terms of this Agreement and pay to KEK the Energy Charges for such purchases. KEDS will so purchase electrical energy for:
- 5.2.1 its Public Supply Function;
- 5.2.2 for those eligible customers set out in Schedule 2, Part 1 who at the date of this Agreement were customers of what became KEDS business;
- 5.2.3 any eligible customer who at any time is able to purchase electrical energy from KEDS at a regulated tariff price for such electrical energy set by the ERO; and
- 5.2.4 for the efficient operation of the KEDS system (including electrical energy required to cover distribution losses) and any maintenance or other services required for the operation of the KEDS system;
- provided always, nothing in this Agreement whether express or implied to the contrary will restrict or prohibit the purchase by KEDS of electrical energy from any other party for the above purposes and/or the participation of KEDS in other markets to those above with electrical energy sourced under other agreements including with third parties.
- 5.3 The sale and purchase of electrical energy shall take place at the Interconnection Points (as identified at the date of this Agreement in Schedule 2, Part 2) and/or as from time to time agreed.
- 5.4 On and from the Effective Date, KEK will declare to KEDS, the availability of imported electrical energy.
- 5.5 KEDS, acknowledges and accepts that KEK will provide certain ancillary services to KOSTT by virtue of the Grid Code and KEK's obligation to declare and sell electrical energy to KEDS will be subject to the provision of those services.
- 5.6 That portion of electrical energy which can be imported, which is not nominated by KEDS, for supply may be sold by KEK to other purchasers or offtakers of such electrical energy, but only after it has first been declared available to KEDS and KEDS has not nominated such electrical energy for supply.
- 5.7 KEDS shall not be obliged to purchase a minimum amount of electrical energy in any time period from KEK; provided always that subject to first nominating the supply of electrical energy from renewable sources of power generation (or where (KEDS, otherwise has a statutory duty to nominate on other sources of generation in priority), KEDS, shall then nominate its electrical supply requirements and the flows of electrical energy for its Public Supply Function under the Bulk Supply Agreement before doing so under this Agreement, provided always that if for any reason whatsoever including the default of KEK or Force Majeure, KEDS cannot acquire sufficient supplies of electrical energy under or in connection with the Bulk Supply Agreement, KEDS shall be entitled to receive supplies under this Agreement.



- 5.8 On and from the Effective Date, KEDS shall nominate its electrical energy supply requirements and the flows of electrical energy to be supplied to KEDS.
- 5.9 Electrical energy so nominated by KEDS, shall be delivered by KEK to KOSTT in accordance with the Grid Code and/or Market Rules as applicable.
- 5.10 KEDS shall make all necessary matching nominations as it is required to make to KOSTT for the dispatch by KOSTT of KEK and the offtake of electrical energy by KEDS and its relevant eligible customers in accordance with the Grid Code and/or Market Rules as applicable.
- 5.11 At least 6 months prior to the likely Effective Date the Parties shall in good faith exchange non binding nominations under Clauses 5.4 and 5.8 such that on and from the Effective Date binding nominations take actual effect.
- 5.12 KEK will indemnify, defend and hold KEDS, harmless against any and all balancing charges and other charges of whatever kind and nature payable by KEK to KOSTT, whether in relation to connection and use of the transmission system or otherwise arising directly or indirectly from KEK's failure to deliver to KOSTT electrical energy nominated for supply by KEDS under this Agreement.
- 5.13 KEDS will indemnify, defend and hold KEK harmless against any and all balancing charges and other charges of whatever kind and nature payable by KEDS to KOSTT, whether in relation to connection and use of the transmission system or otherwise arising directly or indirectly from KEDS's failure to offtake from KOSTT electrical energy nominated for supply by KEDS under this Agreement.
- 5.14 The price payable by KEDS, to KEK for electrical energy supplied under this Agreement shall be as set out in Clause 6.

## **6. Price**

- 6.1 The price will be comprised of Energy Charges payable by KEDS, to KEK, on a Monthly basis.
- 6.2 The Energy Charges shall be the price payable by KEK for imported electrical energy expressed in Euros per MWh under the agreements entered into by KEK for importing electrical energy less any subsidy paid by the Government of Kosovo to KEK for such supplies which subsidy shall be applied throughout any relevant year on as constant basis as is practicable.
- 6.3 The price shall be paid to the extent and in the manner set out in Clause 7.

## **7. Payment of Charges**

- 7.1 On or before the later to occur of (a) the fifteenth (15<sup>th</sup>) day of the Month, or if not a Business Day the immediately following Business Day or (b) the third (3<sup>rd</sup>) Business Day following receipt of an invoice from KEK for energy delivered in the previous Month, KEDS shall pay all sums properly due under any such invoice. The invoice shall show how the Energy Charge has been calculated, any Applicable Taxes payable on such charges and the total sum payable. Should KEDS have a bona fide dispute with regard to any sum so invoiced then it shall pay the undisputed sums in accordance with Clause 7.2. Any undisputed sum paid later than as provided in Clause 7.2 shall attract interest at eight percent (8%) above LIBOR from the date on which payment was due in relation to the disputed invoice until the date payment is made. In the case of disputed sums interest will attach to such sum as is agreed or determined to be paid from the date on which payment was due in relation to the disputed invoice until the date payment is made at eight percent (8%) above LIBOR.





**8. Grid Code, Metering Code and System Connection.**

8.1 The Parties shall enter into relevant codes and agreements with KOSTT under the applicable codes and market rules.

**9. Not Used.**

**10. Force Majeure**

10.1 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:

10.1.1 fire, flood, lightning, storm, tornado, earthquake, landslide;

10.1.2 epidemic illness;

10.1.3 war, civil war, acts of public enemies; and/or

10.1.4 strike, lockout or other industrial disturbances.

10.2 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:

10.2.1 failure by GoK to exercise its lawful powers; or

10.2.2 lack of funds and in the case of 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.

10.3 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.

10.4 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:

10.4.1 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);

10.4.2 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);

10.4.3 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

10.4.4 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.

10.5 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

## **11. Liabilities and Indemnities**

11.1 Neither KEK and KEDS shall be liable to the other for the other's Consequential Loss, provided always that, in no circumstances under or in connection with this Agreement shall Consequential Loss include any express obligation to make payment, or any express obligation to provide an indemnity stated in this Agreement.

11.2 KEK shall indemnify, defend and hold KEDS, together with its employees, directors, officers and agents, harmless against any and all Consequential Losses suffered by KEK under or in connection with this Agreement.

11.3 KEDS shall indemnify, defend and hold KEK, together with its employees, directors, officers and agents, harmless against any and all Consequential Losses suffered by KEDS under or in connection with this Agreement.

11.4 Save with respect to any express obligation to indemnify KEK the liability of KEDS under this Agreement is limited to its obligation to pay the price under Clauses 6 and 7.





**12. Termination**

12.1 This Agreement shall terminate at the same time as the Bulk Supply Agreement terminates in accordance with Clause 12 of the Bulk Supply Agreement.

12.2 Termination of this Agreement will not affect any rights or obligations of either Party which may have accrued as at the date of termination and will not affect any continuing obligations of either party which are expressed to survive the termination of this Agreement.

**13. Severability**

13.1 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:

13.1.1 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

13.1.2 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.

**14. Variation**

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

**15. Representations and Warranties**

15.1 KEK unconditionally and irrevocably and to the maximum extent permitted by law:

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

15.1.2 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

15.1.3 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.

15.2 Representations and Warranties of KEK

15.2.1 KEK represents and warrants to KEDS:



- (a) It is duly incorporated or constituted or organised under the laws of Kosovo and is a validly existing legal person under the laws of Kosovo which is controlled by the Government of Kosovo;
- (b) It has the full legal ability and authority to enter into and carry out its obligations under this Agreement. This Agreement constitutes a valid, legally binding and enforceable obligations of KEK and does not conflict with any agreement by which it may be bound;
- (c) All approvals necessary to allow KEK to enter into this Agreement and to carry out the obligations contemplated herein have been given or received and shall remain in full force and effect;
- (d) There are no applicable constitutional provisions, laws, regulations, decrees or rules of the governmental authorities of Kosovo in force on the date of execution of this Agreement or any provisions of any organisational document of KEK, which restrict or prohibit the ability of KEK to enter into and perform the terms of this Agreement. KEK is not entitled to immunity from legal process or jurisdiction on grounds of sovereignty or otherwise;
- (e) This Agreement does not conflict with any provisions of any law, including any regulation, of Kosovo, as in effect on the date of execution of this Agreement;
- (f) The execution, delivery and performance of this Agreement does not conflict with KEK's memorandum and articles of association or similar organisational documents; and
- (g) No suit, action or arbitration or legal, administrative or other proceeding is pending against KEK that would affect the validity of enforceability of this Agreement or the ability of KEK to fulfil its obligations under this Agreement.

### 15.3 Representations and Warranties of KEDS

#### 15.3.1 KEDS represents and warrants to KEK that on and from the Effective Date:

- (a) It is a validly existing legal entity under the laws of Kosovo;
- (b) It has the full legal ability and authority to enter into and carry out its obligations under this Agreement. This Agreement constitutes a valid, legally binding and enforceable obligation of KEDS and does not conflict with any agreement by which it is bound;
- (c) All approvals and licences necessary to allow KEDS, to enter into this Agreement and to carry out the transactions contemplated herein have been given or received and remain in full force and effect;
- (d) There are no provisions of any organisational document of KEDS, which restrict or prohibit the ability of KEDS, to enter into and perform the terms of this Agreement.
- (e) This Agreement does not conflict with any provisions of any law, including any regulation, of Kosovo, as in effect on the date of execution of this Agreement;



- (f) The execution, delivery and performance of this Agreement does not conflict with KEDS's memorandum and articles of association or similar organisational documents; and
- (g) No suit, action or arbitration or legal, administrative or other proceeding is pending against KEDS that would affect the validity of enforceability of this Agreement or the ability of KEDS to fulfil its obligations under this Agreement.

**16. Confidentiality and Publicity**

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

**17. Assignment, Transfers of Interest**

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

- 17.1.1 KEK shall not assign or transfer all or part of its rights, benefits or obligations under this Agreement except with KEDS's prior written consent which shall be in the sole discretion of KEDS; and
- 17.1.2 KEDS shall not sell, assign or otherwise transfer all or any of its rights, benefits or obligations under this Agreement except with KEK's prior written consent, such consent not to be unreasonably withheld or delayed, except that KEDS may assign or transfer all or any of its rights, benefits or obligations under this Agreement to an Affiliate of KEDS or create a security interest over its rights and interests under this Agreement for the Lenders or an Affiliate of KEDS.

**18. Notices**

18.1 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 or facsimile or leaving the same at:

18.1.1 KEDS  
Elektrokosova Building  
No.3 Bill Clinton Boulevard  
Pristina, Republic of Kosovo  
For the attention of: Managing Director; and

KEK:  
Kosova B Power Plant  
Obiliq/Kastriot, Republic of Kosovo  
For the attention of: Managing Director

18.1.2 Notices given in writing and delivered by hand or sent by first class prepaid post, 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

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

18.2 Either Party to the Agreement may change its nominated address/addresses, telefax or telex number by prior notice to the other Party.

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

## **19. Entirety of Agreement**

19.1 This Agreement constitutes the entire Agreement between the Parties in relation to the sale and purchase of electricity between the parties and excludes all prior representations, negotiations and undertakings.

## **20. Waiver**

20.1 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.

## **21. Successors**

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

## **22. Relationship of Parties**

22.1 This Agreement does not create an association, joint venture, or partnership between the Parties.

22.2 Neither 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.

## **23. Good Faith**

23.1 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.

## **24. Further Assurance**

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

## **25. Sovereign Immunity**

If 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 KEK agrees not to claim and

irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction. Further, KEK unconditionally and irrevocably and to the maximum extent permitted by law:

- 25.1.1 agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;
- 25.1.2 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
- 25.1.3 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.

**26. Costs**

Each Party shall bear its own costs and expenses incurred by it in connection with entering into this 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. Dispute resolution and governing law**

28.1 If any dispute arises between the Parties in connection with or relating to this Agreement (a "Dispute") any Party to the Dispute may, by notice in writing to the other Parties to the Dispute, require it to be referred to the Chief Executive Officer of KEK and a designated representative of the Investors (on behalf of KEDS), who shall attempt to resolve the Dispute through discussion.

28.2 If a Dispute is not resolved within twenty (20) Business Days after notice under clause 28.1 by mutual discussion and such Dispute is expressly required by this Agreement to be referred to an Expert or the Parties otherwise agree in writing to refer it to an Expert as it relates in either case to technical issues, any Party may by notice to the other Party (including the SPV) require the Dispute to be referred to an Expert in accordance with the procedure specified in clause 28.3.

28.3 The Parties to a Dispute shall jointly appoint an Expert within twenty (20) Business Days, or such longer period as may be agreed by the parties to the Dispute, after the date of receipt of the notice by the addressee of notice under clause 28.2. If the Parties to the Dispute fail to agree on an appointee, either Party to the Dispute may apply to the International Chamber of Commerce Centre for Expertise to appoint an Expert requesting that the appointment be made within twenty (20) Business Days after the date of receipt of the application. The following procedure shall apply to determination of a Dispute by an Expert and the Parties shall procure that it is reflected in the Expert's terms of reference:


28.3.1 The Expert shall:

- (a) give each of the parties to the Dispute the opportunity of making oral and/or written representations to him on the Dispute within fifteen (15) Business Days after the date of his appointment;





- (b) give his decision within thirty (30) Business Days (or such longer period as may be decided by the Expert but not exceeding forty five (45) Business Days) after the date of his appointment;
  - (c) determine the amount of his fees and the responsibilities of the parties to the Dispute for such fees and expenses; and
  - (d) give copies of his decision and the reasons therefore in writing to each of the parties to the Dispute.
- 28.3.2 The parties to the Dispute shall promptly provide the Expert and each other with all such evidence and information within their respective possession or control as the Expert may consider necessary for determining the Dispute or which is relevant to and bears upon the Dispute.
- 28.3.3 If the Expert shall fail to give his decision pursuant to Clause 28.3.1 within the period specified in Paragraph (b) of Clause 28.3.1 any Party to the Dispute may by notice in writing to the other require that the Dispute is decided by reference to arbitration, whereupon the Expert shall be instructed not to consider the matter further.
- 28.3.4 The Expert shall not act as arbitrator but shall decide the Dispute using his skill, experience and knowledge and with regard to such matters as are expressly specified in this Agreement to be considered by him and as the Expert in his sole discretion considers appropriate. The decision of the Expert pursuant to this Clause 28.3 shall (subject to Clause 28.3.3) be final and binding on the parties save in respect of fraud or manifest error.
- 28.3.5 Unless the Expert's decision is set aside for reasons specified in Clause 28.3.4, the Parties to the Dispute hereby agree to be bound by, perform the Agreement in accordance with, and undertake to implement, as the case may be, the determination of the Expert. Failure by a Party to the Dispute to so act shall constitute a breach of the Agreement. Any Dispute concerning the Expert's determination may be submitted to arbitration in accordance with Clause 28.4. The Tribunal shall be bound by the determination of the Expert and the only issue for the Tribunal to determine shall be whether the parties to the Dispute have complied with the determination of the Expert.
- 28.3.6 In the event that the Expert becomes unwilling or unable to act in relation to the Dispute or (being a firm or partnership) is discontinued or (being a company) goes into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or commences carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors, then the Parties to the Dispute shall agree on substitute Expert. The substitute shall be selected in accordance with the procedure specified in this Clause 28.3.
- 28.4 Subject to Clause 28.2, any Dispute, difference, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, 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:
  - 28.4.1 the statement of claim and the notification of the appointment of an arbitrator shall be included in the notice of arbitration;





- 28.4.2 the appointing authority shall be the President of the Geneva Chamber of Commerce; the number of arbitrators shall be 3 (three);
- 28.4.3 the place of arbitration shall be Geneva, Switzerland;
- 28.4.4 the language to be used in the arbitral proceedings shall be English;
- 28.4.5 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;
- 28.4.6 either Party may request an oral hearing, but the arbitral tribunal established pursuant to this Clause 28 (the "**Arbitration Tribunal**") shall have the discretion whether or not to hold such a hearing unless the request is supported by the other Party;
- 28.4.7 the Arbitration Tribunal shall not be authorised to decide as "*amiables 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;
- 28.4.8 Article 37 and Article 39 of the UNCITRAL Arbitration Rules shall not apply;
- 28.4.9 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
- 28.4.10 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).

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.

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.



## **SCHEDULE 1**

### **Part 1**

#### **DEFINITIONS**

**Agreement** – shall mean this Import Supply Agreement;

**Affiliate** – shall mean in relation to any Party, any company which is a Subsidiary of such Party or a company of which such a Party is a Subsidiary or a company which is another Subsidiary of a company of which such Party is a Subsidiary;

**Applicable Taxes** – shall mean Taxes lawfully due;

**Arbitration Tribunal** – has the meaning assigned to the term in Clause 28.4.6;

**Business Day** - means any day, other than Saturday, Sunday and public holidays, on which banks are open for business in Kosovo;

**Bulk Supply Agreement** – means the so named agreement between the Parties of the same date as this Agreement as may be amended from time to time;

**Competent Authority** - shall mean the Government or any Governmental agency or any local or national agency, authority, department, inspectorate, minister, court, tribunal or public or statutory person (whether autonomous or not) of the Republic of Kosovo (including for the avoidance of doubt any licensing authority), exercising a statutory authority (but excluding the ERO);

**Confidential Information** - has the meaning assigned to the term in Clause 16.3;

**Consequential Loss** - means all losses, costs and financial harm in respect of loss of contract, loss of use of machinery or property, loss of production, profit or revenue or any other economic loss, cost or claim of whatever kind and nature suffered by a Party under or in connection with this Agreement and/or any third party claim for loss damage and or expense brought against a Party in the course of its performance of this Agreement, howsoever caused (including the default or negligence of a Party or a breach of any duty owed in law by a Party), and whether or not foreseeable at the date of this Agreement;

**Day** - shall mean a period of twenty four Hours beginning at 0000 Hours on a day and ending at 2400 Hours on that day;

**Dispute** – shall have the meaning assigned to that term in Clause 28.1;

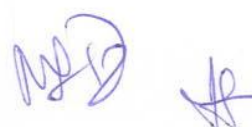
**Effective Date** – has the meaning given to it in Clause 4;

**Energy Charges** – has the meaning given to that expression in Clause 6;

**ERO** – shall mean the Energy Regulatory Office, the regulatory authority of the energy sector in the Republic of Kosovo and its successor in any function relevant to this Agreement;

**Expert** – means an independent consulting firm, company or association of persons with specialised skills in the interpretation of power engineering and supply contracts and financial and economic analysis appointed pursuant to Clause 28.3;

**Force Majeure** - has the meaning assigned to the term in clause 10.1;





**Force Majeure Events** - has the meaning assigned to the term in clause 10.1;

**Government** - shall mean the Government of the Republic of Kosovo and any ministry, department, agency of the same and any statutory authority created by it (with the exception of the ERO), exercising lawful powers;

**Grid Code** - shall mean a code of general application from time to time drawn up by KOSST in accordance with any regulatory requirement of the ERO and which sets out operational rules governing KOSST and generators and interconnectors connected to and users of the KOSST electricity transmission system;

**Hour** - shall mean each continuous period of sixty minutes commencing with the first minute of each of the twenty four denominated Hours of any Day;

**Interconnection Points** - has the meaning given in Clause 5.3;

**Investor(s)** - has the meaning assigned to the term in the Share Sale and Purchase Agreement;

**KOSTT** - means KOSTT, J.S.C., a joint stock company organized under the laws of Kosovo, with its principal office at Pristina, Kosovo, or its successor in interest in the event that KOSTT ceases to perform any of the functions of the Kosovo Electricity Transmission System and Market Operator under the Grid Code;

**Lenders** - shall mean the banks and/or financial institutions and/or other persons making loans, credit facilities and guarantee facilities or funding arrangements (other than by way of equity or quasi equity participation), available to the Investors for the purpose of or in connection with the Transaction or any agent or trustee acting for their benefit or on their behalf;

**"LIBOR"** - in relation to the amount and currency of the sum in question on which interest is to accrue, the annual rate of the 1-Month-LIBOR quoted by the British Bankers' Association at or about 11:00 a.m. London time, which appears on REUTERS page "LIBOR01" or under [www.bbalibor.com](http://www.bbalibor.com), on the first Business Day of the month in which the payment becomes due. The reference rate shall thereafter be adjusted at the beginning of each subsequent month to the first published rate of that month as defined above until such time that payment received in full

**Market Rules** - shall mean market rules from time to time drawn up by KOSST in accordance with any regulatory requirement of the ERO and which sets out market rules governing KOSST and generators and interconnectors connected to and users of the KOSST electricity transmission system;

**Megawatt** - means a megawatt or 1000 kilowatts;

**Month** - shall mean a period beginning at 0000 Hours on the first Day of a calendar Month and ending at 2400 Hours on the last Day of that calendar month, [provided that:

- (a) the first Month of the Operational Period shall commence at 0000 Hours on the Commercial Operation Date of Unit 1 and shall end at 2400 Hours on the last Day of the calendar Month in which the Commercial Operation Date of Unit 1 falls; and
- (b) the last Month of the Operational Period shall end at 2400 Hours on the last Day of the Operational Period;]

**Prudent Utility Practices** - shall mean a person acting in good faith with the intention of performing its contractual obligations hereunder and in so doing and who in the general conduct of its electricity undertaking exercises that degree of skill, diligence, prudence and foresight which would reasonably and





ordinarily be exercised by a skilled and experienced operator complying with applicable law and applying international standards engaged in the same type of electricity undertaking;

**Public Supply Function** – shall mean the function of an electricity enterprise licensed to carry out the activity of supply of electricity to final customers at regulated tariffs in accordance with Article 18 of Law No. 03/L-201 On Electricity;

**Share Sale and Purchase Agreement** - means the agreement executed between the GoK, KEK, Investors and KEDS as of the date of this Agreement, as amended from time to time, for purchase by Investors of GoK's shares in KEDS ("Distribution and Supply") to the extent specified in that agreement;

**Subsidiary** – shall mean a company:

- (a) of which the majority of its issued share capital is held by another company; or
- (b) in respect of which another company has the right to control the composition of the board of directors or the casting of votes at shareholders' meetings of that company; or
- (c) which, or whose board of directors, normally acts in accordance with the instructions of another company;

**Taxes** – shall mean:

- (a) all forms of direct and indirect taxation and statutory, governmental, state, federal, provincial, local government or municipal charges, duties (including stamp duties), imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of Kosovo or any other jurisdiction and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference (including social security contributions and any other payroll taxes and including local authority rates) however imposed (whether by way of withholding or deduction for or on account of tax or otherwise); and
- (b) any penalty, fine, surcharge, interest, charges or costs payable in connection with any Taxes within (a) above or any late or incorrect return in respect of any Taxes within (a) above;

**Transaction** – shall mean the proposed acquisition from GoK of shares in KEDS ("Distribution and Supply").

## Part 2

### Interpretation

In this Agreement, unless the context otherwise requires:

- (a) reference to a business day is a reference to any day which is not a Sunday or a recognised public holiday in Kosovo;
- (b) reference to a day, month or year is a reference to a Gregorian calendar day, month or year;
- (c) references to Clauses, Schedules, Sections, Paragraphs and Figures are references to Clauses, Schedules, Sections, Paragraphs and Figures of, to and contained in this Agreement;
- (d) words in the singular shall be interpreted as referring to the plural and vice versa, and words denoting natural persons shall be interpreted as referring to corporations and any other legal



entities and vice versa and all references to persons shall include their permitted successors and assigns;

- (e) the term "including" shall be construed without limitation; unless the context otherwise requires;
- (f) in the event of any conflict between the Clauses and the Schedules, the Clauses shall prevail;
- (g) the word "material" shall mean (except where stated otherwise), in the context in which it is used, an obligation, act, omission, amount, provision, circumstance or thing which is of significance to one or both of the Parties hereto or is considered by them as important in the context of their agreement to enter into this Agreement;
- (h) for the purpose of any calculation under this Agreement, reference to any period or periods of any hour or hours shall be rounded up to the nearest 1/10 th of an hour;
- (i) where reference is made in this Agreement to a period or periods of time, the periods in questions shall be deemed to end at midnight on the last day of such period unless otherwise stated;
- (j) words importing the masculine shall include the feminine and neuter and vice versa;
- (k) the headings and marginal notes in this Agreement shall not be deemed part of or be taken into consideration in the interpretation or construction of this Agreement and are included for ease of reference only; and
- (l) words, phrases and expressions set out in Schedule 1, Part 1 (Definitions) shall have the meanings given to them in that Schedule.



## SCHEDULE 2

### Part 1 Eligible customers

As of the date of this agreement, eligible customers have the meaning as defined in the Law on Electricity, of 2010, Article 19.4

### Part 2 Delivery points for the sale of electricity

<u>Interconnection Line</u>	<u>Prime Meter</u>	<u>Control Meter</u>
<u>Interconnections to Serbia</u>		
#407, Kosova B – Nish	77049077	77049078
#205, Podujeva – Krushevc	96379851	96379852
#1140, Berivojca – Bujanovc	97752109	97752110
#155/2, Vallaq – Novi Pazar	77049065	77049066
<u>Interconnection to Albania</u>		
#2303, Prizren 2 – Fierza	99709967	99709968
<u>Interconnection to Montenegro</u>		
#437, Peja 3 – Ribarevina	96192444	96192445
<u>Interconnection to Macedonia</u>		
#420, Ferizaj 2 - Shkupi 5	97752111	97752112

Note: All meters are under the jurisdiction of KOSTT