



**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**

Dated

17 October 2012

- (1) **THE REPUBLIC OF KOSOVO**
- (2) **Kosovo Çalık Limak Energy Sh.A.**

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**AGREEMENT**  
**for the sale and purchase of the entire issued**  
**share capital of Kompania Kosovare Per**  
**Distribuum Dhe Furnizim Me Energji**  
**Elektrike SH.A.**

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## Table of Contents

1.	Definitions, Interpretation and Language .....	1
2.	Sale and Purchase .....	1
3.	Consideration .....	2
4.	Conditions .....	2
5.	Conduct prior to Completion .....	3
6.	Completion .....	6
7.	Transferring Assets .....	7
8.	Warranties .....	7
9.	Limitation of Seller's liability .....	8
10.	Termination .....	9
11.	Further assurance .....	9
12.	Confidentiality and Publicity .....	9
13.	Assignment .....	9
14.	Waiver; variation; invalidity .....	10
15.	Costs and expenses .....	10
16.	Payments .....	10
17.	Entire agreement .....	11
18.	Counterparts .....	11
19.	Notices .....	11
20.	Taxation .....	13
21.	External Funding; Foreign Currency and Repatriation .....	13
22.	Governing law and jurisdiction .....	13
23.	Dispute Resolution .....	13
24.	Enforcement .....	15
25.	Relationship of Parties .....	15
26.	Sovereign acts and immunity .....	15
27.	Good Faith .....	16
28.	Improper Payments .....	16
	Schedule 1 Definitions and Interpretation .....	18
	Schedule 2 The Company .....	24
	Schedule 3 Completion Obligations .....	26
	Schedule 4 Warranties .....	27
	Schedule 5 Limitations on Liability .....	31
	Schedule 6 Transfer Agreement .....	34
	Schedule 7 Collection Agreement .....	35
	Schedule 8 Shared Services Agreement .....	36
	Schedule 9 Form of Distribution System Operator Licence and Public Supply Licence .....	37

REPUBLIC OF KENYA  
 MINISTRY OF PETROLEUM & MINING  
 OFFICE OF THE SECRETARY  
 NAIROBI

*[Handwritten signature]*

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THIS AGREEMENT is made on the 17<sup>th</sup> day of October 2012

**BETWEEN**

- (1) **THE GOVERNMENT OF THE REPUBLIC OF KOSOVO** represented by the Ministry of Economic Development whose principal office is at Ministria e Zhvillimit Ekonomik; ish-Toskana, Rr. Nena Tereze, Prishtinë 10000, Kosove (the "Seller"); and
- (2) **Kosovo Çalik Limak Energy Sh.A.** a company established by the Consortium and incorporated under the laws of the Republic of Kosovo with registration number 70888645 whose registered address is at Qyteza Pejton, Mbreti Zog I. No. 09 Prishtinë 10000, Kosovë (the "Purchaser").

**RECITALS**

- (A) The Seller, through the Privatisation Committee, has undertaken a competitive tender process for selecting private sector investors to acquire the shares owned by it, and generally to participate, in Kompania Kosovare Per Distribucion Dhe Furnizim Me Energji Elektrike SH.A. (the "Company").
- (B) The Consortium has submitted an offer to acquire all the issued share capital of the Company and this offer has been accepted by the Seller.
- (C) The Seller therefore has agreed to sell the Shares to the Purchaser and the Purchaser has agreed to purchase the Shares on and subject to the terms and conditions of this Agreement.

**NOW 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. Sale and Purchase**

*Obligation to sell and purchase*

- 2.1 Subject to the terms of this Agreement, the Seller shall sell all the Shares (together with all rights attaching to them at the date of this Agreement) and the Purchaser shall purchase the Shares accordingly.

*Dividends and distributions*

- 2.2 The Purchaser shall be entitled to receive all dividends and distributions (whether income or capital) declared, paid or made by the Company on or after the date of this Agreement.

*Implied covenants for title*

- 2.3 The Seller covenants that it:

2.3.1 has the right to transfer the legal and beneficial title to the Shares in accordance with this Agreement; and

2.3.2 it is disposing of them free from all Encumbrances.

***Waivers of pre-emption***

2.4 The Seller waives (and undertakes to procure that its nominee(s) (if any) shall waive) all rights of pre-emption or similar rights over any of the Shares conferred on it either by the articles or association of the Company or in any other way.

**3. Consideration**

***Consideration***

3.1 The Shares shall be sold for the sum of Euro twenty six million and three hundred thousand (€26,300,000) (the "**Purchase Price**").

***Payment***

3.2 The Purchase Price will be payable on Completion in accordance with Clause 6.2 and Schedule 3.

3.3 Wherever in this Agreement provision is made for any payment either by the Seller to the Purchaser or by the Purchaser to the Seller, as the case may be, such payment shall be made by crediting the Purchaser's Designated Account or the Seller's Designated Account, as the case may be, by way of electronic transfer of funds on or before the due date for payment pursuant to this Agreement.

**4. Conditions**

4.1 Completion is subject to and conditional on satisfaction (or waiver in accordance with Clause 4.2) of the following conditions:

4.1.1 the grant or transfer by ERO of a distribution system operator licence and a public supply licence to the Company which are substantially in the form as set out in Schedule 9;

4.1.2 the execution of the Transfer Agreement, Shared Services Agreement and the Collection Agreement by KEK and the Company;

4.1.3 confirmation in form and substance acceptable to the Parties, acting reasonably, from ERO to the transfer of the Company to the Purchaser;

4.1.4 the approval of the Privatisation Committee to the sale of the Shares to the Purchaser pursuant to this Agreement;

4.1.5 completion of each of the Connected Contracts (save for any condition in those agreements which relates to Completion being achieved); and

4.1.6 the delivery to the Purchaser of the un-audited opening and closing pro-forma balance sheet of the Company which shall have been prepared in accordance with IFRS as of the date of Completion to reflect the transfer of the Assets under the Transfer Agreement.

- 4.2 Waiver of any of the Conditions in Clause 4.1.1 to 4.1.6 shall require the mutual written consent of the Seller and the Purchaser.
- 4.3 The Parties undertake to use all reasonable endeavours to ensure satisfaction of the Conditions set out in Clause 4.1 as soon as practicable following the date of this Agreement and in any event by no later than 5 p.m. (Kosovo time) on the Longstop Date.
- 4.4 If any of the Conditions have not been satisfied (or waived) by 5p.m. (Kosovo time) on the Longstop Date, this Agreement (except for the surviving provisions as set out in Clause 10.2) shall lapse and cease to have effect and no Party shall have any claim against any other Party under it, save for any claim arising from any antecedent breach of this Agreement.
- 5. Conduct prior to Completion**
- 5.1 Without prejudice to the generality of Clause 5.2.2, the Seller undertakes to procure that, between the date of this Agreement and Completion, the Company shall not, except (i) as may be required to give effect to and comply with the Connected Contracts; (ii) where prior written consent of the Purchaser has been obtained (such consent not to be unreasonably withheld or delayed); (iii) where necessary in order to comply with applicable law; or (iv) as disclosed to the Purchaser prior to the date hereof (including, for the avoidance of doubt, the 2012 KEK budget):
- 5.1.1 cancel or release any material debt or claim, or sell or transfer any material tangible or intangible Asset in excess of the Aggregate Amount;
  - 5.1.2 enter into or materially amend any contract or commitment which is not capable of being terminated without compensation at any time or which involves or may involve total annual expenditure in excess of five hundred thousand Euro (€500,000);
  - 5.1.3 acquire or dispose of, or agree to acquire or dispose of, or create or agree to create any Encumbrance over, any material Asset or property in excess of the Aggregate Amount;
  - 5.1.4 give any material guarantee or indemnity;
  - 5.1.5 assume or incur or agree to assume or incur any capital commitment in excess of five hundred thousand Euro (€500,000); dispose of or agree to dispose of or acquire or agree to acquire an interest in any company, partnership or other venture;
  - 5.1.6 materially alter its present business policies (both short term and long term) including those relating to manning levels, salary and benefit levels, ordering, supply and stocking;
  - 5.1.7 fail to carry out the Company's present operating, repair and maintenance procedures in any material respect;
  - 5.1.8 other than in the ordinary course of business, enter in, modify (in any material respect) or terminate any contract, licence or permit which are material to the continued operation of the business of the Company;
  - 5.1.9 permit any liens to arise on any Assets;
  - 5.1.10 change any of the Company's accounting policies or practices, otherwise than as required by applicable accounting principles;



- (c) this Agreement (except for this Clause 6.3.4 and the provisions set out in Clause 10.2) shall lapse and cease to have effect, and no Party shall have any claim against any other Party under or in connection with this Agreement; or

6.3.5 waive all or any of the Purchaser's completion obligations to such extent as it may think fit.

- 6.4 The Parties acknowledge and agree that the amount expressed to be payable under Clauses 6.3.4(a) and (b) is in the nature of liquidated damages, and not a penalty. Full and punctual payment by the Purchaser in accordance with Clause 6.3.4 shall be the sole and exclusive remedy and measure of damages in relation to the matters giving rise to such payment.

*Effect of Completion*

- 6.5 Notwithstanding Completion:

6.5.1 each provision of this Agreement (and any other document referred to in it) not performed at or before Completion but which remains capable of performance;

6.5.2 the Warranties; and

6.5.3 all covenants and all undertakings contained in or entered into pursuant to this Agreement,

will remain in full force and effect and (except as otherwise expressly provided) without limit in time.

**7. Transferring Assets**

The Transfer Agreement as set out in Schedule 6 shall govern the transfer of the assets and personnel from KEK to the Company.

**8. Warranties**

*Warranties*

- 8.1 The Seller warrants to the Purchaser in the terms set out in Schedule 4 in relation to the Company. Each of the Warranties set out in the separate paragraphs of Schedule 4 shall be separate and independent and (except as expressly otherwise provided) shall not be limited by reference to any other Warranty or by anything in this Agreement or the Disclosure Documents.

- 8.2 The Purchaser hereby warrants to the Seller in the terms set out in Schedule 4.

*Investigation by Purchaser*

- 8.3 None of the Warranties shall be deemed in any way modified or discharged by reason of any investigation or inquiry made or to be made by or on behalf of the Purchaser. No information relating to the Company and/or KEK that has not been Disclosed but of which the Purchaser has knowledge (whether actual or constructive) shall prejudice any claim which the Purchaser shall be entitled to bring or shall operate to reduce any amount recoverable by the Purchaser under this Agreement.

hand or sent by first class pre-paid post or facsimile transmission. Delivery by courier shall be regarded as delivery by hand.

*Address and facsimile*

- 19.2 Such communication shall be sent to the address of the relevant Party referred to in this Agreement or the facsimile number set out below or to such other address or facsimile number as may previously have been communicated to the sending Party in accordance with this Clause. Each communication shall be marked for the attention of the relevant person.

Seller - facsimile number +381-38-213955. For the attention of Minister of Economic Development

Purchaser - facsimile number +381 38 609 258. For the attention of Mr. Mesut Serhat Dinc, Deputy General Manager, Energy Group.

*Deemed time of service*

- 19.3 A communication shall be deemed to have been served:
- 19.3.1 if delivered by hand at the address referred to in sub-clause 19.2 at the time of delivery;
  - 19.3.2 if sent by first class pre-paid post to the address referred to in that sub-clause, at the expiration of two clear days after the time of posting; and
  - 19.3.3 if sent by facsimile to the number referred to in that sub-clause, at the time of completion of transmission by the sender.

If a communication would otherwise be deemed to have been delivered outside normal business hours (being 08:00 a.m. to 4:00 p.m. on a Business Day) in the time zone of the territory of the recipient under the preceding provisions of this Clause, it shall be deemed to have been delivered at the next opening of such normal business hours in the territory of the recipient.

*Proof of service*

- 19.4 In proving service of the communication, it shall be evidenced that actual delivery or delivery in accordance with Kosovo laws has been made.

*Change of details*

- 19.5 A Party may notify the other of a change to its name, relevant person, address or facsimile number for the purposes of sub-clause 19.2 provided that such notification shall only be effective on:
- 19.5.1 the date specified in the notification as the date on which the change is to take place; or
  - 19.5.2 if no date is specified or the date specified is less than five (5) clear Business Days after the date on which notice is deemed to have been served, the date falling five (5) clear Business Days after notice of any such change is deemed to have been given.



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*Non-applicability to Proceedings*

- 19.6 For the avoidance of doubt, the Parties agree that the provisions of this Clause shall not apply in relation to the service of any claim form, application notice, order, judgment or other document relating to or in connection with any Proceedings.

**20. Taxation**

Kosovo legislated Taxation is applicable.

**21. External Funding; Foreign Currency and Repatriation**

- 21.1 The Seller shall not prevent the Purchaser from receiving from outside of Kosovo, funds in relation to its investment in the Company, to the extent related to the financing of the Company's business.
- 21.2 The Purchaser shall have the right to transfer in / out of the Republic of Kosovo, foreign currency (including without limitation US Dollars and Euro), any and all amounts required and / or gained from the business of the Company. The Purchaser shall have the right to repatriate interest payments, loan repayments, dividends, or other distributions made by or on behalf of the Company at any time and without any additional Taxation payable by the Purchaser.
- 21.3 The Seller shall permit the repatriation, by the Purchaser, of interest payments, loan repayments, dividends, or other distributions made by or on behalf of the Company at any time and without any additional Taxation payable by the Purchaser.

**22. Governing law and jurisdiction**

*Kosovo law*

This Agreement, and any non-contractual rights or obligations arising out of or in connection with it or its subject matter, shall be governed by and construed in accordance with the laws of the Republic of Kosovo.

**23. Dispute Resolution**

- 23.1 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 Party to the Dispute, require it to be referred to a designated representative of the Seller and a designated representative of the Purchaser, who shall attempt to resolve the Dispute through discussion within thirty (30) days from the date that the notice of the Dispute is served by a Party on the other Party.
- 23.2 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:
- 23.2.1 the statement of claim and the notification of the appointment of an arbitrator shall be included in the notice of arbitration;
- 23.2.2 the appointing authority shall be the President of the Geneva Chamber of Commerce; the number of arbitrators shall be 3 (three);



- 23.2.3 the place of arbitration shall be Geneva, Switzerland;
- 23.2.4 the language to be used in the arbitral proceedings shall be English;
- 23.2.5 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;
- 23.2.6 either Party may request an oral hearing, but the arbitral tribunal established pursuant to this Clause 23.2 (the "Arbitration Tribunal") shall have the discretion whether or not to hold such a hearing unless the request is supported by the other Party;
- 23.2.7 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;
- 23.2.8 Article 37 and Article 39 of the UNCITRAL Arbitration Rules shall not apply;
- 23.2.9 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
- 23.2.10 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).
- 23.3 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.
- 23.4 The Parties recognise and acknowledge that this Agreement constitutes a commercial transaction in respect of which neither Party is entitled to plead sovereign immunity and the Seller and Purchaser 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.
- 23.5 The award rendered in any arbitration commenced hereunder or any order (including injunctive 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.

- 23.6 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.
- 23.7 During the course of any arbitration hereunder:
- 23.7.1 the Seller and the Company shall continue to perform their respective obligations hereunder; and
- 23.7.2 neither the Company nor the Seller shall exercise any other remedies hereunder arising by virtue of the matters in Dispute.
- 23.8 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.
- 24. Enforcement**
- 24.1 Subject to any right of appeal, second appeal, revision or any other legal proceeding or remedy available under law, the Purchaser, the Seller and the Company consent with respect to the enforcement of any final judgment against it in any proceedings, whether in Kosovo or outside, and to the giving of any relief or the issue of any process in connection with such proceedings (including 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).
- 24.2 Subject to any right of appeal, second appeal, revision or any other legal proceeding or remedy available to the Seller under law, the Seller undertake to enforce any final judgment against it in any proceeding, whether in the Republic of Kosovo or outside, in accordance with the provisions of the relevant Law, if applicable.
- 25. Relationship of Parties**
- 25.1 This Agreement does not create an association, joint venture, or partnership between the Parties.
- 25.2 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.
- 26. Sovereign acts and immunity**
- The Seller unconditionally and irrevocably and to the maximum extent permitted by law:
- 26.1.1 agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;
- 26.1.2 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 laws of the Republic of Kosovo, be claimed by or on behalf of itself; and
- 26.1.3 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.

27. **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.

28. **Improper Payments**

28.1 Each Party undertakes to each of the other Party that it shall not, and shall cause its respective Affiliates and all of its and their respective officers, managers, directors, employees, shareholders, members, agents, contractors and representatives not to, either themselves or on behalf of the Party or through a third person on their behalf, offer, give, pay, promise to give or pay, or authorise the offer, giving, payment or promise to give or payment of, any money, gift, bribe, loan, commission, fee, (including, consultancy fee or agent's fee), reward, advantage or other consideration or other thing of value, whether directly or indirectly, to any Official (as defined below), or any other person while knowing it will be offered, given or promised to a Official, which is illegal, or is in the nature of a bribe, influence payment or kickback or similarly has an ulterior or covert purpose or for the purpose of influencing any act or decision of such Official acting in their official capacity, including such Official doing or omitting to do any action in violation of their lawful duties, or inducing such Official to use their influence with the Seller, or any instrumentality thereof to affect or influence any act or decision of the Seller or such instrumentality, in order to assist either Party to obtain or retain business for or with, or in directing business to, any person. For the purposes of this Clause 28 "Official" means (i) any officer or employee of the Seller, department (whether executive, legislative, judicial or administrative), agency or instrumentality of the Seller, including a regional government body or government-owned business, or of a public international organisation; (ii) any person acting in an official capacity for or on behalf of the Seller or such department, instrumentality or public organisation; (iii) any candidate for political office; or (iv) any political party, in each case whether or not of or from the Republic of Kosovo.

28.2 In the event any the Purchaser commits a breach of this Clause 28, which breach (where remediable) has not been remedied to the reasonable satisfaction of the Seller within ten (10) days after the date of receipt by the Purchaser or the Company of a written notice from the Seller setting out the breach committed by the Purchaser or the Company (as the case may be), the Seller may at its discretion:

28.2.1 terminate this Agreement by a written notice to the Purchaser and the Company; and/or

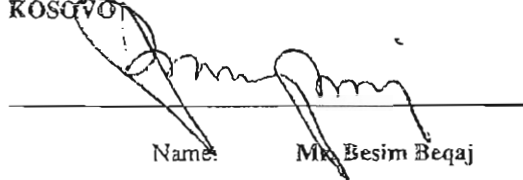
28.2.2 demand that the Purchaser pay a sum equal to twice the amount of payments made or not disclosed in contravention of this Clause 28,

without prejudice to other remedies available to it under this Agreement or in law.

28.3 The provisions of this Clause 28 shall survive the termination of this Agreement.

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

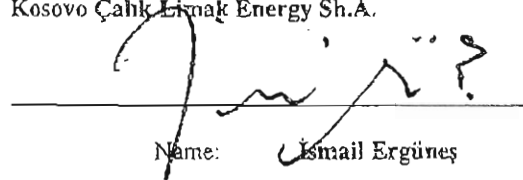
GOVERNMENT OF THE REPUBLIC OF  
KOSOVO



Name: Mr. Besim Beqaj

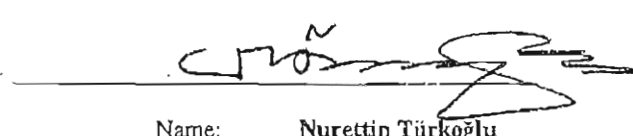
Designation: Minister, Ministry of Economic Development

Kosovo Çalık Limak Energy Sh.A.



Name: Ismail Ergünes

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.





## Schedule 1

### Definitions and Interpretation

#### Part 1

##### Definitions

**"Affiliate"** means in relation to any person, any entity (X) under the control of another entity (Y); for the purposes of this definition "control" shall exist where (i) Y owns directly or indirectly more than one half of the voting power of X; or (ii) even if Y owns one half or less of the voting power of X, the Y has the power, directly or indirectly, to do one of the following: (a) direct more than one half of the voting rights of X by virtue of an agreement with other investors, (b) govern the financial and operating policies of X under a statute or an agreement, (c) appoint or remove the majority of the members of the board of directors or equivalent governing body, or (d) cast the majority of votes at meetings of the board of directors or equivalent governing body, but such definition shall not include in the case of the Purchaser, the Company;

**"Agreement"** means this agreement, including the Schedules;

**"Arbitration Tribunal"** has the meaning assigned to the term in Clause 23.2.6;

**"Assets"** means all material assets, whether tangible or intangible, necessary to the proper operation of the Company's business which are to be transferred to the Company in accordance with the Transfer Agreement;

**"Bid Bond"** means the guarantee provided by the Purchaser in accordance with the Bidding Rules;

**"Bidding Rules"** means the bidding rules issued by the Privatisation Committee pursuant to the competitive tender process for the privatisation of the Company;

**"Board"** means the board of directors of the Company for the time being;

**"Budget"** means the list of potential capital expenditure items in the agreed form;

**"Bulk Supply Agreement"** means the bulk supply agreement in the agreed form to be entered to by KEK and KEDS;

**"Business Day"** means any day (other than a Saturday, Sunday or public holiday) on which banks are generally open for business in the Republic of Kosovo, London and New York;

**"Collection Agreement"** means the collection agreement to be entered into by the Company and KEK in the form as set out in Schedule 7;

**"Company"** has the meaning assigned to the term in the Recitals, further details of which are set out in Part 1 of Schedule 2;

**"Competent Authority"** means (i) any person (whether autonomous or not) having legal and/or regulatory authority and/or enforcement powers (including any licensing authority exercising a statutory authority); (ii) any court of law or tribunal in any jurisdiction; and/or (iii) any taxation authority;



**"Completion"** means completion of the sale and purchase of the Shares in accordance with Clause 6;

**"Completion Date"** means the date on which Completion takes place;

**"Conditions"** means the conditions set out in Clause 4.1;

**"Connected Contracts"** means:

- (a) the Bulk Supply Agreement;
- (b) the Implementation Agreement; and
- (c) the Import Supply Agreement;

**"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 however caused (including the default of another Party or a breach of any duty owed in law by another Party, and whether or not foreseeable at the date of this Agreement);

**"Consortium"** means the consortium established by Çalık Enerji Sanayi ve Ticaret A.Ş., Çalık Elektrik Dağıtım A.Ş. and Limak Yatırım Enerji Üretim İşletme Hizmetleri ve İnşaat A.Ş. for the purposes of entering into the competitive tender process in respect of the privatisation of the Company;

**"Data Room"** means the data room held at the offices of KEK, the contents of which are listed in the Disclosure Letter;

**"Default Rate"** means a rate of interest equal to the lesser of:

- (a) three percent (3%) above LIBOR; or
- (b) the maximum rate, permitted by law from time to time;

**"Disclosed"** means accurately and fairly disclosed (with sufficient details to identify the nature and scope of the matter disclosed) by the Disclosure Documents (and **"Disclosure"** shall be construed accordingly);

**"Disclosure Documents"** means the Disclosure Letter and the two identical bundles of documents collated by or on behalf of the Seller, the outside covers of each of which have been signed for identification by or on behalf of the Seller and the Purchaser;

**"Disclosure Letter"** means the letter described as such, dated as of the date of this Agreement, addressed by the Seller to the Purchaser and referred to in paragraph 7 of Schedule 5;

**"Dispute"** has the meaning assigned to the term in Clause 23;

**"Encumbrance"** means any claim, right to acquire, pledge, charge, mortgage, security, lien, option, equity, power of sale, retention of title or other similar third party rights or any kind of agreement, arrangement or obligation to create any of the foregoing;

**"ERO"** means the Energy Regulatory Office established pursuant to the Law on Energy Regulator;

"Euro" or "€" means the official currency of the European Union;

"Implementation Agreement" means the implementation agreement in the agreed form to be entered to by the Government of the Republic of Kosovo, KEK, the Consortium, the Purchaser and KEDS;

"Import Supply Agreement" means the import supply agreement in the agreed form to be entered to by KEK and KEDS;

"Invitation to Pre-qualify" means the invitation dated 25 January 2011 issued by the Seller inviting offers to purchase the Shares;

"KEK" means Kosovo Energy Corporation J.S.C., a joint stock company incorporated under the laws of the Republic of Kosovo with registration number 70325399 whose registered office is at 36 Mother Theresa Street, Pristina, Kosovo;

"LIBOR" means 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;

"Longstop Date" means May 6, 2013 or such other date as the Seller and the Purchaser shall agree in writing;

"MED" means the Ministry of Economic Development of the Government of Kosovo;

"Parties" means the parties to this Agreement;

"Privatisation Committee" means the committee constituted under Law No. 03/L087 on Publicly Owned Enterprises and conferred with the authority to conduct Privatisation of Publicly Owned Enterprises (as defined under Law No. 03/L087);

"Proceedings" means any proceeding, suit or action (including arbitration) arising out of or in connection with this Agreement;

"Purchase Price" has the meaning given in Clause 3.1;

"Purchaser's Designated Account" means [Bank] [Address] [Account Number] [Sort Code];  
*[Note: Details to be provided by Completion Date]*

"Purchaser Warranties" means the warranties set out in Part 2 of Schedule 4;

"Regulatory Authority" means any court or tribunal of competent jurisdiction or any competent national, governmental or regulatory authority or agency or any legislative body and includes any recognised stock exchange;

"Regulatory Requirements" means any applicable requirement of law, or of any person who has regulatory authority which has the force of law;

"Relevant Warrantor" means:

(a) in relation to the Seller Warranties, the Seller; and

(b) in relation to the Purchaser Warranties, the Purchaser;

"Seller's Designated Account" means:

Bank: Central Bank of the Republic of Kosovo

Address: 33 Garibaldi, 10000, Pristine, Republic of Kosovo

Account Number: 1000400070000180

The transfer to the Ministry of finance account may be executed via the two following banks:

(a) Raiffeisen Bank International AG

BIC Code: RZBAATWWXXX

Address: Am Stadtpark 9, 1030, Vienna, Austria

Bank Sort Code: 31000

IBAN: AT263100000055044937

Account currency: EURO

(b) Deutsche Bank AG

BIC Code: DEUTDEFFXXX

Address: Taunusanlage 12, Frankfurt AM Main, Germany

Bank Sort Code: 50070010

IBAN: DE31500700100935885400

Account currency: EURO

"Seller Warranties" means the warranties set out in Part 1 of Schedule 4;

"Shared Services Agreement" means the Shared Services Agreement to be entered into by the Company and KEK as set out in Schedule 8;

"Shares" means the twenty five thousand (25,000) fully-paid issued ordinary shares of one Euro (€1) each in the capital of the Company (of whatever class) in the capital of the Company in issue from time to time;

"Statement of Qualification" means the statement of qualification submitted by each member of the Consortium to the Privatisation Commission in response to the Invitation to Pre-Qualify;

"Taxation" means:-

(a) all forms of taxation (including value added tax (VAT)) and statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether of Kosovo or any other jurisdiction; and

*[Handwritten signature and initials]*

- (b) any penalty, fine, surcharge, interest, charges or costs payable in connection with any Taxation above, save insofar as attributable to the delay or default after Completion of the Seller or the Company;

**"Transaction Adviser"** means the International Finance Corporation (IFC) acting as the transaction and financial adviser to the Ministry of Economic Development and the Privatisation Committee;

**"Transaction Costs"** means the sum of one million two hundred thousand Euros (€1,200,000) supported by all relevant documentation;

**"Transfer Agreement"** means the transfer agreement to be entered into by the Company and KEK for the transfer of Assets and personnel to the Company as set out in Schedule 6;

**"US Dollars"** or **"USD"** means the official currency of the United States of America; and

**"Warranties"** means the Seller Warranties and the Purchaser Warranties.

## PART 2

### Interpretation

- 1.1 In this Agreement (including the Recitals), unless the context otherwise requires capitalised words used in this Agreement shall have the meanings assigned to them in Part 1 of Schedule 1;
- 1.2 In interpreting this Agreement:
- 1.2.1 reference to any document as being "**in the agreed form**" shall mean that it is in the form agreed between the Seller and the Purchaser and signed for the purposes of identification by or on behalf of the Seller and the Purchaser;
  - 1.2.2 where any statement is qualified by the expression "**so far as the Seller is aware**" or by reference to the knowledge, awareness or belief of the Seller or by an expression of similar import, the statement shall be deemed to be given on the basis of matters which are within the actual knowledge of the Seller;
  - 1.2.3 the table of contents and headings and sub-headings are for convenience only and shall not affect the interpretation of this Agreement;
  - 1.2.4 unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and references to any gender shall include all other genders. References to any person shall include natural persons, bodies corporate, unincorporated associations, partnerships, governments, governmental agencies and departments, statutory bodies or other entities, in each case whether or not having a separate legal personality, and shall include such person's successors;
  - 1.2.5 the words "**other**", "**include**" and "**including**" shall not connote limitation in any way;
  - 1.2.6 references to Recitals, Schedules, clauses and sub-clauses are to (respectively) recitals to, schedules to, and clauses and sub-clauses of, this Agreement (unless otherwise specified) and references within a Schedule to paragraphs are to paragraphs of that Schedule (unless otherwise specified);
  - 1.2.7 references to any statute, statutory provision or other legislation include a reference to that statute, statutory provision or legislation as amended, extended, re-enacted, consolidated or replaced from time to time (whether before or after the date of this Agreement) and include any order, regulation, instrument or other subordinate legislation made under the relevant statute, statutory provision or legislation and in force at the relevant time;
  - 1.2.8 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, organisation, body, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
  - 1.2.9 any reference to "**writing**" or "**written**" shall include faxes and any legible reproduction of words delivered in permanent and tangible form (but not e-mail); and
  - 1.2.10 reference to times of day are (unless otherwise expressly provided) to Pristina time and references to a day are to a period of 24 hours running from midnight on the previous day.



## Schedule 2

### The Company

**Name:** Kosovo Electricity Distribution and Supply Company J.S.C in English;  
Kompania e Kosovare për Distributim dhe Furnizim me Energji Elektrike Sh.  
a. in Albanian; and  
Kosovsko Preduzeće za Distribuciju i Snabdevanje Električnom Energijom  
d.d. in Serbian.  
Each of the English, Albanian and Serbian names of the Company shall be a  
true and correct name of the Company.

**Registered Number:** 70606119

**Date and place of  
Registered  
incorporation:** Incorporated on 24 August 2009 in Pristina, Republic of Kosovo.  
with Kosovo Business Registration Agency on 11 September 2009.

**Registered office:** Elektrokosova Building, No.3 Bill Clinton Boulevard, Pristina, Republic of  
Kosovo

**Share capital:**

- authorised: 25,000 ordinary shares with a par value of €1 (one euro) each.
- issued: 100% of the Share capital of the Company is held by the Seller.

**Shareholders:**

- name: The Seller
- Shares held: 100% of the Share capital of the Company is held by the Seller.

**Directors:**

Fadil Çitaku (Chairman)  
Bregu i Diellit, Zona OENDËR, H/3, Nr 4, 10000 Pristina

Mujë Rugova  
Rr. Agim Ramadani, B-II, nr. 14, 10000 Pristina

Agim Nika  
Dardania SU7/7B, Nr21, 10000 Pristina

Izet Ibrahim  
Zabeli i Ulët, 13000 Drenas

Flamur Kega  
Ulpiana S/12/II, Nr. 10, 10000 Pristina

Arben Gjukaj (ex officio)  
Bregu i Diellit, Rr. Ganimete Terbeshi, nr. 18, 10000 Pristina

**Auditors:** None appointed

**Fiscal No.** 600678471

**VAT No.** 330169905

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## Schedule 3

### Completion Obligations

#### 1. Seller's Obligations

##### 1.1 On Completion, the Seller shall deliver or make available to the Purchaser the following:

- 1.1.1 evidence of the fulfilment of the Conditions set out in Clause 4 for which the Seller is responsible;
- 1.1.2 a validation from the Tax Administration that the Company has no outstanding tax debts or other obligations toward the Tax Administration that is valid at the Completion Date and that no additional Taxation in respect of such period shall be payable by the Seller and / or the Company, and, in addition, all Taxation due and payable by the Seller and / or the Company for the period 1 January 2012 up to the Completion Date has been duly paid;
- 1.1.3 transfer of the Shares duly executed by the registered holders in favour of the Purchaser and have the share ledger amended accordingly;
- 1.1.4 duly executed transfers of the Assets capable of being transferred at Completion, together with the relative documents of title, where applicable;
- 1.1.5 the written resignations (in form acceptable to both the Seller and Purchaser, acting reasonably) of each of the directors and any secretary of the Company;
- 1.1.6 the written resignation (in form acceptable to both the Seller and Purchaser, acting reasonably) of the auditors of the Company, if any are appointed, to take effect on the date of Completion; and
- 1.1.7 the certificates of incorporation, statutory books of the Company (duly written up-to-date).

##### 1.2 The Seller shall procure the passing of board resolutions of the Company:

- 1.2.1 approving the registration of the share transfer (including the endorsement of the share certificates in accordance with Kosovo law);
- 1.2.2 accepting the resignations of the existing directors and appointing such persons as the Purchaser may nominate as directors;
- 1.2.3 the execution of each of the Connected Contracts by the Company are approved and ratified.

#### The Purchaser's Obligations

##### 1.3 On Completion, prior to the passing of the board resolution of the Company in accordance with paragraph 1.2 above, the Purchaser shall deliver, pay or make available to the Seller the following:

- 1.3.1 evidence of the fulfilment of the Conditions set out in Clause 4 for which the Purchaser is responsible; and
- 1.3.2 the Purchase Price.

## **Schedule 4**

### **Warranties**

#### **Part 1**

#### **The Seller Warranties**

##### ***Business of the Company***

1. Prior to assumption of the business of distribution and supply by the Company, the Company had (other than its issued share capital) no Assets, liabilities or obligations and had not traded.
2. The Company does not directly or indirectly own any interest in any corporation, partnership, joint venture or other business entity.

##### ***Shares and Share Capital of the Company/Capitalisation***

3. The Seller is the only legal and beneficial owner of the Shares.
4. The Shares constitute 100% of the issued ordinary share capital of the Company at the date of this Agreement and are fully paid up.
5. The Company has not issued any debentures or agreed to do so.
6. There is no agreement or commitment outstanding which calls for the allotment, issue or transfer of, or accords to any person the right to call for the allotment or issue of any shares or debentures in or securities of the Company.

##### ***Encumbrances***

7. There is no option, right to acquire, mortgage, charge, pledge, lien or other form of security or Encumbrance or other form of security or equity on, over or affecting the Shares or any of them and there is no agreement or commitment to give or create any and no claim has been made by any person to be entitled to any.
8. There is no Encumbrance (or any agreement or commitment to give or create any Encumbrance) on, over or affecting the whole or any part of any of the Assets or undertaking of the Company and no claim has been made against the Company by any person to be entitled to the benefit of any such Encumbrance.

##### ***Authority; Binding Effect***

9. The execution and performance of this Agreement by the Seller have been duly authorised and is within the Seller's powers and all consents and approvals in respect of the transfer of the Shares have been obtained and the Seller warrants that all consents and approval for the transfer of Shares have been received.
10. The provisions of this Agreement constitute binding obligations on the Seller enforceable in accordance with their terms and will not give rise to any breach of any instrument, agreement, law, order, judgement or decree by which the Seller are bound.

##### ***Status of the Company; Constitutional Documents***

11. The Company is a joint stock company duly organised and validly existing under the laws of Kosovo and has the corporate power and authority to execute and perform its obligations under this Agreement and Connected Contracts.
12. Other than as disclosed in the Disclosure Letter, no amendment of the Memorandum and Articles of the Company has been filed, and no amendment of the same has been authorised.
13. No action has been taken for the merger, consolidation, dissolution, winding up or liquidation of the Company.
14. The minute books of the Company contain materially true, accurate and complete records of all meetings and other corporate action taken by the Company and there are no resolutions of the Company which authorise any material obligations of the Company which are not reflected in the minute books.
15. The Company has at all times complied with the provisions of all relevant companies legislation and all returns, particulars, resolutions and other documents required to be filed with or delivered to the registrar of companies or to any other authority whatsoever by the Company have been correctly and properly prepared and so filed or delivered.

***Licences; Permissions; Consents***

16. The transaction contemplated under this Agreement do not violate and are not inconsistent with the terms of the Company's licence and any other provision of applicable law.  
At Completion, the Company shall possess all licences, permits and consents that will allow it to carry on the business of KEK which is transferred to the Company prior to Completion.
17. Except for the Connected Contracts, or agreements which are at arm's length, the Company has not directly or indirectly entered into any of the following transactions with the Seller or any Affiliate of the Seller in connection with which the Company has continuing obligations in effect as of the date of this Agreement:
  - 17.1 the borrowing of any money, or the guarantee of any obligation; or
  - 17.2 the acquisition of any stock, shares or securities; or
  - 17.3 the making of any payment (other than normal salary and bonus payments).

***Assets***

18. At Completion, each of the Assets is either owned both legally and beneficially by the Company or leased or the Company has been granted by statute a 'right of use' over such Asset and all the Assets are in the Company's possession or control.
19. The Company's written standard terms and conditions of employment are attached to the Disclosure Letter and apply to each of the Company's employees.
20. As at the date hereof, no material change has been made in the emoluments or other terms of employment of any senior employee as provided in the Data Room save for increases in emoluments made in accordance with the normal practice of the Company.

***Employees***



21. The Company has materially complied with all its obligations under statute, regulation, code of conduct or practice and collective agreements relevant to the relations between it and its employees.
22. Save as disclosed in the Disclosure Letter or the Data Room, there is no arrangement, custom or practice to which the Company contributes under which benefits of any kind are payable to or in respect of any of its employees on retirement or death or during periods of sickness or disablement.

***Litigation***

23. Save as disclosed in the Disclosure Letter or the Data Room or as provided in the Shared Services Agreement, the Company is not engaged in any litigation or arbitration, administrative or criminal proceedings, whether as plaintiff, defendant or otherwise which is material in the context of its business and where any right of action would exist against it after Completion.
24. So far as the Seller is aware, no such litigation or arbitration, administrative or criminal proceedings as are referred to in paragraph 24 are pending or threatened.

## Part 2

### The Purchaser Warranties

#### *Prequalification Criteria*

1. The written information contained in, provided with or relating to the Statement of Qualification was and remains complete and accurate in all material respects and there are no facts which have not been disclosed to the Seller which would make any such information misleading in any material respect.

#### *Authority; Binding Effect*

2. The execution and performance of this Agreement by the Purchaser has been duly authorised and is within the corporate power of the Purchaser.
3. The provisions hereof constitute binding obligations on the Purchaser enforceable in accordance with their terms and will not give rise to any breach of any instrument, agreement, law, order, judgement or decree by which the Purchaser is bound.

#### *Incorporation*

4. The Purchaser is validly existing and is a company duly incorporated under the law of its jurisdiction of incorporation.

#### *Knowledge*

5. None of the directors, officers, employees, agents or financial, accounting or legal advisers of the Purchaser involved in negotiating the acquisition of the Company is aware of any facts, matters or circumstances which could reasonably be expected to give rise to a claim being made against the Seller for breach of this Agreement or any document to be executed by it pursuant to or in connection with this Agreement.

#### *Licences; Permissions; Consents*

6. The Purchaser has obtained all necessary consents, licences and permissions to enable it to enter into this Agreement, to own the Shares and for the Purchaser to enter into and perform its obligations under this Agreement.

#### *Fees and financing*

7. No broker, funder or investment banker is entitled to any brokerage, finders or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by or on behalf of the Purchaser.
8. The Purchaser has (excepting the Purchase Price) not paid or agreed to pay to Seller any of their respective employees, agents, subcontractors or representatives any money, directly or indirectly, whether in commissions, consultant's fees, agents fees or otherwise or given or agreed to give to any such person any object of material value whether directly or through a third party, regardless of whether this was done by the Purchaser or on its behalf.
9. The Purchaser has, and will have at Completion, available cash and/or committed loan facilities to be able to pay the Purchase Price.



## Schedule 5

### Limitations on Liability

#### 1. General

- 1.1 No Party shall be entitled to claim under the Warranties for any Consequential Loss, and accordingly, the Relevant Warrantor shall not be liable in respect of any claim for any Consequential Loss.
- 1.2 No Party shall be liable in respect of any claim under the Warranties unless and to the extent that such claim is admitted by the Relevant Warrantor or proven in an arbitration tribunal as provided for under Clause 23.
- 1.3 The Seller and the Purchaser will take or procure the taking of all such reasonable steps and actions in order to mitigate any claims under a warranty. However this will not prevent the injured party from initiating arbitration under clause 23 of this Agreement. Nothing in this Agreement shall or shall be deemed to relieve any Party of any duty in law, equity or otherwise to mitigate any loss or damage incurred by it.
- 1.4 Without prejudice to paragraph 3 below, no Party shall be liable and no claim may be made under any of the Warranties, unless, if and to the extent that the matter giving rise to such claim is capable of remedy, the Relevant Warrantor shall have been given the opportunity to remedy such matter, and such matter shall not have been remedied to the reasonable satisfaction of the other Party within the period of thirty (30) days following the date on which the other Party first notifies the Relevant Warrantor of the particular claim.
- 1.5 Each provision of this Schedule 5 shall be read and construed without prejudice to each of the other provisions of this schedule.

#### 2. Quantum

- 2.1 The liability of the Seller in respect of any claim under the Warranties:
  - 2.1.1 shall not arise unless and until the amount of such claim when aggregated with other claims based on substantially the same facts or circumstances exceeds two hundred and fifty thousand Euro (€250,000) in respect of any single item;
  - 2.1.2 shall not arise unless and until the amount of such claim when aggregated with the amount of any other claim made against the Seller under this Agreement exceeds one million Euro (€1,000,000) in which event all of such claim or claims (and not just the excess) shall be recoverable and no minimum shall apply to any subsequent claims;
  - 2.1.3 The total aggregate liability of the Seller in respect of the Warranties shall not in any event exceed seventy-five percent (75%) of the Purchase Price other than in the case of the matters which are the subject of paragraphs 7 and 9 of Schedule 4 of the Agreement, where the total aggregate liability of the Seller in respect of the Warranties shall not in any event exceed one hundred percent (100%) of the Purchase Price.

#### 3. Time limits

- 3.1 The liability of the Seller in respect of any claim under the Warranties shall cease on the third anniversary of Completion, except in respect of matters which before that period expires have been the subject of a bona fide written claim made by or on behalf of the Purchaser to the Seller



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3.2 Any such claim shall (if it has not previously been satisfied, settled or withdrawn) be deemed to have been withdrawn unless legal proceedings in respect of it have been commenced by both being issued and served within twelve (12) months of the date of such notification to the Seller.

No Party (and for the purpose of this paragraph 4, the Purchaser and the Company shall together be a Party) shall be entitled to recover damages or otherwise claim reimbursement or restitution (whether pursuant to this Agreement or otherwise) more than once in respect of the same loss.

If any claim under the Warranties arises by reason of a liability which is a contingent liability when the claim in respect thereof is notified to the Relevant Warrantor pursuant to paragraph 3 above, then the Relevant Warrantor shall not be obliged to make any payment to the Party bringing the claim until such time as the contingent liability ceases to be contingent and becomes an actual liability. So long as any claim arising by reason of a contingent liability shall have been notified to the Relevant Warrantor in accordance with paragraph 3 above, then the proviso to paragraph 3 above shall be deemed to be amended in relation to such claim so as to require that proceedings be commenced within six (6) months from the date on which the said liability ceases to be so contingent and becomes an actual liability.

6.1 No Party shall be liable in respect of any claim under any of the Warranties if and to the extent such claim is attributable to:

- 6.1.1 any voluntary act, omission, transaction, or arrangement carried out at the request of or with the consent of the other Party or its Affiliate or, in the case of the Company, the Purchaser or its Affiliate, before Completion or under the terms of this Agreement or any other Connected Contract; or
- 6.1.2 any voluntary act, omission, transaction, or arrangement carried out by the other Party or its Affiliate or, in the case of Company, the Purchaser or its Affiliate, on or after Completion.

7.1 The Seller shall not be liable under the Warranties to the extent that:

- 32

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- (d) wholly or partly as a result of the passing or coming into force of or any change in any enactment, law, regulation, requirement or any published practice of any government, government department or agency or regulatory body after Completion, whether or not having retrospective effect:

provided that no exclusion of liability will apply under paragraph 7.1.2(c) and (d) where any such law, regulation, requirement or any published practice unduly discriminates against the rights and obligations of the Purchaser and / or KEDS specifically (and no other person and/or third party) and in so doing denies the Purchaser of the benefit of this Agreement.



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LRP- nr. Rend. 591/2013-----

Vërtetim kopje nga dokumenti origjinal-----

Vërtetohet se ky dokument është kopje e dokumentit origjinal "AGREEMENT – for the sale and purchase of the entire issued share capital of Kompania kosovare per Distribuim dhe urnizim Me Energji Elektrike SH.A", dated 17 October 2012, e cila është identike me origjinalin e saj, të përcaktuar nga vetë pala si original. Dokumenti përbëhet prej 34 faqe dhe 34 fletë dhe të njejtën e vërtetoj në 1(një) kopje, në vlerë prej 34 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. -----

