



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

Kosovo Electricity Distribution and Supply Privatisation

IMPLEMENTATION AGREEMENT

October 2012

Dated

17 October 2012

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

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

Handwritten initials and signature

Table of Contents

1.	Definitions, Interpretation and Language	1
2.	Effectiveness and Term.....	2
3.	Obligations of GoK.....	2
4.	Investors' Change in Control and KEDS's Rights and Obligations	4
5.	Force Majeure	9
	Events of Force Majeure.....	9
6.	Indemnities.....	10
	Right to Defend Action.....	11
	Indemnified Party not to Compromise.....	11
7.	Not Used	11
8.	Termination.....	11
	KEDS Events of Default.....	11
	Termination.....	12
9.	Dispute Resolution.....	13
10.	Governing law.....	15
11.	Currency, Due Date of Payment and Delayed Payments.....	15
12.	Enforcement.....	15
13.	Sovereign Immunity.....	15
14.	Notices	16
15.	Confidentiality and Publicity	17
16.	Amendments	17
17.	Waiver.....	17
18.	Successors.....	17
19.	Assignment and Transfers of Interest	17
20.	Severability	17
21.	Relationship of Parties	18
22.	Good Faith	18
23.	Further Assurance	18
24.	Entirety of Agreement.....	18
25.	Costs.....	18
26.	Survival.....	19
27.	Counterparts.....	19
28.	Variation	19
	Schedule 1 Definitions and Interpretation.....	22
	Schedule 2 Part 1 Share Sale and Purchase Agreement (SPA), Part 2 Bulk Supply Agreement (BSA) and Part 3 Import Supply Agreement (ISA).....	26

ND #

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

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

Each a “Party” and collectively the “Parties”.

WHEREAS

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

NOW, THEREFORE, IT IS AGREED as follows:

1. Definitions, Interpretation and Language

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

- 1.2 Certain rules of interpretation which apply to this Agreement are set out in Schedule 1, Part 2.
- 1.3 The language of negotiation of this Agreement has been English, this Agreement is executed in English, and the English text shall prevail for all purposes of determining the intention of the Parties and in any construction of this Agreement.

2. Effectiveness and Term

This Agreement shall come into full force and effect on and from the date of the signing of this Agreement and shall then continue in full force and effect until terminated in accordance with Clause 8.

3. Obligations of GoK

- 3.1 The GoK shall provide the following in support of KEDS and shall continue to do so with respect to any reorganisation of the KEDS's Business which sees KEDS separate its functions with respect to the electricity distribution system from the supply of electrical energy, including by way of separate legal entities. So long as such entities remain Affiliates of KEDS, the GoK's obligations under this Clause 3 and this Agreement shall continue in effect to the benefit of and as may be relevant to such Affiliates, in which respect KEDS shall have the right to enforce such obligations on their behalf:

3.1.1 Licences and Work Permits

- (a) Subject to applicable law and KEDS and its contractors complying with the conditions for grant of a licence, permit or consent, the GoK agrees to provide all reasonable assistance to KEDS in obtaining all such licences, permits or consents of whatever kind and nature and their contractors, as the case may be, from any Competent Authority in connection with KEDS's Business, provided that any prescribed fee or costs of such licence, permit or consent shall be payable by KEDS as the case may be; and
- (b) subject to applicable laws the GoK agrees to provide all reasonable assistance to the Investors, the Purchaser and KEDS in granting Work Permits and Visas for KEDS's Foreign Personnel engaged in KED's Business.

3.1.2 Non-Discrimination

Neither the GoK nor any Competent Authority shall take any action or combination of actions, unless permitted by this Agreement, which, in comparison to other entities engaged or who may become engaged in the distribution and supply of electrical energy in Kosovo or in the sale of electrical energy for distribution and supply, is discriminatory against KEDS.

3.1.3 Performance of KEK

Subject to applicable law, for so long as it subscribes to any shareholding in KEK, the GoK shall ensure the proper performance by KEK of any of KEK's contracted obligations arising directly between KEK and KEDS, including but not limited to those arising under the BSA and ISA.

3.1.4 Foreign currency accounts and repatriation

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

3.1.5 Maintenance of Shareholdings

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

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

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

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

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

4.1 Change in Control

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

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

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

4.2 KEDS Reorganisation

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

4.3 Future PPA's

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

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

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

4.4 Finance

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

4.5 To Provide all Information Under Approvals

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

4.6 Compliance with Licences

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

4.7 Duty to Keep Facilities Secure

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

4.8 Compliance with Laws

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

4.9 Procurement of Goods and Services

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

4.9.2 KEDS shall procure goods and services on commercial terms and on an arm's length basis.

4.10 Rights of Transferred Employees

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

4.10.1 KEDS shall continue to provide employment to all its employees at the date of Completion (as that term is defined in the Share Sale and Purchase Agreement), for a minimum period of three years on and from such date; and

4.10.2 notwithstanding anything to the contrary in such Law No. 03/L – 212 On Labour any employee on a fixed period employment contract which would expire within three years on and from such date of Completion shall be entitled to an extension to that term until the third anniversary of such date of Completion.

4.11 Compliance with specified procedures and performance standards

4.11.1 KEDS shall at all times comply with the legal Kosovar law and the applicable environmental and social standards and guidelines to which Equator Principles refer.

4.11.2 KEDS shall conduct any ESIA, as and when required after the Completion Date, in compliance with the laws of Kosovo and the applicable environmental and social standards and guidelines to which Equator Principles refer, (as these may be amended and/or restated from time to time). Pursuant to any ESIA, if KEDS identifies specific issues requiring mitigation, it shall prepare an action plan and submit this to GoK for review. Further to such submission, KEDS shall take all reasonable necessary mitigation measures as set out in the Action Plan to ensure KEDS and KEDS's Business operates in continued compliance with the laws of Kosovo, and the Equator principles.

4.11.3 KEDS shall operate KEDS's Business with formal documented environmental, health and safety and social management systems following the requirements of the Equator principles, and shall obtain and maintain ISO14001 and OHSAS 18001 Management System Certifications.

4.12 Conduct

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

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

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

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

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

4.13 GoK Step in Rights

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

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

5. **Force Majeure**

Events of Force Majeure

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

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

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

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

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

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

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

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

6. Indemnities

6.1 GoK Indemnity

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

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

Right to Defend Action

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

Indemnified Party not to Compromise

- 6.3
- 6.3.1 Where the GoK has an obligation under Clause 6.1, of indemnifying KEDS, KEDS shall not compromise or in any way settle any claim, lawsuit, action or cause of action without the express written consent of the GoK . Where such consent is not obtained prior to such compromise or settlement, the GoK shall be released and discharged from all obligations under Clause 6.1.1 or 6.1.2, as the case may be.
- 6.3.2 Any payment payable by the GoK to the indemnified Party pursuant to this Article 6 shall be paid within forty five (45) days from the date on which the indemnified Party makes any payment in connection with a third party claim as first agreed in writing by the GoK.

7. Not Used

8. Termination

KEDS Events of Default

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

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

8.2 Consequences of KEDS Event of Default

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

Termination

8.3

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

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

unless such notice of termination has been withdrawn.

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

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

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

8.4 Consequences of Termination.

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

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

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

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

9. Dispute Resolution

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

- 9.1.1 the statement of claim and the notification of the appointment of an arbitrator shall be included in the notice of arbitration;
- 9.1.2 the appointing authority shall be the President of the Geneva Chamber of Commerce; the number of arbitrators shall be 3 (three);
- 9.1.3 the place of arbitration shall be Geneva, Switzerland;
- 9.1.4 the language to be used in the arbitral proceedings shall be English;
- 9.1.5 Article 22 of the UNCITRAL Rules shall not apply and a Party shall not be allowed to amend or supplement its statement of claim or statement of defence unless the other Party agrees in writing, or the arbitral tribunal considers it appropriate, to allow such amendment or supplement, having regard to the delay in making it and any prejudice caused to the other Party or any other relevant circumstances;
- 9.1.6 either Party may request an oral hearing, but the arbitral tribunal established pursuant to this Clause 9.10 (the "Arbitration Tribunal") shall have the discretion whether or not to hold such a hearing unless the request is supported by the other Party;

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

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

10. Governing law

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

11. Currency, Due Date of Payment and Delayed Payments

11.1 All payments under this Agreement shall be due in EUROS/US Dollars and may be made in EUROS/US Dollars in an amount equivalent to the amount due in EUROS/US Dollars at the rate of exchange prevailing on the date of payment, as certified by the Central Bank of Kosovo.

11.2 A Party entitled to payment under this Agreement shall raise an invoice on the other Party accompanied by supporting calculations of the amounts claimed and where the sending Party relies on the data and documents maintained by it, such data and documents shall be made available for inspection by the receiving Party on reasonable prior notice.

11.3 Unless otherwise specified in this Agreement, any amount payable by one Party to the other Party pursuant to this Agreement shall be paid within forty-five (45) days from the date of the invoice raised by the Party and where disputed, when agreed or determined.

11.4 When making payment of a disputed sum, the Party liable to make payment shall pay interest:

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

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

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

12. Enforcement

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

13. Sovereign Immunity

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

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



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

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

14. Notices

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

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

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

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

14.1.4 Kosovo Çalık Limak Energy Sh.A., Qyteza Pejton, Mbreti Zog 1. No. 09 Prishtinë 10000, Kosovë, Fax: +381 38 609 258, For the attention of: Mr. Mesut Serhat Dinç, Deputy General Manager, Energy Group;

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

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

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

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

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

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

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

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

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

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

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

15. Confidentiality and Publicity

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

16. Amendments

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

17. Waiver

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

18. Successors

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

19. Assignment and Transfers of Interest

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

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

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

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

20. Severability

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

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

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

21. Relationship of Parties

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

22. Good Faith

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

23. Further Assurance

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

24. Entirety of Agreement

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

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

25. Costs

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



26. Survival

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

27. Counterparts

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

28. Variation

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

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

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

By:



Name: **Mr. Besim Beqaj**

Designation: **Minister, Ministry of Economic Development**

For and on behalf of KEK in the presence of:


Name: **Arben Cjukaj**

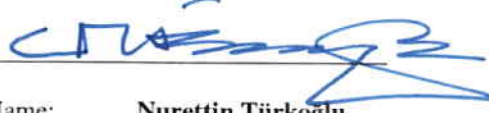
Designation: **Managing Director, KEK**


Name: **Fadil Çitaku**

Designation: **Chairman, Board of Directors, KEK**



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



Name: **Nurettin Türkoğlu**

Designation: **Çalık Enerji Sanayi ve Ticaret A.Ş.**



Name: **Nurettin Türkoğlu**

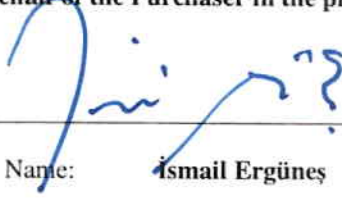
Designation: **Çalık Elektrik Dağıtım A.Ş.**



Name: **Mesut Serhat Dinç**

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

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



Name: **İsmail Ergüneş**

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



Name: **Nurettin Türkoğlu**

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

Name: **Nihat Özdemir**

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



For and on behalf of KEDS in the presence of:



Name: **Mujë Rugova**

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



Schedule 1

Part 1

“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;

“Bidding Rules” shall mean the so named Bidding Rules for the Kosovo Electricity Distribution and Supply Privatisation issued by the Government of the Republic of Kosovo acting through the Ministry of Economic Development under which the Investors became the Awardee in relation to such privatisation;

“Business Day”: any day, other than Friday, Saturday and public holidays, on which banks are open for business in Kosovo, Istanbul and New York;

“Bulk Supply Agreement” or **“BSA”** means the agreement of that name of the same date as this Agreement between KEK and KEDS in the form set out in Schedule 2, Part 2;

“Competent Authority”: the GoK or any GoK agency or any provincial or national authority, department, inspectorate, minister, official, court, tribunal or public or statutory body (whether autonomous or not), (including for the avoidance of doubt any licensing authority) exercising a statutory authority, but in all cases excluding the ERO;

“Completion Date”: has the meaning assigned to the term in the Share Sale and Purchase Agreement;

“Default Rate”: an annual rate of interest equal to lesser of:

- (a) **Eight (8%)** per cent above LIBOR; or
- (b) the maximum rate permitted by law from time to time

as determined at the date on which liability for payment arose;

“Dispute”: has the meaning assigned to the term in Clause 9.1;

“EHS Guidelines”: means IFC’s Environmental, Health, and Safety Guidelines for Electric Power Transmission and Distribution dated 30 April 2007 (as these may be amended, restated or updated from time to time) and any additional guidelines communicated to KEDS by IFC from time to time;

“Environmental, Health and Safety Procedures”: means IFC’s Environmental, Health and Safety General Guidelines dated 30 April 2007 (as these may be amended, restated or updated from time to time);

“Environmental Standards”: the standards and technical rules drawn up from time to time by the relevant Competent Authority pursuant to law for the purpose of protecting the environment, including: (1) the protection of human health, flora, fauna and the ecosystems on which they depend; and (2) the assessment of environmental impacts and the protection of air, land and water;

“ERO”: means 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;

“ESIA”: means the environmental and social impact assessment to be carried out by KEDS

“Event of Default”: either the GoK Event of Default or the KEDS Event of Default, as the case may be;

“EUROS”: is the official currency of the European Union;

“Event of Force Majeure”: has the meaning assigned to the term in Clause 5.1;

“Facilities”: the distribution system and all associated plant, equipment, transformers, meters, cables and control systems owned by KEDS;

“Force Majeure Event” has the meaning assigned to the term in Clause 5.1.

“Future Retrenchment Procedures”: means the retrenchment procedures as these are set out in IFC’s Good Practice Note Number 4 dated August 2005 but only in respect of any future retrenchment undertaken by KEDS or its unbundled operations registered in separate legal entities;

“GoK”: the Government of the Republic of Kosovo;

“GoK Step in Rights” : has the meaning given assigned to the term in Clause 8.4;

“IFC”: means the International Finance Corporation;

“Import Supply Agreement” or **“ISA”** means the agreement of that name of the same date as this Agreement between KEK and KEDS in the form set out in Schedule 2, Part 3;

“KEDS’s Business”: the operation, maintenance and ownership of the Facilities for the distribution of electrical energy, together with the sale and purchase of electrical energy including the supply of electrical energy to consumers and parts of those activities;

“KEDS Event of Default”: has the meaning assigned to the term in Clause 8.1;

“Kosovo B (Retrofitted) PPA”: means a power purchase agreement of that name as disclosed to the Investors prior to the date of this Agreement;

“KOSTT”: means KOSTT, J.S.C., a joint stock company organised under the laws of Kosovo, with its principal office at Pristina, Kosovo, or its successor in interest in the event KOSTT ceases to perform any of the functions of the Kosovo Electricity Transmission System and Market Operator under the applicable grid code and marketing rules;

“KRPP PPA”: shall mean the power purchase agreement of that name as disclosed to the Investors prior to the date of this Agreement;

“LIBOR”: in relation to any period for which an interest rate is to be determined under this Agreement, the arithmetic mean (rounded upwards, if necessary, to the nearest whole multiple of one sixteenth of one percent (1/16%) of the U.S. Dollar London Interbank Offered Rates for such period appearing on page 3750 (or such other page as may replace page 3750) of the Reuters screen at or about 11:00 a.m. (London time) on the second Business Day prior to the first day of such 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;

“Reference Interest Rate”: a rate of interest equal to the lesser of:

- (a) Eight (8 %) above the one month LIBOR from time to time; and
- (b) the maximum rate permitted from time to time under Kosovan Law.

“Share Sale and Purchase Agreement” or **“SPA”**: the agreement executed between the GoK, KEK, and the Investors, as of the date of this Agreement, for purchase by Investors of GoK’s shares in KEDS 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;

“Termination Notice”: the notice issued pursuant to Clause 8.2.1 by KEDS or Clause 8.2.2 by the GoK, as the case may be, for terminating this Agreement; and

“US Dollars” and **“USD”**: the official currency of the United States of America.

PART 2

- 1.1 In this Agreement (including the Recitals), unless the context otherwise requires:
 - 1.1.2 capitalised words used in this Agreement shall have the meanings assigned to them in Schedule 1;
 - 1.1.3 words, importing persons or parties shall include firms and corporations and all references to persons shall include their permitted successors and assigns;
 - 1.1.4 words importing the singular only also include the plural and vice versa where the context requires;
 - 1.1.5 words importing the masculine shall include the feminine and neuter and vice versa;
 - 1.1.6 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;

- 1.1.7 the Recitals and the Schedules shall be deemed to be part of this Agreement and all references to Recitals, Articles, Clauses and Schedules, shall be construed as references to recitals of, articles of, Clauses of and schedules to this Agreement, and references to paragraphs in a Clause or Schedule shall be construed as reference to paragraphs of that Clause or Schedule, unless indicated otherwise; and
- 1.1.8 references to any law or statute shall be construed as a reference to that law or statute, as amended from time to time.

Schedule 2

Part 1

The Share Sale and Purchase Agreement (SPA)

Part 2

The Bulk Supply Agreement (BSA)

Part 3

The Import Supply Agreement (ISA)



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.**

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

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

BHD

1/10

THIS AGREEMENT is made on the 17th 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, Prishtine 10000, Kosove (the "Seller"); and
- (2) **Kosovo Çalık 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 1. 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 Distribuim 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;

- 5.1.11 increase or reduce the number of employees engaged in any part of the business to any material degree or move any employee from one part of the business to another;
- 5.1.12 make any distribution, declaration, authorisation, or payment to shareholders of the Company, including a dividend in specie or dividend in kind or any reduction of share capital;
- 5.1.13 create, allot, issue or grant any option over or other right to subscribe or purchase, or redeem, purchase or repurchase any shares of the Company or securities convertible in such shares or any loan capital of the Company;
- 5.1.14 repay, redeem or repurchase any share capital or loan capital of the Company;
- 5.1.15 form any subsidiary or acquire shares in any company or participate in, or terminate any existing participation in, any partnership, joint venture or profit sharing agreement;
- 5.1.16 alter any of the Company's constitutional documents;
- 5.1.17 make any proposal for the winding-up or liquidation of the Company or any scheme or plan or arrangement, reconstruction, amalgamation or demerger;
- 5.1.18 enter into any new material contract or transaction with any Affiliate of the Seller otherwise than in the ordinary course of business and on arm's length terms;
- 5.1.19 alter any material terms of any existing borrowings or incur any additional borrowings or other indebtedness on behalf of the Company in excess of the Aggregate Amount, otherwise than in the ordinary course of business borrow any money or incur any indebtedness;
- 5.1.20 initiate, settle or abandon any litigation which is material to the business of the Company except, in any case, in relation to debt collection in the ordinary course of the business or litigation where the monetary value of any claim is worth less than five hundred thousand Euro (€500,000).
- 5.1.21 do anything which would constitute a breach or event of default under any loan agreement or vary the terms of any such loan agreement;
- 5.1.22 do anything which would constitute a breach or event of default under any Connected Contract, to the extent such Connected Contract is executed before the date of this Agreement; and
- 5.1.23 establish or change the terms of any employee benefit, bonus or share option scheme.

For the purposes of Clauses 5.1.1, 5.1.3 and 5.1.19, the "Aggregate Amount" shall be an amount equal to five hundred thousand Euros (€500,000) and such amounts calculated under the aforementioned clauses shall not in aggregate exceed the Aggregate Amount. For the purposes of this Clause 5.1, "material" shall mean something which is material or commercially significant (whether in terms of a financial or other obligation) in the context of the matter in question in relation to the transaction as a whole which is contemplated by this Agreement. The Seller undertakes to procure that from the date of this Agreement until Completion:

- 5.1.24 the Purchaser and its representatives shall be given all reasonable access to the premises, Assets, books, records and accounts of KEK, to the extent relevant to this transaction, or the Company and shall be permitted to make such inspections as may

Handwritten initials/signature

be reasonably requested by the Purchaser, and be given all such financial and operating information as the Purchaser and its representatives may reasonably request provided that:

- (a) such access shall be granted and such inspections shall be conducted in such a manner so as not to interfere unreasonably with the operation of the business of KEK or the Company or the Seller; and
- (b) the Purchaser and its representatives shall strictly observe all relevant regulations and security procedures of KEK and the Company and the Seller then in force and shall promptly carry out all reasonable requests and instructions given to them and their representatives; and
- (c) access to premises within certain areas may be restricted on security and safety grounds; and

5.1.25 save in the case of operational necessity or emergency or circumstances beyond its control, the Company shall maintain and carry on substantially all of its business as a going concern and in all material respects in the ordinary and usual course as carried on prior to the date of this Agreement, in each case save in so far as agreed in writing by the Purchaser such consent not to be unreasonably withheld or delayed and, in particular, shall comply with the provisions set out in Clause 5.1.

5.2 The Company shall notify the Purchaser in writing of the time and place for any management or Board meetings of the Company, such notice (save in the case of emergency) to be received not later than five (5) Business Days prior to any such meeting being held. Any resolution passed at a Board meeting of the Company shall be deemed null and void in the event that the Purchaser has not been given the requisite five (5) Business Days' notice prior to such meeting. The Purchaser shall be entitled to appoint two observers to attend such management and Board meetings in the capacity of observers only.

Termination rights prior to Completion

5.3 The Seller may by written notice served on the Purchaser prior to Completion, terminate this Agreement if:

5.3.1 any meeting of the creditors of the Purchaser is held with a view to the general readjustment or rescheduling of its indebtedness or any general assignment or composition with or for the benefit of its creditors is proposed or entered into by the Purchaser; or

5.3.2 a receiver, administrator or liquidator or similar officer takes possession of or is appointed over, or any distress, execution or other process is levied against or enforced upon, the whole or any substantial part of the business or assets of the Purchaser; or

5.3.3 the Purchaser ceases or threatens to cease to carry on business or is or becomes unable to pay its debts as they fall due; or

5.3.4 in relation to the Purchaser, a court petition is presented and remains uncontested for a period of thirty (30) days following notice thereof for, or a meeting is convened for the purpose of considering its winding-up, bankruptcy or dissolution or circumstances exist which would permit such a court petition to be presented; or

5.3.5 the written information contained in, provided with or relating to the Statement of Qualification ceases to remain true and correct in any material respect,

in which event, and notwithstanding termination of this Agreement, the Seller shall have the right to call upon the Bid Bond at any time following the occurrence of any of the circumstances set out in Sub-clauses 5.4.1 to 5.4.5 above.

5.4 If this Agreement is terminated pursuant to Clause 5.3, it shall (except for Clause 5.4 and this Clause 5.5 and the provisions set out in Clause 10.2) 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.

5.5 The sole remedy of the Purchaser for breach by the Seller of Clause 5.1 shall be an action for damages against the Seller and the Purchaser shall not be entitled to rescind or terminate this Agreement.

6. Completion

Completion

6.1 Completion shall take place at the offices of the Ministry of Economic Development, Prishtina, Kosovo, on the date falling five (5) Business Days after satisfaction (or waiver, to the extent permitted) of all the Conditions (or at such other time and place as the Parties shall agree). In the event that the satisfaction of all Conditions is achieved on the Long Stop Date (or on any of the preceding four (4) Business Days), then Completion shall occur on the Long Stop Date or such date as the Parties agree.

6.2 On Completion, the Seller and the Purchaser shall comply with their respective obligations specified in Schedule 3.

Failure to comply

6.3 If the Purchaser fails in any material respect to comply with its completion obligations set out this Clause 6 on the date specified for Completion in Clause 6.1, the Seller will not be obliged to complete the sale and purchase of the Shares in accordance with this Agreement and may immediately by written notice:

6.3.1 defer the date set for Completion to a date not more than sixty (60) days after the date set out in Clause 6.1;

6.3.2 without prejudice to its rights under this Agreement, proceed so far as practicable with the transactions contemplated by this Agreement in relation to the sale and purchase of the Shares;

6.3.3 call upon the Bid Bond; or

6.3.4 terminate this Agreement, in which event:

(a) the Purchaser shall, within ten (10) Business Days of the date of termination, pay to the Seller, or as it directs in writing, an amount equal to five percent (5%) of the Purchase Price;

(b) unless such right has been exercised under Clause 6.3.3, the Seller shall have the right to call upon the Bid Bond; and

(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.

Information supplied by the Company

- 8.4 The Seller undertakes to the Purchaser to waive any and all claims (including for negligence) that the Seller might otherwise have against the Company or its officers, employees, agents or consultants or any of them in respect of any information that any such person has in any capacity supplied to the Seller in connection with the Warranties and/or the information Disclosed.

Reliance

- 8.5 The Seller accepts that the Purchaser has been induced to enter into this Agreement, and has entered into it, upon the basis of and in reliance upon the Warranties.

9. Limitation of Seller's liability

Limitations on liability

- 9.1 The Seller's liability in respect of any claim under the Warranties shall be limited as provided in Schedule 5.

Exclusions from Clause 9

- 9.2 Notwithstanding any other provision of this Agreement, the provisions of this Clause 9 and Schedule 5 shall not apply to any claim made against the Seller in the case of any fraud, dishonesty, wilful misstatement or wilful omission by or on behalf of the Seller.

Independent investigation

- 9.3 The Purchaser acknowledges and agrees that, save as provided in the Seller Warranties, the Seller makes no representation or warranty as to the accuracy of the forecasts, estimates, projections, statements of intent or statements of opinion provided to the Purchaser on or prior to the date of this Agreement or in the documents provided to the Purchaser or their respective advisers (including the documents contained in the Data Room).

- 9.4 The Purchaser confirms that it has made its own independent investigation, inspection, analysis and evaluation of all matters relating to and connected with the business of the Company and the business of KEK in so far as it relates to the transaction contemplated by this Agreement including:

- 9.4.1 the business, Assets and liabilities of (i) the Company and (ii) KEK in so far as such business, Assets and liabilities relates to the transaction contemplated by this Agreement;
- 9.4.2 the regulatory regime for the electricity sector in the Republic of Kosovo to which the Company is subject;
- 9.4.3 the Republic of Kosovo itself;
- 9.4.4 the legal, financial and taxation consequences of entering into this Agreement; and
- 9.4.5 the provisions of all regulations, directives and decisions made by ERO and the implications thereof,

and has entered into this Agreement on the basis of such investigation, inspection, analysis and evaluation and not in reliance on any information or representation which may have been given

or made available to it by the Seller, MED, ERO or the Company or any of their officers, employees, consultants or advisers.

9.5 The Purchaser acknowledges that:

9.5.1 without prejudice to Seller Warranties under Schedule 4, it has satisfied itself as to the state and condition of the Assets in whatever condition such Assets may be and will acquire the Assets with all their technical or structural defects (or other defects of similar nature), whether patent or latent.

9.5.2 it is not entering into this Agreement in consequence of or in reliance of any communication or announcement which is not lawfully made under the laws of the Republic of Kosovo (or the laws applicable to the jurisdiction in which the Purchaser is domiciled) by the Seller or the Seller's professional advisers.

10. Termination

Accrued liabilities

10.1 On termination, the rights and liabilities of the Parties that have accrued beforehand shall subsist.

Surviving provisions

10.2 This Clause and the following provisions of this Agreement shall survive termination, without limit of time:

10.2.1 Clause 1; and

10.2.2 Clauses 8 to 28 inclusive.

11. Further assurance

11.1 The Parties shall, from time to time do or procure the doing of all such acts and/or execute or procure the execution of all such documents as the Parties may reasonably consider necessary for giving full effect to this Agreement (or to such parts of it as remain operative after termination).

11.2 Following Completion, the Purchaser shall, and shall procure that the Company shall, use its reasonable endeavours to agree commercially acceptable terms in order for the Company to enter into power purchase agreements with a company procured by GoK to build and operate a new generation facility currently referred to as GenCo.

12. Confidentiality and Publicity

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

13. Assignment

Except as provided for in the Implementation Agreement, no Party may assign or transfer the benefit of this Agreement whether absolutely or by way of security, without the prior consent in writing of the other Party and any purported assignment in contravention of this Clause shall be ineffective.

14. Waiver; variation; invalidity

No waiver by omission, delay or partial exercise

- 14.1 No right, power or remedy provided by law or under this Agreement shall be waived, impaired or precluded by any delay or omission to exercise it, by any single or partial exercise of it on an earlier occasion, or by any delay or omission to exercise, or single or partial exercise of, any other such right, power or remedy.

Specific waivers to be in writing

- 14.2 Any waiver of any right, power or remedy under this Agreement must be in writing and may be given subject to any conditions thought fit by the grantor. No waiver will take effect if the person seeking the waiver has failed to disclose to the grantor every material fact or circumstance which (so far as the person seeking the waiver is aware) has a bearing on its subject matter. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

Variations to be in writing

- 14.3 No variation to this Agreement shall be of any effect unless it is agreed in writing and signed by or on behalf of each Party.

Invalidity

- 14.4 Each of the provisions of this Agreement is severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that shall not affect or impair the legality, validity or enforceability in that jurisdiction of the other provisions of this Agreement, or of that or any other provision of this Agreement in any other jurisdiction. In the event that a term becomes illegal, invalid or unenforceable, the Parties shall meet as soon as reasonably practicable in order to agree a way forward so as to preserve the intentions of the Parties as contemplated by this Agreement.

15. Costs and expenses

Payment of costs

- 15.1 Except as otherwise stated in this Agreement, each Party shall bear its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other agreements forming part of the transactions contemplated by this Agreement.
- 15.2 The Purchaser shall be responsible for and shall pay to the Transaction Adviser the Transaction Costs within ten (10) Business Days following Completion.

16. Payments

No deduction etc

- 16.1 Except as otherwise expressly provided in this Agreement, all payments to be made under this Agreement shall be made in full without any set-off or counterclaim and free from any deduction or withholding except as may be required by law (in which event such deduction or withholding shall not exceed the minimum amount required by law and the payer will simultaneously pay to the payee whatever additional amount is required for the net amount received to equal what would have been received if no such deduction or withholding had been required). Any amount payable in relation to any Warranty, indemnity or undertaking shall be

increased to the extent necessary to ensure that the net amount received by the Purchaser shall after taxation be equal to that which it would have received had the payment not been subject to taxation.

Interest on late payment

- 16.2 If a Party fails to pay any sum payable by it under this Agreement on the due date for payment, it shall pay interest on such sum for the period from and including the due date up to the date of actual payment (after as well as before judgment) at the Default Rate. The interest will accrue from day to day on the basis of the actual number of days elapsed and a 365-day year and shall be payable on demand and compounded monthly.

17. Entire agreement

This Agreement

- 17.1 In this Clause, references to this Agreement include all other written agreements and arrangements between the Parties, and all other instruments, which are expressed to be supplemental to this Agreement or which this Agreement expressly preserves or requires to be executed.

Entire agreement

- 17.2 This Agreement constitutes the whole and only agreement and understanding between the Parties in relation to its subject matter. Subject to sub-clause 17.4, all previous drafts, agreements, understandings, undertakings, representations, warranties, promises and arrangements of any nature whatsoever between the Parties with any bearing on the subject matter of this Agreement are superseded and extinguished to the extent that they have such a bearing, except insofar as any such thing is in terms repeated or otherwise reflected in this Agreement.

Other remedies

- 17.3 The rights, powers and remedies provided in this Agreement are independent and cumulative and do not exclude any rights, powers or remedies (express or implied) which are available as a matter of common law, statute, custom or otherwise.

Fraud

- 17.4 Nothing in this Agreement shall be read or construed as excluding any liability or remedy in respect of fraud.

18. Counterparts

This Agreement may be executed in any number of counterparts and by the Parties on different counterparts. Each counterpart shall constitute an original of this Agreement but all the counterparts shall together constitute one and the same Agreement.

19. Notices

Form of notices

- 19.1 Any communication to be given in connection with the matters contemplated by this Agreement shall except where expressly provided otherwise be in writing and shall either be delivered by

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.

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 alık Limak Energy Sh.A.

Name: İsmail Ergüneş

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

Name: Nurettin Türkođlu

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

Name: Nihat Özdemir

Designation: Chairman of Board, Kosovo alık 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, 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



- (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 Distribuim 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 Ulet, 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

Handwritten signature

Handwritten mark

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

giving reasonable details of all material aspects of the claim, including the Purchaser's bona fide estimate of the amount.

- 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.

4. Recovery

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.

5. Contingent Liabilities

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. Voluntary Acts

- 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. Disclosure

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

7.1.1 the facts which might result in a claim or possible claim under the Warranties were Disclosed;

7.1.2 a claim under the Warranties arises or is increased:

- (a) as a result of an act or omission on the part of the Seller occurring at the request of or with the written consent of the Purchaser after Completion;
- (b) as a result of an act or omission of the Company after Completion (otherwise than in the ordinary course of trading);
- (c) as a result of an act or omission compelled by law; and



- (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.

Handwritten initials and a signature in the bottom right corner of the page.

TRANSFER AGREEMENT

BETWEEN

KOSOVO ENERGY CORPORATION, J.S.C (KEK)

AND

**KOSOVO ELECTRICITY DISTRIBUTION AND SUPPLY COMPANY, J.S.C
(KEDS)**

October 2012

This Transfer Agreement is entered into by and between:

- (1) **Kosovo Energy Corporation, J.S.C.** a company duly incorporated under the laws of Kosovo with registered number 70325399 whose registered office is at No. 36 Mother Theresa Street, Pristina 10000, Kosovo (hereinafter "KEK"); and
- (2) **Kosovo Electricity Distribution and Supply Company, J.S.C.** a company duly incorporated under the laws of Kosovo with registered number 70606119, whose principal office address is at Elektrokosova Building, Bill Clinton Boulevard, Pristina 10000, Kosovo (hereinafter "KEDS").

(each a "Party" and together "the Parties")

WHEREAS

- (A) The Government of the Republic of Kosovo has, in its capacity under Articles 5.1, 9 and 11 of the Law on Publicly Owned Enterprises (Law No.03/L-087) (the "POE Law"), issued Decisions No. 04/36 and 03/38, which have approved the legal unbundling of KEK's electricity distribution and public supply functions also the privatization by sale of shares of KEDS.
- (B) The Kosovo Tax Administration has, by letter dated [●] 2012 reaffirmed its Ruling dated 31st March 2009, which confirms that KEK's legal unbundling constitutes a 'reorganization' pursuant to the applicable Corporate Income Tax Law, thereby exempting the transfer of property pursuant to this Transfer Agreement from corporate tax liability. Further, the transfer of assets under this Transfer Agreement constitutes a supply by a taxable person of taxable goods as part of the transfer of a business or part of a business to another taxable person for the purposes of the Law on Value Added Tax thereby exempting the Transfer Agreement from VAT.
- (C) The Kosovo Electricity Distribution and Supply Company, J.S.C has been duly registered and incorporated under the laws of Kosovo, with business registry number 70606119, and is wholly owned by the Republic of Kosovo pursuant to Article 11.2 of the POE Law.
- (D) The Government of the Republic of Kosovo has, by Decision No. [●], delegated to a Ministerial Committee full responsibility for the implementation of Decisions No. 04/36 and 03/38.
- (E) On [●] 2012 [Strategic Investor] purchased 100% of the ordinary shares of the KEDS pursuant to a Share Purchase Agreement dated [●] between [Strategic Investor], and the Government of the Republic of Kosovo (the "Share Purchase Agreement")
- (F) On [DATE] 2012, the Government of Kosovo, through the Ministerial Committee, authorized the execution of this Transfer Agreement, pursuant to which KEK shall transfer and convey assets, contracts, and obligations relating to its electricity distribution and supply business to KEDS.
- (G) The Board of Directors of KEK and KEDS have, based on their decisions dated [●] 2012, resolved to approve the terms of this Transfer Agreement and to authorise the duly appointed signatories to execute this Transfer Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained, and intending to be legally bound, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Transfer Agreement (including the Schedules),
- 1.2 “**Accounts Receivable**” means the accounts receivable, a list of which is set out in Schedule 4.
- 1.3 “**Assets**” means all assets included in the list of Fixtures, Fittings and Equipment as set out in Schedule 1, the list of Intangible Assets set out in Schedule 2, the list of Inventories set out in Schedule 3, the list of Accounts Receivable and Advances set out in Schedule 4, the list of Cash and Bank Accounts set out in Schedule 7, the list of Vehicles set out in Schedule 8 and the list of Real Property and Electricity Sites set out in Schedule 9.
- 1.4 “**Advances**” means advances for contractual expenditures as set out in Schedule 4.
- 1.5 “**Cash and Bank Accounts**” means the monies a list of which is set out in Schedule 7.
- 1.6 “**Collection Agreement**” means an agreement concluded by KEK and KEDS, pursuant to which KEK designates and appoints KEDS as its agent to collect certain customer receivables
- 1.7 “**Day**” - Means a twenty four (24) hour period commencing at 00.00 on any calendar day and ending at 00.00 hours on the following calendar day and the date of any Day shall be the date of its commencement as defined herein. Calendar day shall mean any day in a month, including weekends and holidays.
- 1.8 “**Dispute**” means any dispute, disagreement, of difference arising under, out of, or in connection with this Transfer Agreement, including any dispute or difference concerning the existence, legality, validity, or enforceability or enforceability of this Transfer Agreement or any provision hereof or the performance of a Party under any provision hereof.
- 1.9 “**Electricity Sites**” means the electricity distribution system, inter-connector circuits, and direct lines for which KEK holds ownership or right of use, right of possession or other property rights together with any property right, i.e. ownership, right of use, servitude, easement or any other property right KEK has on the underlying real property, particulars of which are set out in Schedule 9.
- 1.10 “**Fixtures, Fittings and Equipment**” means the plant, machinery, equipment, furniture and other assets of KEK set out in Schedule 1.
- 1.11 “**Intangible Assets**” means certain intangible assets set out in Schedule 2, which include among other Information Solutions and Regulatory licenses.
- 1.12 “**Inventories**” means certain consumables and spare parts as set out in Schedule 3.
- 1.13 “**Liabilities**” means certain trade accounts payable of KEK, as set out in Schedule 6.
- 1.14 “**Real Property**” means certain land plots and any structures attached or fixed within the boundaries of such plots, buildings, other real property, for which KEK holds ownership, right of use, servitude, easement or other right of possession including, but not limited to, leasehold, in

accordance with the applicable law, or claims raised in legal proceedings regarding real property rights, particulars of which are set out in the attached Schedule 9.

- 1.15 **"Register"** means the Register of Immovable Properties held by the mortgage office of each cadastral area where the each of the Real Property is located, with which the transfer of the Real Properties must be registered according to applicable laws of Kosovo.
- 1.16 **"Shared Services Agreement"** means a document executed by KEK and KEDS, which outlines the transitional commercial and operational relationship between KEK and KEDS upon the transfer of ownership and responsibility for the Distribution System, and Public Supplier obligations from KEK to KEDS.
- 1.17 **"Technical Dispute"** means a Dispute that relates to a technical, engineering, operational, or accounting issue or matter related to this Transfer Agreement that, in any case, is the type of issue or matter that is reasonably susceptible to consideration and resolution by an expert in the relevant field or fields.
- 1.18 **"Transferred Contracts"** means contracts, agreements and orders for the sale of goods, supply of services, performance of works, and employment contracts made or placed by, or with, KEK as set out in Schedule 5.
- 1.19 **"Vehicles"** means cars, trucks, buses and other automobiles and specialized vehicles listed in Schedule 8.
- 1.20 The provisions of the Schedules attached to this Transfer Agreement shall form an integral part of this Transfer Agreement.
- 1.21 Clause, Schedule or paragraph headings shall not affect the interpretation of this Transfer Agreement.
- 1.22 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.23 Words in the singular shall include the plural and vice versa.
- 1.24 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.25 Where the words include(s), including or in particular are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.26 References to clauses and schedules are to the Clause and Schedules of this Transfer Agreement.
- 1.27 If this Transfer Agreement is translated into other languages, and an ambiguity or inconsistency arises between the different language versions, the English language version shall prevail.

2. TRANSFER AND ENTRY INTO FORCE

2.1 This Agreement enters into force on the Day upon which all of the following conditions precedent are fulfilled (hereinafter the "Effective Date")

- (a) Execution of this Transfer Agreement by the Parties;
- (b) Execution of the Collection Agreement by the Parties; and
- (c) Execution of the Shared Services Agreement by the Parties.

2.2 KEK hereby transfers and conveys to KEDS, and KEDS accepts, with effect from the Effective the following assets, contracts and liabilities (the "Transferred Items"):

- (a) the Fixtures, Fittings and Equipment set out in Schedule 1;
- (b) the Intangible Assets set out in Schedule 2;
- (c) the Inventories set out in Schedule 3;
- (d) the Accounts Receivable and Advances set out in Schedule 4;
- (e) the Transferred Contracts, including employment contracts, set out in Schedule 5;
- (f) the Liabilities set out in Schedule 6;
- (g) the Cash and Bank Accounts set out in Schedule 7;
- (h) the Vehicles outlined in Schedule 8; and
- (i) the Real Property and Electricity Sites set out in Schedule 9.

2.3 KEK undertakes to use its best efforts to obtain any requisite third party consents, approvals and permits, which are required to effect a transfer of the Transferred Items – as particularized in the attached Schedules.

2.4 KEK transfers the Transferred Items "as is", in the condition in which they are at the time of transfer.

3. REAL PROPERTY AND ELECTRICITY SITES

3.1 Upon execution of this Transfer Agreement, all of KEK's rights and title to, and interest in, the Real Property and Electricity Sites are transferred from KEK to KEDS subject to, or with the benefit of, all easements, rights, agreements, restrictions, licences, tenancies and other encumbrances whatsoever affecting the Real Property and Electricity Sites and existing as at the date of entry into force of this Transfer Agreement.

3.2 Completion of the transfer of all of KEK's rights and title to, and interest in, the Real Property and Electricity Sites shall take place immediately upon the entry into force of this Transfer Agreement and possession of the said property surrendered to KEDS on the same day. Thereafter, and as soon as practicable, the transfer of Real Property and Electricity shall be formalized by registration with the Registers. KEK shall provide reasonable assistance to KEDS in order to execute, deliver, register and file any further documents that the KEDS and/or any other public authority shall consider necessary or appropriate, to the purpose of registering the ownership title over the Real Property in the name of KEDS with the Register.

3.3 For the avoidance of doubt, the transfer pursuant to Clause 3.1 shall include the transfer of all of KEK's rights and title to, and interest in, structures on the Real Property and Electricity Sites,

Handwritten initials 'KD' and a signature.

notwithstanding any discrepancy between structures actually existing and structures detailed in cadastral plot records shown in the attached Schedules.

- 3.4 Further, and until the transfer or assignment of any of the Real Property and Electricity Sites has been recorded at the concerned Register, KEK shall be legally deemed to hold such Real Property and Electricity Sites in trust for KEDS. However, nothing in this Clause 3.4 shall limit KEDS assumption of use, possession, liability and control of the Real Property and Electricity Sites from the Effective Date.

4. LIABILITIES

- 4.1 KEK hereby assigns to KEDS entirely, and KEDS shall exclusively assume the liabilities listed in Schedule 6 to this Transfer Agreement. For the avoidance of doubt, any persons or entities deriving rights from the liabilities assigned to KEDS should seek legitimate satisfaction, or whatever measures, only from KEDS, and any person or entities deriving rights from liabilities not being transferred to KEDS but remaining with KEK, should only seek legitimate satisfaction, of whatever measure from KEK.
- 4.2 Without prejudice the generality of the foregoing, KEDS shall also be responsible for payment of the following: (i) Legitimate unpaid invoices received either before or after the Effective Date for goods delivered, works performed or services rendered under a Transferred Contract at any time 60 days prior to the Effective Date; (ii) any residual 2013 property taxes for Real Estate outlined in Schedule 9; and (iii) any Kosovo Value Added Tax payable on KEDS Initial Receivable as defined in the Collection Agreement.
- 4.3 With respect to Transferred Contracts, the Parties agree that from the Effective Date KEK transfers all its rights and obligations under the said contracts to KEDS. Furthermore, KEDS agrees that it will perform the Transferred Contracts and be bound by their terms in every way as if it were the original party to it in place of KEK, and KEDS thereby releases KEK from all its future obligations under the Transferred Contracts.
- 4.4 KEDS agrees to indemnify KEK against any losses, damages or costs KEK suffers or incurs under or in connection with the Transferred Contracts referred to in Clause 4.6 herein below, as a result of KEDS failure to perform or satisfy its assumed obligations under the Transferred Contracts. KEK agrees to indemnify KEDS against any losses, damages or costs it suffers or incurs under or in connection with the Transferred Contracts as a result of KEK's failure to perform or satisfy its obligations under the Transferred Contracts before the Effective Date.
- 4.5 If KEDS or KEK is entitled to be indemnified pursuant to Clause 4.4 above, the indemnifying Party shall be entitled, at its option and expense and with counsel of its selection, to assume and control the defence of such claim, action, suit or proceeding at its expense, with counsel of its selection; provided, however, it gives prompt notice of its intention to do so to the indemnified Party, and reimburses the indemnified Party for the reasonable costs and expenses incurred by the indemnified Party prior to assumption by the indemnifying Party of such defence. Unless and until the indemnifying Party acknowledges in writing its obligation to indemnify the indemnified Party and assumes control of the defence of a claim, suit, action or proceeding in accordance with this Clause 4.5, the indemnified Party shall contest, defend and litigate, with counsel of its own selection, any claim, action, suit or proceeding by any third party, alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and the reasonable costs and expense thereof shall be subject to the

indemnification obligations of the indemnifying Party hereunder. Neither Party shall be entitled to settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party. Each Party shall promptly notify the other Party of any loss, claim, proceeding or other matter in respect of which it is or it may be entitled to indemnification under Clause 4.5. Such notice shall be given as soon as is reasonably practicable after the relevant Party becomes aware of such loss, claim, proceeding or other matter. Any notification submitted under this Clause 4.5 should describe in detail the facts and circumstances of the claim, proceeding or loss. The delay or failure of such indemnified Party to provide the notice required pursuant to this Clause 4.5 to the other Party shall not release the indemnifying Party from any indemnification obligation that it may have to such indemnified Party except to the extent that such failure or delay materially and adversely affected the indemnifying Party's ability to defend such action or increased the amount of the loss.

- 4.6 In the event that the transfer of any of the Transferred Contracts shall be subject to approval by a third party and should such approval not be obtained, or the validity of such transfer be questioned in any way, KEK will in the best of interests of KEDS, and pursuant to its instructions exercise all rights and perform all obligations under these contracts in its own name, but on behalf of KEDS to as far as possible reflect the situation as if the transfer of the contract to KEDS would have been achieved. In such cases, KEDS shall also make available to KEK any requisite remedies, including, but not limited to, payments of contracts, provisions of services, or execution of works on behalf of KEK, in order to facilitate the continued performance of such contracts by KEK without any adverse effect for the KEDS. KEDS shall reimburse KEK for any necessary and reasonable costs that are legitimately incurred in relation to any such actions of KEK.

5. EXCLUDED ASSETS AND LIABILITIES

- 5.1 Any assets, contracts, and Liabilities that are not expressly stated in this Transfer Agreement or the Schedules thereto or the Shared Services Agreement shall not be transferred to KEDS, and shall remain with KEK.

6. COMPLETION OF TRANSFER

- 6.1 Subject to the provisions of Clauses 6.2 and 6.3 herein, completion of the transfer of the Transferred Items shall be deemed to have taken place immediately upon the entry into force of this Transfer Agreement and the following shall occur on the same day:
- (a) Possession of the Assets shall be transferred to KEDS.
 - (b) Possession of such of the other assets being transferred pursuant to this Transfer Agreement as are capable of transfer by delivery to KEDS shall be delivered to KEDS.
 - (c) KEK shall execute or shall order the execution by the necessary persons associated with KEK of any and all documents and action items as may be necessary for vesting good title to the property, rights and assets hereby declared to be transferred to KEDS that are not capable of transfer by delivery to KEDS; and
 - (d) KEK shall make such arrangements as may in each case be necessary for affording to KEDS the benefit of the Transferred Contracts.
- 6.2 As outlined in Clause 3.2, in order to formalize the transfer of all of KEK's rights and title to, and interest in, the Real Property and Electricity Sites, the corresponding entries in the Registers shall also be changed to reflect the transfer to KEDS.

6.3 With respect to Transferred Contracts, the Parties acknowledge the following:

- (a) The transfer of contracts outlined in Tables 1 [commercial contracts] and 3(b) [electric supply contracts with large customers] of Schedule 5 shall be considered finalized upon consent of such transfer by the other party through the novation of the contracts – the terms of such novation shall be consistent with provisions of Clause 4.3 herein. Notwithstanding any pending novation, KEDS shall comply with the provisions of Clause 4 – in particular, it shall assume responsibility for the performance, and liability under, or in connection with the concerned contracts - from the Effective Date.
- (b) The transfer of employment contracts outlined Table 2 of Schedule 5 is considered finalized upon the Effective Date on the basis that the concerned employees have provided their prior written consent to the transfer of their employment contracts from KEK to KEDS.

6.4 In addition to what is explicitly outlined in this Agreement, KEK shall provide reasonable assistance to KEDS in order to formalize under the applicable law the transfer of the Transferred Items.

7. REPRESENTATIONS AND WARRANTIES OF KEK

7.1 KEK represents and warrants to KEDS that as of the date of this Agreement:

- (a) KEK is a joint stock company duly organised, validly existing and in good standing under the laws of Kosovo. KEK has all requisite power and authority to own its properties and to conduct its business as presently conducted.
- (b) KEK has all requisite power and authority to execute, deliver and perform its obligations arising under this Transfer Agreement and the transactions contemplated herein and the authorizations attached to this Transfer Agreement as Schedule 10 constitute the necessary authorizations for the execution, delivery and performance of this Agreement.
- (c) This Transfer Agreement has been duly executed and delivered to KEDS and constitutes a valid and binding obligation of KEK enforceable against it in accordance with its terms.
- (d) KEK warrants as to the right and title to, and interest in, the Real Property and Electricity Sites and the validity of such rights, title and interest.

7.2 The execution, delivery and performance of this Transfer Agreement do not, and shall not:

- (a) Conflict with or constitute a violation of the Charter or other constitutional document of KEK;
- (b) Conflict with or constitute a violation of any law, statute, judgment, order, decree or regulation or any legislative body, court, administrative agency, governmental authority, which has jurisdiction over KEK;
- (c) Result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Assets or any portion thereof.

8. INDEMNIFICATION

8.1 KEK will indemnify, and hold harmless KEDS and its Officers and Directors from, against, and with respect to any and all loss, damage, claim, obligation, liability, penalty, fine and expense (including without limitation, reasonable legal fees and costs and expenses incurred while investigating, preparing, defending against or prosecuting any litigation, claim, proceeding, demand

or request for action by any governmental or administrative entity) of any kind or character ("the Loss") arising out of, or in connection with any of the following:

- (a) Any material breach of any of the representations or warranties contained in, or made pursuant to this Transfer Agreement; or
- (b) any failure by KEK to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by it pursuant to this Transfer Agreement;

8.2 If KEDS is entitled to be indemnified pursuant to Clause 8.1 above, the applicable provisions of Clause 4.5 shall apply to the extent that is applicable.

9. FORCE MAJEURE

9.1 For the purposes of this Agreement, "Force Majeure" means any occurrence beyond the reasonable control of the Party claiming Force Majeure (the "Affected Party"), which it could not reasonably have avoided or overcome and which makes it impossible for the Affected Party to perform one or more obligations under this Agreement, including but without limitation, such an occurrence that results from:

- (a) acts of God, lightning, fire, storm, flood, earthquake, drought, accumulation of snow or ice, lack of water arising from weather or environmental problems;
- (b) strike, lockout or other industrial disturbance (other than that of either Party's own employees);
- (c) blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism;
- (d) unavailability of transmission capability, including an unscheduled transmission line outage or any transmission system constraints;
- (e) act of war (whether declared or undeclared), threat of war, terrorist act;
- (f) governmental restraint, other prohibition, measure or legislation, by Governmental Authority.

9.2 If a Party is fully or partly prevented due to Force Majeure from performing one or more of its obligations under this Agreement and such Party complies with the requirements of Clause 9.4: (i) no breach or default on the part of the Affected Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations for the period of time and to the extent that such Force Majeure prevents its performance, and (ii) no obligation to pay damages will accrue to the Affected Party with respect to the obligations not performed because of Force Majeure.

9.3 Following the occurrence of a Force Majeure event, the Affected Party shall:

- (a) provide the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure, describing the particulars of such Force Majeure;
- (b) remedy its inability to perform as soon as reasonably practicable;

- (c) provide monthly status reports to the other Party, to inform the other Party of what steps have been taken to remedy the Force Majeure event and the expected remaining duration of the Party's inability to perform its obligations; and
- (d) provide the other Party written notice promptly after it determines when it is able to resume performance of its obligations under this Agreement.

9.4 A release from contractual obligations under Clause 9.3 shall be of no greater scope and of no longer duration than is required by such Force Majeure event.

10. EVENTS OF DEFAULT

10.1 Except as otherwise provided in this Agreement, each one of the following Clauses 10.1 (a) to (c) represents an event of default (an "Event of Default") for the purposes of this Agreement:

- (a) failure by either Party to perform in a timely manner a material obligation under this Agreement, to include, but without limitation the obligation to make, when due, any payment under this Agreement.
- (b) either Party omits to observe any of the covenants, representations, and warranties under this Agreement and any representations or warrant made by any of the Parties proves to be incorrect, untrue or misleading; or
- (c) either Party:
 - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger) or becomes insolvent or is unable or fails to pay its debts or admits in writing its inability generally to pay its debts as they become due;
 - (ii) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (iii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; or
 - (iv) causes or is subject to any event with respect to it which, under the Laws of the Republic of Kosovo has an analogous effect to any of the events specified in paragraphs (i) to (iii) above (inclusive).

11. TERMINATION

11.1 Except where this Agreement specifically provides for another remedy, either Party may terminate this Agreement on written notice with immediate effect where the other Party:

- (a) is responsible for or the subject of an Event of Default, except where such Event of Default is capable of remedy by the other Party and the other Party has failed to remedy such Event of Default within 28 days of receipt of a notice requiring it to do so; or
- (b) enters into liquidation whether compulsory or voluntary liquidation (other than pursuant to a consolidation, amalgamation or merger); or
- (c) suffers anything analogous to Clause 11.1(b) or threatens to cease or ceases to carry on business.

- 11.2 Termination of this Agreement for whatever reason shall not affect any rights or obligations which may have accrued prior to such termination or which expressly or by implication are intended to survive termination, whether resulting from the event giving rise to the right to terminate, or otherwise

12. NOTICES

- 12.1 Written communications relating to this Agreement between the Parties may be sent by e-mail, post, fax or by hand. Provided that, formal notifications such as administrative orders, notifications of termination or breach or other notifications, which have an impact on the level of payments, or additional cost claims, should be submitted by post or hand to the addresses outlined below (or such other address as a Party may designate in writing to the other Party). E-mail may be used as a supplementary notification method for such formal or other notifications only. Notices must be delivered to the address of the intended recipient as follows:

For KEK:

No. 36 Mother Theresa Street, Pristina 10000, Kosovo
For the attention of the Chief Financial Officer.

For KEDS:

Elektrokosova Building, Bill Clinton Boulevard, Pristina 10000, Kosovo
For the attention of the Chief Financial Officer.

Notices shall be deemed effective and to have been received at the time of actual delivery

13. APPLICABLE LAW AND DISPUTE RESOLUTION

- 13.1 This Agreement shall be subject to and interpreted in accordance with the laws of the Republic of Kosovo.
- 13.2 In the event that Dispute between the Parties cannot be resolved informally, either Party may send a notice to the other Party identifying the dispute in issue. Within 30 days of delivery of a notice of dispute, the Parties shall attempt in good faith to settle such dispute by discussions amongst representatives of the Parties, each of whom shall possess the appropriate decision-making authority. In the event that such individuals are unable to reach agreement within 30 days, or such longer period as they may agree, either of the Parties may refer the matter to arbitration pursuant to Clause 13.12, unless the matter is a Technical Dispute, in which case either Party may refer the matter to an expert pursuant to Clause 13.3.
- 13.3 In the event that the Parties are unable to resolve a Technical Dispute in accordance with Clause 13.2 then either Party may refer the Technical Dispute to an expert for consideration of the Technical Dispute and to obtain a recommendation from the expert as to the resolution the Technical Dispute. The expert shall have demonstrated expertise in the area to which such Technical Dispute relates and must satisfy the following requirements of impartiality and independence:

- (a) The expert cannot be a national of the jurisdiction of either Party or the jurisdiction of any investor or group of investor owning directly or beneficially five percent (5%) or more of the Ordinary Share capital of a Party; and
 - (b) The expert shall not be a shareholder or employee or agent or former employee or agent of, or have or have had any material interest (directly or indirectly) in the business or in, any Party or any Investor owning directly or beneficially five percent (5%) or more of the Ordinary Share capital of a Party.
- 13.4 In the event that the Parties cannot agree within 10 days as to whether a dispute falls within the definition of Technical Dispute, then this Clause shall not be used to resolve this dispute and either Party may proceed directly to arbitration under Clause 13.12 to resolve the dispute.
- 13.5 The Party initiating submission of the Technical Dispute to the expert shall provide the other Party with a notice stating that it is submitting the Technical Dispute to an expert and nominating the Person it proposes to be the expert. The other Party shall, within 15 days of receiving such notice, notify the initiating Party whether such Person is acceptable. If the Party receiving such notice fails to respond, or notifies the initiating party that the Person is not acceptable, the Parties shall meet and discuss in good faith for a period of 10 days to agree upon a Person to be the expert. If the Parties are unable to agree within the 10-day period, either Party may request the International Chamber of Commerce Centre for Expertise to nominate a Person, who shall be the expert; provided, however, that the nominated expert must satisfy the independence and impartiality requirements outlined in Clause 13.3.
- 13.6 The Party seeking consideration for the Technical Dispute by the expert shall initiate the process by submitting to the expert within 10 days of the appointment of the expert to both the expert and the other Party, written materials setting forth (i) a description of the Technical Dispute; (ii) a statement of the initiating Party's position; and (iii) copies of records supporting the initiating Party's position. Within 10 days of the date that the initiating Party has submitted the materials described in the preceding sentence, the responding Party may submit to the expert: (A) a description of the Technical Dispute, (B) a statement of the responding Party's position, and (C) copies of any records supporting the responding Party's position. In addition to the material provided to the expert by the initiating Party, the expert shall consider any such information submitted by the responding Party within such 10-day period specified above and, in the expert's discretion, any additional information submitted by either Party at a later date. Any materials submitted by a Party to the expert shall be simultaneously submitted by such Party to the other Party.
- 13.7 Each Party shall designate one Person knowledgeable about the issues in dispute who shall be available to the expert to answer questions and provide any additional information requested by the expert. Except for such Person, a Party shall not be required to but may provide oral statements or presentations to the expert or make any particular individuals available to the expert.
- 13.8 The proceedings shall be without prejudice to the Parties and any evidence given or statement made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as arbitration, and the laws relating to commercial arbitration shall not apply.
- 13.9 When consideration of the Technical Dispute by the expert is initiated, the expert shall be requested to provide a recommendation within 15 days after the 10-day response period provided in Clause 13.6 has run. If the expert's recommendation is given within such 15 day period, or if the expert's recommendation is given at a later time and no Party has initiated arbitration under Clause 13.12 to resolve the Technical Dispute, the Parties shall review and discuss the recommendation with each

other in good faith for a period of 10 days following delivery of the recommendation before proceeding with any other actions.

- 13.10 If either Party does not accept the recommendation of the expert with respect to the Technical Dispute, either Party may initiate arbitration proceedings in accordance with Clause 13.12. Similarly if the expert has not submitted such recommendation within the time period provided in Clause 13.9 either Party may initiate arbitration proceedings in accordance with Clause 13.12.
- 13.11 The costs of engaging the expert shall be borne equally by the Parties and each Party shall bear its costs in preparing materials for and making presentations to the expert.
- 13.12 In the event that the parties are unable to resolve the dispute through the procedures above, then the Parties agree that the dispute shall be resolved through arbitration in accordance with Clauses 13.12 to 13.15 herein.
- 13.13 The dispute shall be finally settled by arbitration before a tribunal (the "Arbitration Tribunal") conducted 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:
- (a) the statement of claim and the notification of the appointment of an arbitrator shall be included in the notice of arbitration;
 - (b) the appointing authority shall be the President of the Geneva Chamber of Commerce; the number of arbitrators shall be 3 (three);
 - (c) the place of arbitration shall be Geneva, Switzerland;
 - (d) the language to be used in the arbitral proceedings shall be English;
 - (e) 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 Arbitration 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;
 - (f) either Party may request an oral hearing, but the Arbitration Tribunal shall have the discretion whether or not to hold such a hearing unless the request is supported by the other Party;
 - (g) 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;
 - (h) Article 37 and Article 39 of the UNCITRAL Arbitration Rules shall not apply;
 - (i) 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

- (j) the award of the Arbitration Tribunal shall be final and binding upon the Parties, provided that:
 - (k) paragraphs (a), (b) and (d) of Article 190(2) of the Swiss Federal Private International Law Act shall be applicable; and
 - (l) 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).
- 13.14 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 recognize and acknowledge that this Agreement constitutes a commercial transaction in respect of which neither Party is entitled to plead sovereign immunity. The Parties 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.
- 13.15 The arbitration agreement set forth in this Clause 13, shall be treated as an agreement independent of and separated from the other terms of this Agreement and, accordingly, a determination or ruling by an arbitral tribunal properly constituted pursuant to this Clause 13 that this Agreement or any provision hereof (other than this Clause 13) is invalid, illegal or unenforceable shall not invalidate the arbitration agreement set forth in this Clause 13.
- 14. MISCELLANEOUS**
- 14.1 KEK hereby agrees to deliver or cause to be delivered to KEDS a copy of all resolutions authorising the execution, delivery and performance by KEK of this Transfer Agreement and such other agreements or documents as may be expected and delivered by KEK pursuant to this Transfer Agreement.
- 14.2 No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment, or modification shall be in writing and duly executed by the Parties.
- 14.3 Upon execution of this Transfer Agreement, KEK agrees to perform all further acts and execute any and all documents necessary in order to implement and give full force and effect to this Transfer Agreement, and to all matters envisaged and contemplated herein. Such documents may include filings with Governmental or Regulatory bodies, corporate resolutions, instruments of transfer or assignment, files, books and records, and such other documentation as may be reasonably necessary from time to time.
- 14.4 This Transfer Agreement shall be binding upon and inure for the benefit of KEK and KEDS and their respective successors and permitted assigns. Neither this Transfer Agreement or any rights, interests or obligations herein may be assigned by KEK or KEDS without their prior written collective consent, and any purported assignment without consent shall be void.
- 14.5 If, by reason of oversight or error, incomplete or erroneous information, certain Assets, contracts, obligations, or liabilities that should according to the overriding intention of this Transfer

- (j) the award of the Arbitration Tribunal shall be final and binding upon the Parties, provided that:
 - (k) paragraphs (a), (b) and (d) of Article 190(2) of the Swiss Federal Private International Law Act shall be applicable; and
 - (l) 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).
- 13.14 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 recognize and acknowledge that this Agreement constitutes a commercial transaction in respect of which neither Party is entitled to plead sovereign immunity. The Parties 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.
- 13.15 The arbitration agreement set forth in this Clause 13, shall be treated as an agreement independent of and separated from the other terms of this Agreement and, accordingly, a determination or ruling by an arbitral tribunal properly constituted pursuant to this Clause 13 that this Agreement or any provision hereof (other than this Clause 13) is invalid, illegal or unenforceable shall not invalidate the arbitration agreement set forth in this Clause 13.
- 14. MISCELLANEOUS**
- 14.1 KEK hereby agrees to deliver or cause to be delivered to KEDS a copy of all resolutions authorising the execution, delivery and performance by KEK of this Transfer Agreement and such other agreements or documents as may be expected and delivered by KEK pursuant to this Transfer Agreement.
- 14.2 No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment, or modification shall be in writing and duly executed by the Parties.
- 14.3 Upon execution of this Transfer Agreement, KEK agrees to perform all further acts and execute any and all documents necessary in order to implement and give full force and effect to this Transfer Agreement, and to all matters envisaged and contemplated herein. Such documents may include filings with Governmental or Regulatory bodies, corporate resolutions, instruments of transfer or assignment, files, books and records, and such other documentation as may be reasonably necessary from time to time.
- 14.4 This Transfer Agreement shall be binding upon and inure for the benefit of KEK and KEDS and their respective successors and permitted assigns. Neither this Transfer Agreement or any rights, interests or obligations herein may be assigned by KEK or KEDS without their prior written collective consent, and any purported assignment without consent shall be void.
- 14.5 If, by reason of oversight or error, incomplete or erroneous information, certain Assets, contracts, obligations, or liabilities that should according to the overriding intention of this Transfer

Agreement, be transferred are in fact omitted from the Transferred Items, KEK will – in coordination and agreement with KEDS - execute a supplementary Transfer Agreement in order to transfer such items and/or remedy any errors. In this context, the Parties agree and acknowledge that the overriding intent of this Transfer Agreement is the divestiture of KEK's electricity distribution and public business to KEDS, to include all associated assets, personnel and contracts.

14.6 None of the provisions of this Transfer Agreement, or any document contemplated herein, is intended to grant any right or benefit to any person or entity, except KEDS.

14.7 KEDS is required to bear all costs and reimburse KEK in relation to:

- (a) The execution of the transfer of the Transferred Items (including the registration of such Transferred Items); and
- (b) Any additional acts that may be necessary to be performed by KEK in order to effect this Transfer Agreement and the performance of which is in the interest of the KEDS.

14.8 In the event that any provision of this Transfer Agreement shall be determined to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Transfer Agreement shall not in any way be impaired, and the illegal, invalid or unenforceable provision shall be fully severed from this Transfer Agreement.

IN WITNESS WHEREOF, intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, as of the day and year first written above.

Signed for and on behalf of the Kosovo Energy Corporation J.S.C
by [NAME]
this [DATE] day of [MONTH] 2012)
Signature of KEK representative

Signed for and on behalf of KEDS, J.S.C
by [NAME]
this [DATE] day of [MONTH] 2012)
Signature of KEDS representative

WITNESSED BY KOSOVO PUBLIC NOTARY:

Before me, on this day personally appeared the following individuals: [NAME ●]
known to me (or satisfactorily proven) to be the persons named as signatories to this Transfer Agreement,
and acknowledged that they executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand on [DATE ●] in [PLACE ●]

SHARED SERVICES AGREEMENT

BETWEEN

KOSOVO ENERGY CORPORATION, J.S.C (KEK)

AND

**KOSOVO ELECTRICITY DISTRIBUTION AND SUPPLY COMPANY, J.S.C
(KEDS)**

October 2012

This Agreement is entered into by and between:

- (1) **Kosovo Energy Corporation, J.S.C** a company duly incorporated under the laws of Kosovo with registered number 70325399 whose registered office is at No. 36 Mother Theresa Street, Pristina 10000, Kosovo (hereinafter “**KEK**”); and
- (2) **Kosovo Electricity Distribution and Supply Company, J.S.C.** a company duly incorporated under the laws of Kosovo with registered number 70606119, whose principal office address is at Elektrokosova Building, Bill Clinton Boulevard, Pristina 10000, Kosovo (hereinafter “**KEDS**”).

(each a “**Party**” and together “**the Parties**”)

WHEREAS:

- (A) The Government of the Republic of Kosovo has, in its capacity under Articles 5.1, 9 and 11 of the Law on Publicly Owned Enterprises (Law No. 03/L-087 as amended by Law No. 04/L-111), and in accordance with EU Directive 2003/54 concerning the rules for the internal market in electricity, issued Decisions No. 04/36 and 03/38, which have approved the legal unbundling of KEK’s electricity distribution and public supply functions, and also the privatization by sale of shares of KEDS.
- (B) On [●] 2012 [Strategic Investor] purchased [●] of the ordinary shares of the KEDS pursuant to a Share Purchase Agreement dated [●] between [Strategic Investor], and the Government of the Republic of Kosovo (the “Share Purchase Agreement”).
- (C) Pursuant to a Transfer Agreement, the assets relating to the electricity distribution network of Kosovo, and all attached rights, which are necessary to distribute electricity in Kosovo will be transferred to KEDS, which will thereafter have the employees, assets, liabilities and responsibility for system operation, maintenance, and development of the distribution network, together with the public supply of electricity;
- (D) In order to successfully implement the legal divestiture of KEK’s electricity distribution and public supply functions to KEDS, thereby and ensuring the continuity of service to Kosovo’s electricity consumers, it is recognized that – for a limited transitional period – KEK and KEDS may continue to use some common services as described herein. This transitional period is anticipated to last until no later than six months from the Effective Date.
- (E) The Government of the Republic of Kosovo has, by Decision No. [●], delegated to a Ministerial Committee full responsibility for the implementation of Decisions No. 04/36 and 03/38. On [DATE] 2012, the Government of Kosovo, through the Ministerial Committee, authorized the execution of this Shared Services Agreement and the Transfer Agreement.



- (F) The Board of Directors of KEK and KEDS have, based on their decisions dated [●] 2012, resolved to approve the terms of this Shared Serviced Agreement and to authorise the duly appointed signatories to execute such agreements.

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained, and intending to be legally bound, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

When used in this Agreement or in any Appendix hereto, the following terms shall have the meanings set forth in this Article 1.1:

- 1.1 **“Agreement”** means this agreement and any Appendix, or any variation thereof;
- 1.2 **“Article”** means an Article in this Agreement;
- 1.3 **“Collection Agreement”** means an agreement concluded by KEK and KEDS, pursuant to which KEK designates and appoints KEDS as its agent to collect certain customer receivables.
- 1.4 **“Day”** - Means a twenty four (24) hour period commencing at 00.00 on any calendar day and ending at 00.00 hours on the following calendar day and the date of any Day shall be the date of its commencement as defined herein. Calendar day shall mean any day in a month, including weekends and holidays.
- 1.5 **“Dispute”** means any dispute, disagreement, of difference arising under, out of, or in connection with this Agreement, including any dispute or difference concerning the existence, legality, validity, or enforceability or enforceability of this Agreement or any provision hereof or the performance of a Party under any provision hereof.
- 1.6 **“Distribution System”** means a combination of electricity power lines and electricity equipment of medium, and low voltage to serve the distribution of electricity in Kosovo, as defined in the Law on Electricity.
- 1.7 **“KEDS Organization Structure”** means the organization structure of KEDS and related definitions of duties and responsibilities.
- 1.8 **“Law on Electricity”** means Law on Electricity of the Republic of Kosovo (No.03/L –201).
- 1.9 **“Public Supplier”** means an electricity enterprise licensed to carry out the activity of public supply.
- 1.10 **“Public supply”** means the supply of electricity to final customers at regulated tariffs as defined in the Law on Electricity.



- 1.11 “**Shared Services Agreement**” means this agreement executed by KEK and KEDS, which outlines the transitional commercial and operational relationship between KEK and KEDS upon the transfer of ownership and responsibility for the Distribution System, and Public Supplier obligations from KEK to KEDS.
- 1.12 “**Technical Dispute**” means a Dispute that relates to a technical, engineering, operational, or accounting issue or matter related to this Agreement that, in any case, is the type of issue or matter that is reasonably susceptible to consideration and resolution by an expert in the relevant field or fields.
- 1.13 “**Training Centre**” means the facility located in Obiliq, Kosovo for the training of KEK employees;
- 1.14 “**Transfer Agreement**” means the document transferring KEK assets, contracts, liabilities, and obligations to KEDS.
- 1.15 References to the masculine shall include the feminine and references to the singular shall include references to the plural and vice versa.
- 1.16 References to the word “include” or “including” are to be construed without limitation.
- 1.17 Except where the context otherwise requires, references to a particular Article, paragraph or Appendix shall be a reference to that Article, paragraph or Appendix in this Agreement.
- 1.18 Reference to an agreement or document shall be a reference to it as further amended, supplemented or novated from time to time in accordance with, and subject to, any requirements of this Agreement and (subject thereto) shall include a reference to any document which amends, is supplemental to, novates, or is entered into, made or given pursuant to or in accordance with any terms of it.
- 1.19 Reference to a statutory provision (including any secondary legislation) shall include such provision as from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into under this Agreement.
- 1.20 Where any provision of this Agreement provides that any word or expression is to have the meaning given to it or have the same meaning as it has in another agreement or document shall remain in full force and effect and the word or expression shall continue to have such meaning notwithstanding that such relevant agreement or document expires or terminates for any reason.
- 1.21 The headings are inserted for convenience only and shall be ignored in construing this Agreement.
- 1.22 Any reference to currency shall refer to the lawful currency of Kosovo.
- 1.23 This Agreement may be executed simultaneously in English and in Albanian. In the event of any inconsistency between the English version and the Albanian version, the English-language version shall take precedence.

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is larger and more stylized, while the second is smaller and more cursive.

2. COMMENCEMENT AND TERM

- 2.1 This Agreement enters into force on the Day upon which all of the following conditions precedent are fulfilled:
- (a) Execution of this Shared Services Agreement by the Parties;
 - (b) Execution of the Collection Agreement; and
 - (c) Execution of the Transfer Agreement by the Parties.
- (hereinafter the "Effective Date").
- 2.2 The terms of this Agreement shall - unless otherwise expressly stated herein - remain in force for six (6) months from the Effective Date.
- 2.3 Termination or expiry of this agreement shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination or expiry.
- 2.4 Without prejudice to the foregoing, the Parties agree that - subject to their mutual written consent - the provisions of this Agreement may be extended, in whole or in part beyond the existing expiry date.

3. SCOPE OF THIS AGREEMENT

- 3.1 The purpose of this Agreement is to outline the commercial and operational relationship between KEK and KEDS upon the transfer of ownership and responsibility for the Distribution System, and Public Supplier obligations from KEK to KEDS (the "Transfer Process"). This Agreement shall also address transitional arrangements arising out, or in connection with the Transfer Process, which may involve the joint use of services and facilities by the Parties.
- 3.2 Further, the Parties undertake to implement the terms of this Agreement in good faith, with the principal objective of ensuring a continuity of services to Kosovo's electricity consumers.

4. TRANSFER OF KEK EMPLOYEES TO KEDS

- 4.1 Pursuant to the terms of the Transfer Agreement, employees that perform KEK's Distribution System and Public Supply functions, and other selected employees from KEK are transferred to the KEDS Organization Structure in accordance with the terms and conditions of their existing employment contracts.
- 4.2 The Parties acknowledge that during the term of this Agreement, there maybe additional transfers of employees between the Parties - this shall only be undertaken with the mutual written consent of both Parties. In this event, the process shall be operated either by direct transfer of employees following agreement between the Parties and consent of the employees concerned, with no advertisement of the required employee position; or by internal advertisement within KEK and KEDS of vacancies.



However, nothing in this Article 4.2 shall preclude either Party from selecting non-KEK or non-KEDS employees for positions after the Effective Date.

5. STATUS OF ASSETS

5.1 The Parties agree that, notwithstanding the transfer of assets between KEK and KEDS, there may be assets operated by KEK's Distribution and/or Supply Divisions, or its predecessors that have not been correctly identified and allocated to KEDS in the Transfer Agreement. In the event that such assets are identified after the Effective Date, they shall be transferred to KEDS, subject to the mutual agreement of the Parties. Upon reaching agreement, KEK will promptly transfer and/or cause transfer of such assets to KEDS, without any further consideration payable by KEDS.

5.2 As of the Effective Date, the principal offices of KEDS will be the Elektrokosova Building, Bill Clinton Boulevard, Pristina – which shall be transferred from KEK to KEDS pursuant to the Transfer Agreement. However, during the term of this Agreement KEDS may also use office space at No. 36 Mother Theresa Street, Pristina (“Toskana”) – which shall remain in KEK ownership. In this event, KEDS shall not utilize more than two floors on the northern wing of Toskana and no rent shall be payable for this usage; provided that, KEDS shall pay KEK its share of all utility payments for each month of its usage of Toskana – payment shall be made on the last business day of each month and shall be calculated pro rata based on the square meters occupied by KEDS.

6. TRAINING CENTRE

6.1 KEK retains all property rights i.e. ownership, right of use, servitude, easement in the Training Centre. However, Parties agree that KEDS shall have free and unimpeded access to the Training Centre facilities and its usage after the Effective Date – KEDS shall bear no cost for this usage. Thereafter, after expiry of this Agreement, if KEDS wishes to continue to utilize the Training Centre facilities, it shall conclude a new contract with KEK – whereby KEDS will be charged by KEK at cost only.

7. CASE MANAGEMENT OF LEGAL CLAIMS

7.1 No court claims – whether for, or against KEK – which were pending at the Effective Date have been transferred to KEDS. However, the Parties have agreed that KEDS shall manage on behalf of KEK – as its legal representative - two categories of court cases, namely:

- (a) Civil claims pertaining to non-payment of electricity bills; and
- (b) Criminal claims pertaining to electricity theft and related offence

7.2 A list of the abovementioned claims is provided as Appendix 2 to this Agreement (hereinafter “the Managed Claims”)

7.3 The arrangements described in Article 7.1 shall remain in force for a period of five (5) years, or until all Managed Claims have been determined or disposed – within the meaning of the applicable law -

whichever date is earlier. In the event that a debtor subject to a Managed Claim pays the amount claimed in full or in part – the monies paid shall be treated in accordance with the categorization of receivables under the Collection Agreement and the provisions therein relating to allocation of payments (Article 4.5) and the Collection Fee (Article 5.1) shall be applied. If, as part of the debtor payment, KEK's original court fees are also recovered – this amount shall be transferred to KEK in full.

- 7.4 It is assumed that KEDS' payroll and other operational costs for the Managed Claims will be recovered through its electricity tariffs. However, if these costs are not recovered– the Parties agree to meet and negotiate in good faith a set of reasonable charges for legal services rendered by KEDS to KEK for the Managed Claims. If no agreement can be reached, the Parties may pursue the matter as a Technical Dispute under Article 18.3 herein.
- 7.5 In addition, KEDS shall - at its own discretion and at no cost to KEK – have the right to assume legal representation of other legal claims pending for, or against KEK at the time of the Effective Date - in addition to those described in Article 7.1 above – where the claim relates to assets, contracts or employees transferred to KEDS under the Transfer Agreement, or KEDS licensed operations. The aforementioned option must be exercised by KEDS within 12 months of the Effective Date. To facilitate this provision, within 30 days of the Effective Date, KEK shall provide KEDS with a list of all pending legal claims for, or against KEK - the list should be sufficiently detailed for KEDS to determine whether or not to exercise its rights under this Article. If KEDS assumes legal representation of a claim under this Article, it shall maintain this role until the claims have been finally determined or disposed within the meaning of the applicable law.
- 7.6 When providing legal representation to KEK under this Article 7, KEDS shall – at all times - use due care and skill, treat information provided by KEK as confidential, act in accordance with KEK's instructions, and observe any ethical legal standards applied by Kosovo Law - or in the absence of such standards, in accordance with international best practices.

8. INFORMATION TECHNOLOGY (IT)

- 8.1 KEDS shall provide KEK with IT support and services at no cost – as further particularized in Appendix 1 of this Agreement. Should KEK require any of these services to continue after the expiry of the term of the Agreement, a new contract shall be established and the services charged at cost plus reasonable profit.
- 8.2 The provision of IT support and services by KEDS to KEK shall be performed only under the direct instruction of KEK staff that hold the appropriate delegated authority. There shall be no direct intervention by KEDS – unless authorized by KEK – in KEK's IT system.
- 8.3 As stipulated in the Transfer Agreement, the transfer of the IT licenses from KEK to KEDS is considered finalized upon applying and obtaining consent for such by the respective licensing authority – if consent is required under the licensing terms. If consent is required and refused or no transfer is

MD 2/4

permissible under the concerned licensing terms – KEK agrees to permit KEDS free use of the license until such time as KEDS is able to secure its own license or procure alternative software, but not to exceed 12 months from the Effective Date or the current validity date of the concerned IT license, whichever is earlier.

9. CONTRACTS

- 9.1 The contracts, agreements and orders for the sale of goods, supply of services, performance of works, lease of real property and employment contracts made or placed by, or with, KEK, which are to be transferred to KEDS are outlined in the Transfer Agreement.
- 9.2 As stipulated in the Transfer Agreement, in the event that the transfer of any of the contracts, agreements and orders mentioned in Article 9.1 above is subject to approval by a third party and should such approval not be obtained, or the validity of such transfer be questioned in any way, KEK will in the best of interests of KEDS, and pursuant to its instructions exercise all rights and perform all obligations under these contracts in its own name, but on behalf of KEDS to as far as possible reflect the situation as if the transfer of the contract to KEDS would have been achieved. In such cases, KEDS shall also make available to KEK any requisite remedies, including, but not limited to, payments of contracts, provisions of services, or execution of works on behalf of KEK, in order to facilitate the continued performance of such contracts by KEK without any adverse effect for the KEDS. KEDS shall reimburse KEK for any necessary and reasonable costs that are legitimately incurred in relation to any such actions of KEK. Further, the Transfer Agreement provides that KEDS shall be responsible for payment of legitimate unpaid invoices received either before or after the Effective Date for goods delivered, works performed or services rendered at any time 60 days prior to the Effective Date under the said contracts transferred to KEDS.
- 9.3 From the Effective Date, counter parts to the transferred contracts should deal solely with KEDS in respect of the transferred contract. Accordingly, all invoices and correspondence relating to the transferred contracts should be sent to KEDS at the registered business address set out above, marked for the attention of [NAME OF INDIVIDUAL].
- 9.4 [NOTE: At present, KEK maintains framework contracts for certain goods and services that are used by all its divisions, to include (i) maintenance of vehicles; (ii) supply of office furniture; (ii) office cleaning; (iii) medical services; (iv) internet services; (v) drinking water; (vi) fuel oil; (vii) supply of toners; and (viii) drinks. It is not proposed that these contracts convey to KEDS. However, it is suggested that KEK discuss with the new investors what, if any of these services/goods it may want to continue to use for a limited period, so that terms can be agreed]
- 9.5 The Parties recognize that from the Effective Date KEK may request that KEDS supply its facilities at multiple metering points at various voltages (35 KV, 10 KV, and 0.4 KV) for the mine and Auxiliary Power for Kosovo A and Kosovo B. In this event, the terms and conditions of the electricity supplied by KEDS to KEK – to include tariff - will be subject to, and in accordance with Kosovo Law.

17/17 2/11

- 9.6 Within 10 days of the Effective Date, the Parties shall jointly review the status of the pending procurement activities listed in Appendix 3 that were initiated by KEK prior to the Effective Date, but which now relate to KEDS. KEK will in the best of interests of KEDS, and pursuant to KEDS instructions, oversight, and approval complete the aforementioned procurement activities and conclude contracts on terms agreed with KEDS. Upon signing, the said contracts shall be transferred to KEDS.

10. FINANCE & ACCOUNTING

- 10.1 It is anticipated that KEK and KEDS computer accounting systems will be completely separate prior to the Effective Date. However, if the separation has not be completed or partly completed by the Effective Date and there is a continued need for KEK to share the computer accounting system that has been transferred to KEDS, the Parties agree that KEK's continued use shall be managed on the basis of the following principles:

- (a) Monthly payments due to KEK – whether for electricity or otherwise – shall be deposited in the nominated KEK bank account.
- (b) All payments for KEK expenditures processed by the computer accounting system shall be made from the nominated KEK bank account, after authorization by the delegated level of authority within KEK.
- (c) All payment of KEK expenditures shall be identified to suppliers as being made by KEK.
- (d) KEDS shall take all reasonable steps to protect the security of KEK financial and accounting data.
- (e) The Parties agreed that KEDS shall restrict access to financial data and systems to personnel authorized in writing by KEK.
- (f) The Parties agree that KEDS shall provide adequate support to KEK at such time as the computer accounting system is migrated to KEK to run on a stand-alone basis.

- 10.2 Pursuant to the terms of the Transfer Agreement, a specified list of bank accounts has been transferred from KEK to KEDS. In this respect, KEK shall be required to open new bank accounts for general operations and payment of salaries under its own legal identity to operate with effect from the Effective Date.

11. TREATMENT OF TAX LIABILITIES

- 11.1 Subject to Article 11.2 and any explicit provisions of the Transfer Agreement, the Parties agree that any tax liabilities arising in respect of the period prior to the Effective Date shall be borne by KEK.
- 11.2 Without prejudice to the generality of the foregoing, KEDS shall be responsible for paying: (i) any residual 2013 property taxes for Real Estate outlined in Schedule 9 of the Transfer Agreement; and (ii) any Kosovo Value Added Tax payable on KEDS Initial Receivable as defined in the Collection Agreement.

MOB *ofers*

11.3 It is the Parties intent that any services rendered between KEK and KEDS at no cost under this Agreement form an integral part of the transfer of KEK's electric distribution and supply business to KEDS and should therefore be treated as exempt from Kosovo Value Added Tax (VAT). However, in the event that the Kosovo Tax Authority concludes and directs in writing that Kosovo VAT should be applied, the Parties agree to comply with such direction, to include entering into good faith discussions to amend this Agreement so as to bring it into compliance with the said direction.

12. REPRESENTATIONS AND WARRANTIES OF KEK

12.1 KEK represents and warrants to KEDS that as of the date of this Agreement:

- (a) KEK is a joint stock company duly organised, validly existing and in good standing under the laws of Kosovo. KEK has all requisite power and authority to own its properties and to conduct its business as presently conducted.
- (b) KEK has all requisite power and authority to execute, deliver and perform its obligations arising under this Agreement and the transactions contemplated herein.
- (c) This Agreement has been duly executed and delivered to KEDS and constitutes a valid and binding obligation of KEK enforceable against it in accordance with its terms.

12.2 The execution, delivery and performance of this Transfer Agreement do not, and shall not:

- (a) Conflict with or constitute a violation of the Charter or other constitutional document of KEK.
- (b) Conflict with or constitute a violation of any law, statute, judgment, order, decree or regulation or any legislative body, court, administrative agency, governmental authority, which has jurisdiction over KEK.

13. INDEMNIFICATION

13.1 Parties shall indemnify, and hold each other harmless from, against, and with respect to any and all action, loss, damage, claim, obligation, liability, penalty, fine and expense (including without limitation, reasonable legal fees and costs and expenses incurred while investigation, preparing, defending against or prosecuting any litigation, claim, proceeding, demand or request for action by any governmental or administrative entity) of any kind or character arising out of, or in connection with any of the following:

- (a) Any material breach of any of the representations or warranties contained in, or made pursuant to this Agreement; or
- (b) any failure by a Party to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by it pursuant to this Agreement.

13.2 If a Party is entitled to be indemnified pursuant to Article 13.1 above, it shall notify the other Party in writing within thirty (30) days of learning of any breach or failure giving rise to a right of indemnification under this Agreement or of notice of any pending or threatened claim or demand

Handwritten signatures

asserted by a third party, which the notifying Party has determined will give rise, or may give rise to a right of indemnification under this Agreement. Any notification submitted under this Article 13.2 should describe in detail the facts and circumstances of the claim.

14. FORCE MAJEURE

- 14.1 For the purposes of this Agreement, "Force Majeure" means any occurrence beyond the reasonable control of the Party claiming Force Majeure (the "Affected Party"), which it could not reasonably have avoided or overcome and which makes it impossible for the Affected Party to perform one or more obligations under this Agreement, including but without limitation, such an occurrence that results from:
- (a) acts of God, lightning, fire, storm, flood, earthquake, drought, accumulation of snow or ice, lack of water arising from weather or environmental problems;
 - (b) strike, lockout or other industrial disturbance (other than that of either Party's own employees);
 - (c) blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism;
 - (d) unavailability of transmission capability, including an unscheduled transmission line outage or any transmission system constraints;
 - (e) act of war (whether declared or undeclared), threat of war, terrorist act; or
 - (f) governmental restraint, other prohibition, measure or legislation, by Governmental Authority.
- 14.2 If a Party is fully or partly prevented due to Force Majeure from performing one or more of its obligations under this Agreement and such Party complies with the requirements of Article 14.3: (i) no breach or default on the part of the Affected Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations for the period of time and to the extent that such Force Majeure prevents its performance, and (ii) no obligation to pay damages will accrue to the Affected Party with respect to the obligations not performed because of Force Majeure.
- 14.3 Following the occurrence of a Force Majeure event, the Affected Party shall:
- (a) provide the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure, describing the particulars of such Force Majeure;
 - (b) remedy its inability to perform as soon as reasonably practicable;
 - (c) provide monthly status reports to the other Party, to inform the other Party of what steps have been taken to remedy the Force Majeure event and the expected remaining duration of the Party's inability to perform its obligations; and
 - (d) provide the other Party written notice promptly after it determines when it is able to resume performance of its obligations under this Agreement.

JD ch

14.4 A release from contractual obligations under Article 14.3 shall be of no greater scope and of no longer duration than is required by such Force Majeure event.

15. EVENTS OF DEFAULT

15.1 Except as otherwise provided in this Agreement, each one of the following Articles 15.1 (a) to (c) represents an event of default (an "Event of Default") for the purposes of this Agreement:

- (a) failure by either Party to perform in a timely manner a material obligation under this Agreement, to include, but without limitation the obligation to make, when due, any payment under this Agreement.
- (b) either Party omits to observe any of the covenants, representations, and warranties under this Agreement and any representations or warrant made by any of the Parties proves to be incorrect, untrue or misleading; or
- (c) either Party:
 - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger) or becomes insolvent or is unable or fails to pay its debts or admits in writing its inability generally to pay its debts as they become due;
 - (ii) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (iii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; or
 - (iv) causes or is subject to any event with respect to it which, under the Laws of the Republic of Kosovo has an analogous effect to any of the events specified in paragraphs (i) to (iii) above (inclusive).

16. TERMINATION

16.1 Except where this Agreement specifically provides for another remedy, either Party may terminate this Agreement on written notice with immediate effect where the other Party:

- (a) is responsible for or the subject of an Event of Default, except where such Event of Default is capable of remedy by the other Party and the other Party has failed to remedy such Event of Default within 28 days of receipt of a notice requiring it to do so; or
- (b) enters into liquidation whether compulsory or voluntary liquidation (other than pursuant to a consolidation, amalgamation or merger); or
- (c) suffers anything analogous to Article 16.1(b) or threatens to cease or ceases to carry on business.

MP *afin*

16.2 Termination of this Agreement for whatever reason shall not affect any rights or obligations which may have accrued prior to such termination or which expressly or by implication are intended to survive termination, whether resulting from the event giving rise to the right to terminate, or otherwise

17. NOTICES

17.1 Written communications relating to this Agreement between the Parties may be sent by e-mail, post, and fax or by hand. Provided that, formal notifications such as administrative orders, notifications of termination or breach or other notifications, which have an impact on the level of payments, or additional cost claims, should be submitted by post or hand to the addresses outlined below (or such other address as a Party may designate in writing to the other Party). E-mail may be used as a supplementary notification method for such formal or other notifications only. Notices must be delivered to the address of the intended recipient as follows:

For KEK:

No. 36 Mother Theresa Street, Pristina 10000, Kosovo
For the attention of the Chief Financial Officer.

For KEDS:

Elektrokosova Building, Bill Clinton Boulevard, Pristina 10000, Kosovo
For the attention of the Chief Financial Officer.

Notices shall be deemed effective and to have been received at the time of actual delivery.

18. APPLICABLE LAW AND DISPUTE RESOLUTION

18.1 This Agreement shall be subject to and interpreted in accordance with the laws of the Republic of Kosovo.

18.2 In the event that a Dispute between the Parties cannot be resolved informally, either Party may send a notice to the other Party identifying the dispute in issue. Within 30 days of delivery of a notice of dispute, the Parties shall attempt in good faith to settle such dispute by discussions amongst representatives of the Parties, each of whom shall possess the appropriate decision-making authority. In the event that such individuals are unable to reach agreement within 30 days, or such longer period as they may agree, either of the Parties may refer the matter to arbitration pursuant to Article 18.12, unless the matter is a Technical Dispute, in which case either Party may refer the matter to an expert pursuant to Article 18.3.

18.3 In the event that the Parties are unable to resolve a Technical Dispute in accordance with Article 18.2 then either Party may refer the Technical Dispute to an expert for consideration of the Technical Dispute and to obtain a recommendation from the expert as to the resolution the Technical Dispute. The expert shall have demonstrated expertise in the area to which such Technical Dispute relates and must satisfy the following requirements of impartiality and independence:

- (a) The expert cannot be a national of the jurisdiction of either Party or the jurisdiction of any investor or group of investor owning directly or beneficially five percent (5%) or more of the Ordinary Share capital of a Party; and
 - (b) The expert shall not be a shareholder or employee or agent or former employee or agent of, or have or have had any material interest (directly or indirectly) in the business or in, any Party or any Investor owning directly or beneficially five percent (5%) or more of the Ordinary Share capital of a Party.
- 18.4 In the event that the Parties cannot agree within 10 days as to whether a dispute falls within the definition of Technical Dispute, then this Article shall not be used to resolve this dispute and either Party may proceed directly to arbitration under Article 18.12 to resolve the dispute.
- 18.5 The Party initiating submission of the Technical Dispute to the expert shall provide the other Party with a notice stating that it is submitting the Technical Dispute to an expert and nominating the Person it proposes to be the expert. The other Party shall, within 15 days of receiving such notice, notify the initiating Party whether such Person is acceptable. If the Party receiving such notice fails to respond, or notifies the initiating party that the Person is not acceptable, the Parties shall meet and discuss in good faith for a period of 10 days to agree upon a Person to be the expert. If the Parties are unable to agree within the 10-day period, either Party may request the International Chamber of Commerce Centre for Expertise to nominate a Person, who shall be the expert; provided, however, that the nominated expert must satisfy the independence and impartiality requirements outlined in Article 13.3.
- 18.6 The Party seeking consideration for the Technical Dispute by the expert shall initiate the process by submitting to the expert within 10 days of the appointment of the expert to both the expert and the other Party, written materials setting forth (i) a description of the Technical Dispute; (ii) a statement of the initiating Party's position; and (iii) copies of records supporting the initiating Party's position. Within 10 days of the date that the initiating Party has submitted the materials described in the preceding sentence, the responding Party may submit to the expert: (A) a description of the Technical Dispute, (B) a statement of the responding Party's position, and (C) copies of any records supporting the responding Party's position. In addition to the material provided to the expert by the initiating Party, the expert shall consider any such information submitted by the responding Party within such 10-day period specified above and, in the expert's discretion, any additional information submitted by either Party at a later date. Any materials submitted by a Party to the expert shall be simultaneously submitted by such Party to the other Party.
- 18.7 Each Party shall designate one Person knowledgeable about the issues in dispute who shall be available to the expert to answer questions and provide any additional information requested by the expert. Except for such Person, a Party shall not be required to but may provide oral statements or presentations to the expert or make any particular individuals available to the expert.
- 18.8 The proceedings shall be without prejudice to the Parties and any evidence given or statement made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as arbitration, and the laws relating to commercial arbitration shall not apply.

- 18.9 When consideration of the Technical Dispute by the expert is initiated, the expert shall be requested to provide a recommendation within 15 days after the 10-day response period provided in Article 18.6 has run. If the expert's recommendation is given within such 15 day period, or if the expert's recommendation is given at a later time and no Party has initiated arbitration under Article 18.12 to resolve the Technical Dispute, the Parties shall review and discuss the recommendation with each other in good faith for a period of 10 days following delivery of the recommendation before proceeding with any other actions.
- 18.10 If either Party does not accept the recommendation of the expert with respect to the Technical Dispute, either Party may initiate arbitration proceedings in accordance with Article 18.12. Similarly if the expert has not submitted such recommendation within the time period provided in Article 18.9 either Party may initiate arbitration proceedings in accordance with Article 18.12.
- 18.11 The costs of engaging the expert shall be borne equally by the Parties and each Party shall bear its costs in preparing materials for and making presentations to the expert.
- 18.12 In the event that the parties are unable to resolve the dispute through the procedures above, then the Parties agree that the dispute shall be resolved through arbitration in accordance with Articles 18.12 to 18.15 herein.
- 18.13 The dispute shall be finally settled by arbitration before a tribunal (the "Arbitration Tribunal") conducted 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:
- (a) the statement of claim and the notification of the appointment of an arbitrator shall be included in the notice of arbitration;
 - (b) the appointing authority shall be the President of the Geneva Chamber of Commerce; the number of arbitrators shall be 3 (three);
 - (c) the place of arbitration shall be Geneva, Switzerland;
 - (d) the language to be used in the arbitral proceedings shall be English;
 - (e) 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 Arbitration 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;
 - (f) either Party may request an oral hearing, but the Arbitration Tribunal shall have the discretion whether or not to hold such a hearing unless the request is supported by the other Party;
 - (g) 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

Handwritten initials/signature in the bottom right corner.

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;

- (h) Article 37 and Article 39 of the UNCITRAL Arbitration Rules shall not apply;
- (i) 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
- (j) the award of the Arbitration Tribunal shall be final and binding upon the Parties, provided that:
 - (i) paragraphs (a), (b) and (d) of Article 190(2) of the Swiss Federal Private International Law Act shall be applicable; and
 - (ii) 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).

18.14 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 recognize and acknowledge that this Agreement constitutes a commercial transaction in respect of which neither Party is entitled to plead sovereign immunity. The Parties 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.

18.15 The arbitration agreement set forth in this Article 18, shall be treated as an agreement independent of and separated from the other terms of this Agreement and, accordingly, a determination or ruling by an arbitral tribunal properly constituted pursuant to this Article 13 that this Agreement or any provision hereof (other than this Article 18) is invalid, illegal or unenforceable shall not invalidate the arbitration agreement set forth in this Article 18.

19. MISCELLANEOUS

19.1 No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment, or modification shall be in writing and duly executed by the Parties.

19.2 Upon execution of this Agreement, the Parties agrees to perform all further acts and execute any and all documents necessary in order to implement and give full force and effect to this Agreement, and to all matters envisaged and contemplated herein. Such documents may include filings with

Governmental or Regulatory bodies, corporate resolutions, instruments of transfer or assignment, files, books and records, and such other documentation as may be reasonably necessary from time to time.

19.3 In the event that any provision of this Agreement shall be determined to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement shall not in any way be impaired, and the illegal, invalid or unenforceable provision shall be fully severed from this Agreement.

IN WITNESS WHEREOF, intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, as of the day and year first written above.

Signed for and on behalf of the Kosovo Energy)
Corporation J.S.C)
by [NAME])
this [DATE] day of [MONTH] 2013) Signature of KEK representative

Signed for and on behalf of the Kosovo)
Electricity KEDS, J.S.C)
by [NAME])
this [DATE] day of [MONTH] 2013) Signature of KEDS representative

APPENDX 1

DESCRIPTION OF INFORMATION TECHNOLOGY SERVICES PROVIDED BY KEDS TO KEK

[Note: The splitting of KEK IS services is in progress and below is an indicative list of the maximum range of services that may be required for the terms of the Shared Services Agreement. This list will be revised closer to the Effective Date].

1. Network Infrastructure	2. Revenue Control System
3. Wireless Links	4. Backup Services
5. Cisco Devices	6. EndPoint Protect Services (Antivirus)
7. Network Documentation	8. Monitoring Services
9. IP PBX	10. WEB Services
11. IP telephony billing system	12. Technical Support
13. Voice Recording	14. Finance And Accounting
15. Radio Communications and Recording	16. Cost Control System
17. Network Security	18. Vehicle Management System
19. Internet Security (ASA FireWall)	20. Fixed Assets
21. Video Surveillance	22. Centralized Document Management
23. Time Attendance Control	24. Sharepoint Services
25. Server Applications Infrastructure	26. Human Resources and Payroll
27. Domain services	28. Information Security
29. Infrastructure Documentation	30. Creation of security and usage rules
31. Application Services	32. Technical Specifications and Standardizations
33. File Services	34. Helpdesk
35. Email Services & AntiSpam	36. Helpdesk Trouble Ticket System
37. Internet Services & Filtering	38. IT Asset Inventory Management

M&P
ofc

APPENDIX 2

LIST OF PENIDNG CLAIMS FOR NON-PAYMENT OF ELECTRICITY & ELECTRICITY THEFT

Table 1 to 3 are attached

[Note: These will be updated with new cases that are filed and/or cases completed in the normal course of business prior to the Effective Date]

DR

APPENDIX 3

PENDING PROCUREMENT ACTIVITIES

[These will be updated prior to the Effective Date]

No.	Division	Procurement number	Description of procurement activity	Value (based on the Procurement Law)
1.	Network	KEKO-12-087-511	Furnizimdhendertumlinjave distributive dheobjekteve te TM qedalinnga TS Prishtina 7	Large
2.	Supply	KEKO-12-265-121	Furnizim me pjeserzerve per printera	Medium
3.	KEK	KEKO-12-027-211	Security Services for KEK Network, Supply and Corporate	High

[Handwritten signature]

COLLECTION AGREEMENT

BETWEEN

KOSOVO ENERGY CORPORATION, J.S.C (KEK)

AND

**KOSOVO ELECTRICITY DISTRIBUTION AND SUPPLY COMPANY, J.S.C
(KEDS)**

October 2012

This Collection Agreement is entered into by and between:

- (1) **Kosovo Energy Corporation, J.S.C** a company duly incorporated under the laws of Kosovo with registered number 70325399 whose registered office is at No. 36 Mother Theresa Street, Pristina 10000, Kosovo (hereinafter "KEK");and
- (2) **Kosovo Electricity Distribution and Supply Company, J.S.C.** a company duly incorporated under the laws of Kosovo with registered number 70606119, whose principal office address is at Elektrokosova Building, Bill Clinton Boulevard, Pristina 10000, Kosovo (hereinafter "KEDS").

(each a "Party" and together "the Parties")

RECITALS

WHEREAS:

- (A) The Government of the Republic of Kosovo has, in its capacity under Clauses 5.1, 9 and 11 of the Law on Publicly Owned Enterprises (Law No. 03/L-087 as amended by Law No. 04/L-111), and in accordance with EU Directive 2003/54 concerning the rules for the internal market in electricity, issued Decisions No. 04/36 and 03/38, which have approved the legal unbundling of KEK's electricity distribution and public supply functions, and also the privatization by sale of shares of KEDS.
- (B) On [●] 2012 [Strategic Investor] purchased [●] of the ordinary shares of KEDS pursuant to a Share Purchase Agreement dated [●] between [Strategic Investor], and the Government of the Republic of Kosovo (the "Share Purchase Agreement").
- (C) Pursuant to a Transfer Agreement, the assets relating to the electricity distribution network of Kosovo, and all attached rights, which are necessary to distribute electricity in Kosovo will be transferred to KEDS, and will thereafter have the employees, assets, liabilities and responsibility for system operation, maintenance, and development of the distribution network, together with the public supply of electricity. Execution of the Transfer Agreement is a condition precedent to completion of the Share Purchase Agreement.
- (D) Notwithstanding the terms of the Transfer Agreement, KEK has retained ownership of certain Retained Receivable (as defined herein) and, except as provided in this Agreement, KEDS has no claims to or liabilities for any such Retained Receivable.
- (E) KEK has requested that KEDS act as its agent for collection of the Retained Receivable and KEDS has agreed to do so on the terms provided in this Agreement.
- (F) The Government of the Republic of Kosovo has, by Decision No. [●], delegated to a Ministerial Committee full responsibility for the implementation of Decisions No. 04/36 and 03/38. On [DATE] 2012, the Government of Kosovo, through the Ministerial Committee, authorized the execution of this Collection Agreement.
- (G) The Board of Directors of KEK and KEDS have based on their decisions dated [●] 2012, resolved to approve the terms of this Collection Agreement and to authorize the duly appointed signatories to execute such agreements.

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained, and intending to be legally bound, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

In this Collection Agreement:

- 1.1 “**Agreement**” means this Collection Agreement and any Attachments hereto.
- 1.2 “**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.
- 1.3 “**Collection Fee**” means the compensation payable by KEK for certain costs and expenses of KEDS in connection with the collection of the Retained Receivable, as further particularized in Clause 5.1. The Collection Fee shall be expressed as a percentage of the Retained Receivable – as described in Clause 5.1 - plus Kosovo Value Added Tax at the prevailing rate.
- 1.4 “**Customer Journal**” means the customer care package record maintained by KEK – but, which will be provided to KEDS as part of the Transfer Agreement - for each Electric Customer showing all transactions related to billing and collection for the concerned Electric Customer.
- 1.5 “**Cut-off Date**” means the Day of the Month immediately preceding the Day on which Electric Customer invoices for electricity consumed during the prior Month are posted to the individual Customer Journal and ready for delivery. The Cut-off Date can only be either the 3rd, 4th or 5th Business Day of a Month.
- 1.6 “**Day**” - Means a twenty four (24) hour period commencing at 00.00 on any calendar day and ending at 00.00 hours on the following calendar day and the date of any Day shall be the date of its commencement as defined herein. Calendar day shall mean any day in a month, including weekends and holidays.
- 1.7 “**Dispute**” means any dispute, disagreement, of difference arising under, out of, or in connection with this Collection Agreement, including any dispute or difference concerning the existence, legality, validity, or enforceability or enforceability of this Collection Agreement or any provision hereof or the performance of a Party under any provision hereof.
- 1.8 “**Electric Customer**” means an entity, organization or person that is registered in the electric customer database maintained by KEK, and which will be conveyed to KEDS at the Effective Date as part of the Transfer Agreement.
- 1.9 “**KEDS Initial Receivable**” means the debt balance in Euros of each Electric Customer at the Effective Date – which includes the corresponding Value Added Tax - the rights to and ownership of which is conveyed to KEDS at the Effective Date. The amount is computed in accordance with the methodology specified in Clause 4.

- 1.10 “**The 2013 Payment for Social Subsidy**” means the annual payment made by the Government of Kosovo for electricity consumption of vulnerable customers, which is applied retrospectively, namely that the 2013 payment will be applied to 2012 electric consumption.
- 1.11 “**Legal Fees**” means any fees, taxes or equivalent payment, which is legally payable by KEDS to, or by order, of a court, arbitral tribunal or competent authority under Kosovo Law, upon commencement and/or during the course of a legal action against customers – where the subject of the underlying legal claim is the recovery of a Retained Receivable under this Collection Agreement. Provided that, if the underlying legal claim concerns both Retained Receivable and KEDS receivables, the Legal Fees shall be reduced pro rata – in proportion to the amount of the claim that relates to a Retained Receivable.
- 1.12 “**Month**” – A calendar month according to the Gregorian calendar.
- 1.13 “**Prudent Utility Practice**” means 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.
- 1.14 “**Regulatory Licenses**” means the Distribution System Operator and Public Supply Licenses issued by the Energy Regulatory Office of Kosovo with reference numbers ERO_Li_06/06 and ERO_Li_07/06 respectively (as modified by ERO decision ZRRE/Li_06/12), which have been transferred to KEDS on the Effective Date.
- 1.15 “**Retained Receivable**” means the debt balance in Euros of each Electric Customer at the Effective Date, the ownership of which is retained by KEK, which includes the corresponding Kosovo Value Added Tax. The amount is computed in accordance with the methodology specified in Clause 4. Provided that, for as long as the Trepca Settlement Agreement (as defined herein) remains valid, the monthly instalment payments of 40,000 Euros made by Trepca thereunder shall not be treated as a Retained Receivable, but shall be remitted by KEDS to KEK in their entirety. In the event that the Trepca Settlement Agreement unravels, the underlying debts of Trepca shall be re-defined – as appropriate - as either Retained Receivables, KEDS Initial Receivables, or simply KEDS receivables, and shall be subject to the terms of this Agreement.
- 1.16 “**Shared Services Agreement**” means a document executed by KEK and KEDS, which outlines the transitional commercial and operational relationship between KEK and KEDS upon the transfer of ownership and responsibility for the Distribution System, and Public Supplier obligations from KEK to KEDS.
- 1.17 “**Technical Dispute**” means a Dispute that relates to a technical, engineering, operational, or accounting issue or matter related to this Collection Agreement that, in any case, is the type of issue or matter that is reasonably susceptible to consideration and resolution by an expert in the relevant field or fields.
- 1.18 “**Transfer Agreement**” means the document transferring KEK electricity distribution and supply assets, contracts, liabilities, and obligations to KEDS.

- 1.19 "Trepca Settlement Agreement" means the debt settlement agreement concluded between Trepca mining complex and KEK dated 28th September 2010 – which shall be transferred to KEDS under the Transfer Agreement – and pursuant to which Trepca's Total Debt (as defined therein) shall be repaid in monthly instalment payments of 40,000 Euros.
- 1.20 The provisions of the Attachments attached to this Collection Agreement shall form an integral part of this Collection Agreement.
- 1.21 Clause, Schedule or paragraph headings shall not affect the interpretation of this Collection Agreement.
- 1.22 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.23 Words in the singular shall include the plural and vice versa.
- 1.24 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.25 Where the words include(s), including or in particular are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.26 References to clauses and attachments are to the Clause and Attachments of this Collection Agreement.
- 1.27 If this Collection Agreement is translated into other languages, and an ambiguity or inconsistency arises between the different language versions, the English language version shall prevail.

2. COMMENCEMENT AND TERM

- 2.1 This Collection Agreement enters into force on Day upon which all of the following conditions precedent are fulfilled:
- (a) Execution of the Collection Agreement by the Parties– the execution must occur on a Cut-Off Date;
 - (b) Execution of the Transfer Agreement by the Parties; and
 - (c) Execution of the Shared Services Agreement.
- (hereinafter the "Effective Date").
- 2.2 The Collection Agreement shall remain in force until 5(five) years from the Effective Date. At the end of the term hereof, the KEDS shall have no further obligation to engage in any collection activities in respect of the Retained Receivable, and all agency collection efforts under this Collection Agreement shall cease; provided that any monies collected by KEDS in

respect of Retained Receivable under Clause 5 prior to the expiry of the term of this Collection Agreement shall be remitted – less the Collection Fee and Legal Fee - to KEK.

- 2.3 Without prejudice to the foregoing, the Parties agree that – subject to their mutual written consent – the provisions of this Agreement may be extended, in whole or in part beyond the existing expiry date.

3. SCOPE OF THIS AGREEMENT

- 3.1 Pursuant to the terms of this Collection Agreement, KEK hereby designates and appoints KEDS as its agent to collect the Retained Receivable identified in the Receivables Database (as defined herein) in accordance with the terms of this Agreement, and KEDS hereby accepts such appointment and agrees to so serve as the KEK's agent in this regard. KEDS shall have no duties or responsibilities other than those expressly set forth herein. In no event shall KEDS have any claim with respect to the Retained Receivable, except as provided in this Agreement.

- 3.2 Further, the Parties undertake to implement the terms of this Agreement in good faith, with the principal objective of ensuring a continuity of services to Kosovo's electricity consumers.

4. IDENTIFICATION AND COLLECTION OF RETAINED RECEIVABLE

- 4.1 KEDS shall prepare and provide to KEK, no later than fifteen (15) Business Days after the Effective Date, a Database in the form of Attachment A hereto, identifying the account balance at the Effective Date of each Electric Customer and its allocation to (i) KEDS Initial Receivable and to (ii) Retained Receivable as of the Effective Date. The allocation of account balances shall be allocated based on the methodology outlined in Clauses 4.2 and 4.3 below.

- 4.2 The KEDS Initial Receivable for each Electric Customer will be determined at the Effective Date in accordance with the following methodology:

- (a) The prior two monthly invoices for electricity consumption will be determined from the Customer Journal.
- (b) All payments made in the 60 days prior to the Effective Date will be determined from the Customer Journal.
- (c) The KEDS Initial Receivable will equal the amount determined in (a) less the amount determined in (b), unless the amount in (b) is greater than the amount in (a), in which case the Initial Receivable will equal zero.

- 4.3 The Retained Receivable for each Electric Customer shall equal the account balance of the Electric Customer at the Effective Date less KEDS Initial Receivable.

- 4.4 The KEDS agrees to use reasonable commercial efforts to collect the Retained Receivable in accordance with Kosovo Law, Prudent Utility Practice and the provisions of its Regulatory Licenses; provided, that

- (a) KEDS shall not be obliged to disconnect customers for non-payment of the Retained Receivable; and



- (b) KEDS shall not be obliged to initiate legal action against customers for recovery of the Retained Receivable unless Legal Fees incurred by KEDS are reimbursed by KEK.
- 4.5 All payments received by KEDS from each Electric Customer for each quarterly period after the Effective Date for the duration of this Agreement will be allocated as follows:
- (a) First, to the value of electricity invoices issued by KEDS to the Electric Customer on, or after the Effective Date.
 - (b) In the event the payments received from the Electric Customer during the quarter exceed the value of electricity invoices issued under (a) above, the excess shall be allocated to the KEDS Initial Receivable for the Electric Customer. The value of the KEDS Initial Receivable will be updated at the end of each quarter based on the activity for the quarter
 - (c) In the event the payments received by KEDS from the Electric Customer during the quarter exceed the total value of (i) electricity invoices issued by KEDS during the quarter; and (ii) the KEDS Initial Receivable for the Electric Customer; the excess shall be allocated to the Retained Receivable for the Electric Customer. The Retained Receivable at the end of each quarter will be updated based on the activity for the quarter.
- 4.6 The Parties acknowledge that certain Retained Receivables are subject to special agreements (“Community Agreements”) concluded by KEK and customers or community leaders – these Community Agreements are listed in the Transfer Agreement. In accordance with the terms of the aforementioned Community Agreements, customers should not be disconnected for non-payment of Retained Receivable provided that they pay for their current consumption. When implementing the terms of this Agreement, KEDS agrees that it shall adhere to and respect the terms of all Community Agreements listed in the Transfer Agreement.
- 4.7 The initiation by KEDS of legal action against customers for recovery of the Retained Receivable will be undertaken based on a general approach to be agreed by the Parties, which should incorporate the following non-exhaustive criteria: (i) debt claimed should exceed a certain monetary threshold; (ii) there should be a realistic prospect of recovering the debt from the debtor in question; and (iii) debts that are nearing the applicable statute of limitation should be issued at court as a priority. Subject to KEK’s prior written consent, in case the effect of foreclosure or a debt recovery process may result in offsetting the debt or a part thereof against acquisition of a seized asset of the debtor or where the monies collected by KEDS in respect of Retained Receivable through legal actions shall be remitted in cash, securities or other forms, KEK shall pay and reimburse KEDS for the Collection Fee to which KEDS is entitled according to this Agreement.
- 4.8 The methodology for calculating the KEDS Initial Receivable, Retained Receivable and the allocation of customer payments after the Effective Date is illustrated in a practical example outlined in Attachment B of this Agreement.

5. COLLECTION FEE

5.1 Subject to Clause 5.4, the monies collected by KEDS in respect of Retained Receivable shall be remitted to the KEK net of the Collection Fee and Legal Fees incurred in the pursuit of the Retained Receivable (see Clause 4.4(b)). The Collection Fee shall constitute the sole and exclusive compensation to the KEDS for performance by it of the collection services hereunder, and shall be calculated as follows. The Collection Fee shall be equal to:

- (a) fifteen percent (15%) of a Retained Receivable for an Electric Customer, the total of which is equal to or exceeds 10,000 Euros as at the Effective Date, as identified on the Receivables Database. Kosovo VAT shall also be added to the Collection Fee at the prevailing rate; or
- (b) twenty five percent (25%) of a Retained Receivable for an Electric Customer, the total of which is below 10,000 Euros as at the Effective Date, as identified on the Receivables Database. Kosovo VAT shall also be added to the Collection Fee at the prevailing rate.

5.2 Collected amounts, net of the Collection Fee and Legal Fees, shall be remitted in full by KEDS to KEK on a quarterly basis, commencing on the date that is one hundred (100) Days after the Effective Date and on each quarterly anniversary of the Effective Date thereafter. Such remittances shall be delivered by KEDS in immediately available funds and credited to bank account(s) nominated in writing by KEK. The netting off of the Collection and Legal Fees by KEDS shall be accompanied by a corresponding invoice issued to KEK by KEDS.

5.3 Without prejudice to the generality of the foregoing, KEDS shall not be entitled to the Collection Fee in connection with The 2013 Payment for Social Subsidy or the monthly instalment payments made by Trepca under the Trepca Settlement Agreement. Upon receipt, KEDS shall remit such payments to KEK in their entirety without deduction - commencing on the Effective Date.

5.4 When implementing the terms of the Agreement the Parties shall comply with their respective obligations under Kosovo's Law on Value Added Tax (Law No. Nr.03/L- 146), to include – where required –remittance to the Kosovo Tax Authority of value added tax on monies collected herein, the reporting of bad debts, and the issuance of credit and debit notes.

6. REPORTS AND MAINTENANCE OF RECORDS

6.1 KEDS shall provide the KEK with a quarterly report, commencing on the date that is one hundred (100) Days after the Effective Date and on each quarterly anniversary of the Effective Date thereafter for the term of this Agreement (and, in any event, with each remittance of funds to the KEK) (such report, the "Progress Report"). The Progress Report shall be a form corresponding to the categories and information contained in the Receivables Database, and shall describe gross collections of Retained Receivable by KEDS, KEDS's calculation of the Collection Fee, and KEDS's recommendations, if any, for write-offs of receivables. KEDS shall provide the KEK with such back-up documentation for its calculations as the KEK may reasonably request.



- 6.2 During the term of the Agreement, each Party shall have right to appoint – at its own cost - a qualified external auditor to perform an audit of the implementation of its terms. In this event, the Parties shall cooperate fully with the appointed auditor and disclose all data and documentation in their possession or control pertaining to the Agreement. The Parties shall share any audit report produced under this Clause and thereafter discuss, in good faith, the implementation of any corrective action recommended by the audit. If no agreement can be reached, the Parties may pursue the matter as a Technical Dispute under Clause 13.3 of the Agreement.

7. REPRESENTATIONS AND WARRANTIES OF KEK

- 7.1 KEK represents and warrants to KEDS that as of the date of this Collection Agreement:

- (a) KEK is a joint stock company duly organised, validly existing and in good standing under the laws of Kosovo. KEK has all requisite power and authority to own its properties and to conduct its business as presently conducted.
- (b) KEK has all requisite power and authority to execute, deliver and perform its obligations arising under this Agreement and the transactions contemplated herein.
- (c) This Agreement has been duly executed and delivered to KEDS and constitutes a valid and binding obligation of KEK enforceable against it in accordance with its terms.

- 7.2 The execution, delivery and performance of this Collection Agreement do not, and shall not.

- (a) Conflict with or constitute a violation of the Charter or other constitutional document of KEK; or
- (b) Conflict with or constitute a violation of any law, statute, judgment, order, decree or regulation or any legislative body, court, administrative agency, governmental authority, which has jurisdiction over KEK.

8. INDEMNIFICATION

- 8.1 Parties shall indemnify, and hold each other harmless from, against, and with respect to any and all action, loss, damage, claim, obligation, liability, penalty, fine and expense (including without limitation, reasonable legal fees and costs and expenses incurred while investigation, preparing, defending against or prosecuting any litigation, claim, proceeding, demand or request for action by any governmental or administrative entity) of any kind or character arising out of, or in connection with any of the following:

- (a) Any material breach of any of the representations or warranties contained in, or made pursuant to this Agreement; or
- (b) any failure by a Party to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by it pursuant to this Agreement.

- 8.2 If a Party is entitled to be indemnified pursuant to Clause 8.1 above, it shall notify the other Party in writing within thirty (30) days of learning of any breach or failure giving rise to a right of indemnification under this Agreement or of notice of any pending or threatened claim



or demand asserted by a third party, which the notifying Party has determined will give rise, or may give rise to a right of indemnification under this Agreement. Any notification submitted under this Clause 8.2 should describe in detail the facts and circumstances of the claim.

9. FORCE MAJEURE

9.1 For the purposes of this Agreement, "Force Majeure" means any occurrence beyond the reasonable control of the Party claiming Force Majeure (the "Affected Party"), which it could not reasonably have avoided or overcome and which makes it impossible for the Affected Party to perform one or more obligations under this Agreement, including but without limitation, such an occurrence that results from:

- (a) acts of God, lightning, fire, storm, flood, earthquake, drought, accumulation of snow or ice, lack of water arising from weather or environmental problems;
- (b) strike, lockout or other industrial disturbance (other than that of either Party's own employees);
- (c) blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism;
- (d) unavailability of transmission capability, including an unscheduled transmission line outage or any transmission system constraints;
- (e) act of war (whether declared or undeclared), threat of war, terrorist act; or
- (f) governmental restraint, other prohibition, measure or legislation, by Governmental Authority.

9.2 If a Party is fully or partly prevented due to Force Majeure from performing one or more of its obligations under this Agreement and such Party complies with the requirements of Clause 9.3: (i) no breach or default on the part of the Affected Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations for the period of time and to the extent that such Force Majeure prevents its performance, and (ii) no obligation to pay damages will accrue to the Affected Party with respect to the obligations not performed because of Force Majeure.

9.3 Following the occurrence of a Force Majeure event, the Affected Party shall:

- (a) provide the other Party notice thereof, followed by written notice if the first notice is not written, as promptly as possible after such Party becomes aware of such Force Majeure, describing the particulars of such Force Majeure;
- (b) remedy its inability to perform as soon as reasonably practicable;
- (c) provide monthly status reports to the other Party, to inform the other Party of what steps have been taken to remedy the Force Majeure event and the expected remaining duration of the Party's inability to perform its obligations; and
- (d) provide the other Party written notice promptly after it determines when it is able to resume performance of its obligations under this Agreement.

AP edy

9.4 A release from contractual obligations under Clause 9.3 shall be of no greater scope and of no longer duration than is required by such Force Majeure event.

10. EVENTS OF DEFAULT

10.1 Except as otherwise provided in this Agreement, each one of the following Clauses 10.1 (a) to (c) represents an event of default (an "Event of Default") for the purposes of this Agreement:

- (a) failure by either Party to perform in a timely manner a material obligation under this Agreement, to include, but without limitation the obligation to make, when due, any payment under this Agreement.
- (b) either Party omits to observe any of the covenants, representations, and warranties under this Agreement and any representations or warrant made by any of the Parties proves to be incorrect, untrue or misleading; or
- (c) either Party:
 - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger) or becomes insolvent or is unable or fails to pay its debts or admits in writing its inability generally to pay its debts as they become due;
 - (ii) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (iii) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; or
 - (iv) causes or is subject to any event with respect to it which, under the Laws of the Republic of Kosovo has an analogous effect to any of the events specified in paragraphs (i) to (iii) above (inclusive).

11. TERMINATION

11.1 Except where this Agreement specifically provides for another remedy, either Party may terminate this Agreement on written notice with immediate effect where the other Party:

- (a) is responsible for or the subject of an Event of Default, except where such Event of Default is capable of remedy by the other Party and the other Party has failed to remedy such Event of Default within 28 days of receipt of a notice requiring it to do so; or
- (b) enters into liquidation whether compulsory or voluntary liquidation (other than pursuant to a consolidation, amalgamation or merger); or
- (c) suffers anything analogous to Clause 11.1(b) or threatens to cease or ceases to carry on business.

11.2 Without prejudice to the foregoing, KEK shall undertake a review of KEDS performance under this Agreement on an annual basis – the first review shall occur within 12 months of the Effective Date. Based on the aforementioned review, KEK may elect to terminate this Agreement by providing one month notice and, if it so chooses, contract a separate collection

AP
WJH

agent for the Retained Receivable. In this event, KEDS shall return any data in its possession or control pertaining to this Agreement to KEK, or its designated collection agent.

- 11.3 Upon termination or expiry of this Agreement for whatever reason, KEDS shall have no further obligation to engage in any collection activities in respect of the Retained Receivable, and all agency collection efforts under this Collection Agreement shall cease. However, this shall not affect any rights or obligations which may have accrued prior to such termination or expiry, or which expressly or by implication are intended to survive termination, whether resulting from the event giving rise to the right to terminate, or otherwise. In particular, any monies collected by KEDS – less the Collection Fee and Legal Fee - in respect of Retained Receivable under Clause 5 prior to termination or expiry of this Collection Agreement shall be remitted to KEK.

12. NOTICES

- 12.1 Written communications relating to this Agreement between the Parties may be sent by e-mail, post, fax or by hand. Provided that, formal notifications such as administrative orders, notifications of termination or breach or other notifications, which have an impact on the level of payments, or additional cost claims, should be submitted by post or hand to the addresses outlined below (or such other address as a Party may designate in writing to the other Party). E-mail may be used as a supplementary notification method for such formal or other notifications only. Notices must be delivered to the address of the intended recipient as follows:

For KEK:

No. 36 Mother Theresa Street, Pristina 10000, Kosovo

For the attention of the Chief Financial Officer.

For KEDS:

Elektrokosova Building, Bill Clinton Boulevard, Pristina 10000, Kosovo

For the attention of the Chief Financial Officer.

Notices shall be deemed effective and to have been received at the time of actual delivery.

13. APPLICABLE LAW AND DISPUTE RESOLUTION

- 13.1 This Agreement shall be subject to and interpreted in accordance with the laws of the Republic of Kosovo.
- 13.2 In the event that Dispute between the Parties cannot be resolved informally, either Party may send a notice to the other Party identifying the dispute in issue. Within 30 days of delivery of a notice of dispute, the Parties shall attempt in good faith to settle such dispute by discussions amongst representatives of the Parties, each of whom shall possess the appropriate decision-making authority. In the event that such individuals are unable to reach agreement within 30 days, or such longer period as they may agree, either of the Parties may refer the matter to arbitration pursuant to Clause 13.12, unless the matter is a Technical Dispute, in which case either Party may refer the matter to an expert pursuant to Clause 13.3.

- 13.3 In the event that the Parties are unable to resolve a Technical Dispute in accordance with Clause 13.2 then either Party may refer the Technical Dispute to an expert for consideration of the Technical Dispute and to obtain a recommendation from the expert as to the resolution of the Technical Dispute. The expert shall have demonstrated expertise in the area to which such Technical Dispute relates and must satisfy the following requirements of impartiality and independence:
- (a) The expert cannot be a national of the jurisdiction of either Party or the jurisdiction of any investor or group of investor owning directly or beneficially five percent (5%) or more of the Ordinary Share capital of a Party; and
 - (b) The expert shall not be a shareholder or employee or agent or former employee or agent of, or have or have had any material interest (directly or indirectly) in the business or in, any Party or any Investor owning directly or beneficially five percent (5%) or more of the Ordinary Share capital of a Party.
- 13.4 In the event that the Parties cannot agree within 10 days as to whether a dispute falls within the definition of Technical Dispute, then this Clause shall not be used to resolve this dispute and either Party may proceed directly to arbitration under Clause 13.12 to resolve the dispute.
- 13.5 The Party initiating submission of the Technical Dispute to the expert shall provide the other Party with a notice stating that it is submitting the Technical Dispute to an expert and nominating the Person it proposes to be the expert. The other Party shall, within 15 days of receiving such notice, notify the initiating Party whether such Person is acceptable. If the Party receiving such notice fails to respond, or notifies the initiating party that the Person is not acceptable, the Parties shall meet and discuss in good faith for a period of 10 days to agree upon a Person to be the expert. If the Parties are unable to agree within the 10-day period, either Party may request the International Chamber of Commerce Centre for Expertise to nominate a Person, who shall be the expert; provided, however, that the nominated expert must satisfy the independence and impartiality requirements outlined in Clause 13.3.
- 13.6 The Party seeking consideration for the Technical Dispute by the expert shall initiate the process by submitting to the expert within 10 days of the appointment of the expert to both the expert and the other Party, written materials setting forth (i) a description of the Technical Dispute; (ii) a statement of the initiating Party's position; and (iii) copies of records supporting the initiating Party's position. Within 10 days of the date that the initiating Party has submitted the materials described in the preceding sentence, the responding Party may submit to the expert: (A) a description of the Technical Dispute, (B) a statement of the responding Party's position, and (C) copies of any records supporting the responding Party's position. In addition to the material provided to the expert by the initiating Party, the expert shall consider any such information submitted by the responding Party within such 10-day period specified above and, in the expert's discretion, any additional information submitted by either Party at a later date. Any materials submitted by a Party to the expert shall be simultaneously submitted by such Party to the other Party.
- 13.7 Each Party shall designate one Person knowledgeable about the issues in dispute who shall be available to the expert to answer questions and provide any additional information requested by the expert. Except for such Person, a Party shall not be required to but may provide oral

ND
sky

statements or presentations to the expert or make any particular individuals available to the expert.

- 13.8 The proceedings shall be without prejudice to the Parties and any evidence given or statement made in the course of this process may not be used against a Party in any other proceedings. The process shall not be regarded as arbitration, and the laws relating to commercial arbitration shall not apply.
- 13.9 When consideration of the Technical Dispute by the expert is initiated, the expert shall be requested to provide a recommendation within 15 days after the 10-day response period provided in Clause 13.6 has run. If the expert's recommendation is given within such 15 day period, or if the expert's recommendation is given at a later time and no Party has initiated arbitration under Clause 13.12 to resolve the Technical Dispute, the Parties shall review and discuss the recommendation with each other in good faith for a period of 10 days following delivery of the recommendation before proceeding with any other actions.
- 13.10 If either Party does not accept the recommendation of the expert with respect to the Technical Dispute, either Party may initiate arbitration proceedings in accordance with Clause 13.12. Similarly if the expert has not submitted such recommendation within the time period provided in Clause 13.9 either Party may initiate arbitration proceedings in accordance with Clause 13.12.
- 13.11 The costs of engaging the expert shall be borne equally by the Parties and each Party shall bear its costs in preparing materials for and making presentations to the expert.
- 13.12 In the event that the parties are unable to resolve the dispute through the procedures above, then the Parties agree that the dispute shall be resolved through arbitration in accordance with Clauses 13.12 to 13.15 herein.
- 13.13 The dispute shall be finally settled by arbitration before a tribunal (the "Arbitration Tribunal") conducted 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:
- (a) the statement of claim and the notification of the appointment of an arbitrator shall be included in the notice of arbitration;
 - (b) the appointing authority shall be the President of the Geneva Chamber of Commerce; the number of arbitrators shall be 3 (three);
 - (c) the place of arbitration shall be Geneva, Switzerland;
 - (d) the language to be used in the arbitral proceedings shall be English;
 - (e) 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 Arbitration 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;
 - (f) either Party may request an oral hearing, but the Arbitration Tribunal shall have the

discretion whether or not to hold such a hearing unless the request is supported by the other Party;

- (g) 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;
- (h) Article 37 and Article 39 of the UNCITRAL Arbitration Rules shall not apply;
- (i) 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
- (j) the award of the Arbitration Tribunal shall be final and binding upon the Parties, provided that:
 - (i) paragraphs (a), (b) and (d) of Article 190(2) of the Swiss Federal Private International Law Act shall be applicable; and
 - (ii) 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).

13.14 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 recognize and acknowledge that this Agreement constitutes a commercial transaction in respect of which neither Party is entitled to plead sovereign immunity. The Parties 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.

13.15 The arbitration agreement set forth in this Clause 13, shall be treated as an agreement independent of and separated from the other terms of this Agreement and, accordingly, a determination or ruling by an arbitral tribunal properly constituted pursuant to this Clause 13 that this Agreement or any provision hereof (other than this Clause 13) is invalid, illegal or unenforceable shall not invalidate the arbitration agreement set forth in this Clause 13.

14. MISCELLANEOUS

14.1 KEK hereby agrees to deliver or cause to be delivered to KEDS a copy of all resolutions authorising the execution, delivery and performance by KEK of this Collection Agreement

and such other agreements or documents as may be expected and delivered by KEK pursuant to this Collection Agreement.

- 14.2 No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment, or modification shall be in writing and duly executed by the Parties.
- 14.3 Upon execution of this Collection Agreement, KEK agrees to perform all further acts and execute any and all documents necessary in order to implement and give full force and effect to this Collection Agreement, and to all matters envisaged and contemplated herein. Such documents may include filings with Governmental or Regulatory bodies, corporate resolutions, instruments of transfer or assignment, files, books and records, and such other documentation as may be reasonably necessary from time to time.
- 14.4 This Collection Agreement shall be binding upon and inure for the benefit of KEK and KEDS and their respective successors and permitted assigns. Neither this Collection Agreement or any rights, interests or obligations herein may be assigned by KEK or KEDS without their prior written collective consent, and any purported assignment without consent shall be void.
- 14.5 None of the provisions of this Collection Agreement, or any document contemplated herein, is intended to grant any right or benefit to any person or entity, except the Parties.
- 14.6 In the event that any provision of this Collection Agreement shall be determined to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Collection Agreement shall not in any way be impaired, and the illegal, invalid or unenforceable provision shall be fully severed from this Collection Agreement.

IN WITNESS WHEREOF, intending to be legally bound, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officer, as of the day and year first written above.

Signed for and on behalf of the **Kosovo Energy Corporation J.S.C**)
by [NAME])
this [DATE] day of [MONTH] 2013) Signature of KEK representative

Signed for and on behalf of the **Kosovo Electricity Distribution and Supply Company, J.S.C.**)
by [NAME])
this [DATE] day of [MONTH] 2013) Signature of KEDS representative



ATTACHMENT A

TEMPLATE FORM OF RECEIVABLES DATABASE

<u>Name of Customer</u>	<u>Account No.</u>	<u>Account Balance as of Effective Date</u>	<u>KEDS Initial Receivable</u>	<u>Retained Receivable</u>

TAD 41

ATTACHMENT B

ILLUSTRATIONS OF THE APPLICATION OF THE COLLECTION AGREEMENT

[SEE SEPARATE DOCUMENT]

PBTD
afy

COLLECTION AGREEMENT EXAMPLE - CUSTOMER #123

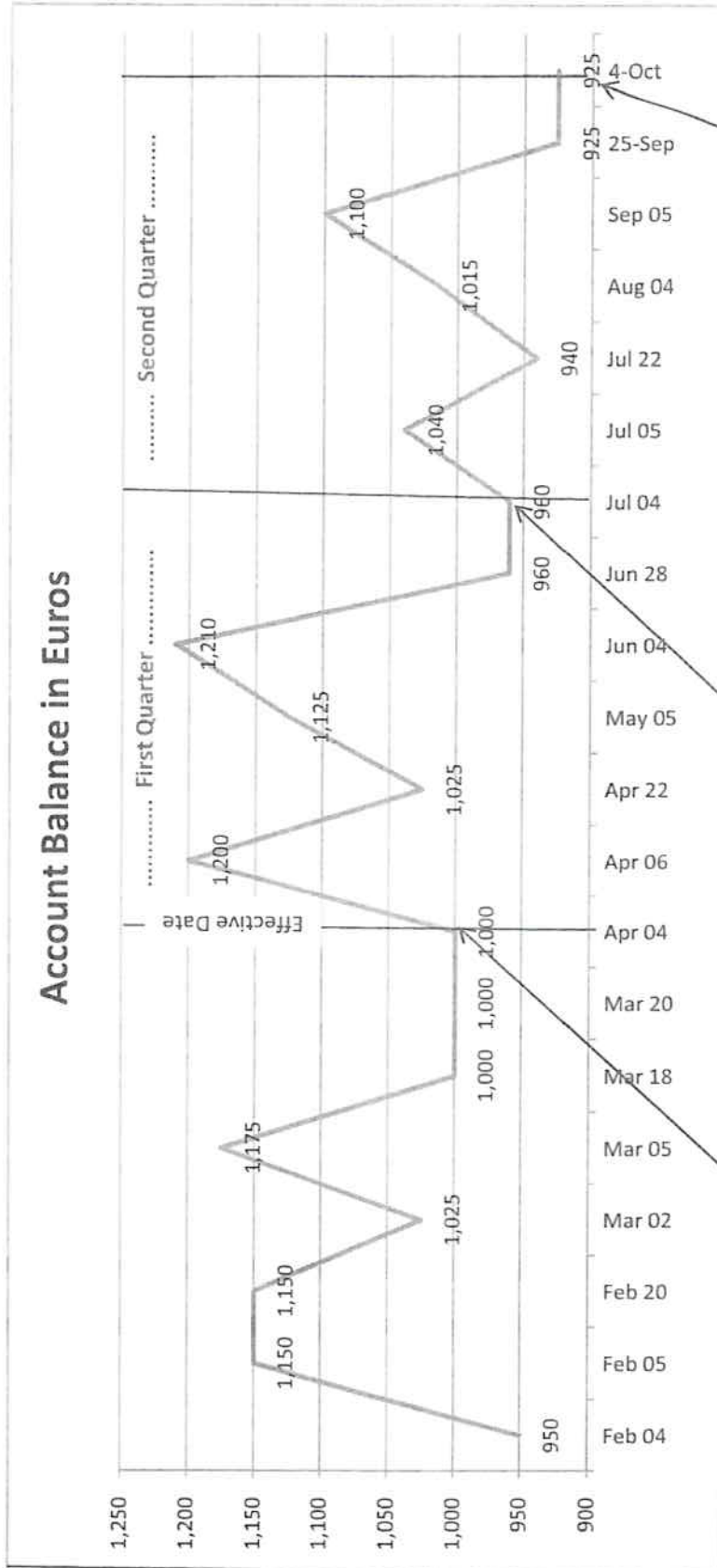
DATE	DESCRIPTION	AMOUNT	ACCOUNT BALANCE	KEDS INITIAL RECEIVABLE	KEK RETAINED RECEIVABLE	MONEY TO KEK	MONEY TO KEDS	PAYMENTS LESS BILLED
Feb 04	Balance on Customer Account		950					
Feb 05	Invoice for January consumption issued	200	1,150					
Feb 20	Invoice for January consumption due		1,150					
Mar 02	Payment made by customer	(125)	1,025			125		
Mar 05	Invoice for February consumption issued	150	1,175					
Mar 18	Payment made by customer	(175)	1,000			175		
Mar 20	Invoice for February consumption due		1,000					
Apr 04	"Effective Date"		1,000	50	950			
Apr 06	Invoice for March consumption issued	200	1,200					
Apr 22	Payment made by customer	(175)	1,025				175	
May 05	Invoice for April consumption issued	100	1,125					
Jun 04	Invoice for May consumption issued	85	1,210					
Jun 28	Payment made by customer	(250)	960				250	
Jul 04	First Quarterly Allocation made		960	10	950			40
Jul 05	Invoice for June consumption issued	80	1,040					
Jul 22	Payment made by customer	(100)	940				100	
Aug 04	Invoice for July consumption issued	75	1,015					
Sep 05	Invoice for August consumption issued	85	1,100					
25-Sep	Payment made by customer	(175)	925				175	
4-Oct	Second Quarterly Allocation made		925	0	925	25	(25)	35

Statistics for Customer 123: Quarters 1 and 2 - April 4th through October 4th

Bills Issued	625
Payments Made	700
Payments Retained by KEDS	675
Payments provided to KEK	25
KEDS Initial Receivable at 04 April	50
KEDS Initial Receivable at 04 October	0
KEK Retained Receivable at 04 April	950
KEK Retained Receivable at 04 October	925

[Handwritten signatures]

COLLECTION AGREEMENT EXAMPLE - CUSTOMER #123



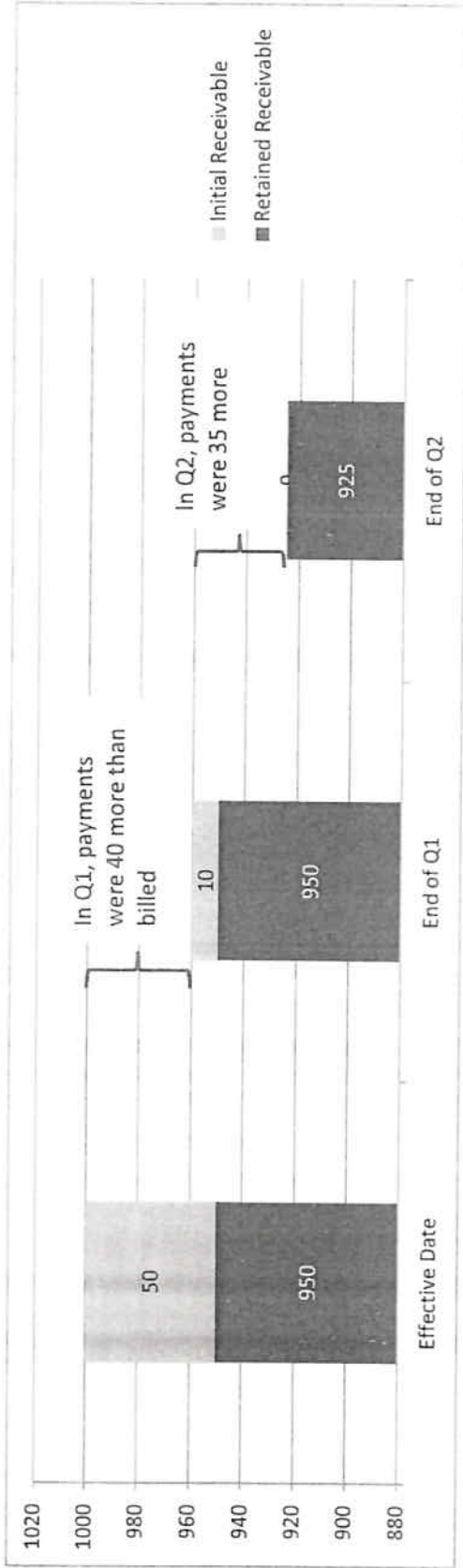
Balance @ Effective Date = 1,000
 - KEDS Initial Receivable = 50
 = KEK Retained Receivable = 950

Billed in Q1 = 385
 Collected in Q1 = 425
 Balance at Jul 04 = 960
 - KEDS Initial Receivable = 10
 = KEK Retained Receivable = 950

Billed in Q2 = 240
 Collected in Q2 = 275
 Balance at Oct 04 = 925
 - KEDS Initial Receivable = 0
 = KEK Retained Receivable = 925

Handwritten signatures and initials

COLLECTION AGREEMENT EXAMPLE - CUSTOMER #123
Account Balances in Euros



	Effective Date	End of Q1	End of Q2
Retained Receivable	950	950	925
Initial Receivable	50	10	0
Billed less Paid		(40)	(35)

[Handwritten signatures]



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

Kosovo Electricity Distribution and Supply Privatisation

BULK SUPPLY AGREEMENT

October 2012

Table of Contents

1.	Agreement.....	2
2.	Definitions	2
3.	Commencement and Termination.....	2
4.	Effective Date	3
5.	Sale and Purchase of Electricity	3
6.	Tariff.....	5
7.	Payment of Charges	5
8.	Grid Code, Metering Code and System Connection.....	5
9.	Not used.....	5
10.	Force Majeure.....	5
11.	Liabilities and Indemnities.....	7
12.	Termination.....	7
13.	Severability	8
14.	Variation	9
15.	Representations and Warranties.....	9
16.	Confidentiality and Publicity	10
17.	Assignment, Transfers of Interest	11
18.	Notices	11
19.	Entirety of Agreement.....	12
20.	Waiver.....	12
21.	Successors	12
22.	Relationship of Parties	12
23.	Good Faith	12
24.	Further Assurance	12
25.	Sovereign Immunity.....	12
26.	Costs.....	13
27.	Counterparts.....	13
28.	Dispute resolution and governing law	13
	SCHEDULE 1	17
	Part 1 17	
	DEFINITIONS.....	17
	SCHEDULE 2	22
	Part 1 22	
	As of the date of this agreement, eligible customers have the meaning as defined in the Law on Electricity, of 2010, Article 19.4.....	22
	Part 2 22	
	Interconnection Points	22

MAD

10

KEDS will purchase energy from KEK based on the gross electrical output of Kosovo A and Kosovo B Generating Stations less all "Auxiliary Power" consumed by each of the Generating Stations.....	22
The electrical configuration is complex since the generating stations and electric facilities were constructed in prior times without regard for commercial arrangements; therefore, the computation of auxiliary consumption is complex, as shown in the table below:.....	22
Computation of Net Output of Kosovo A to be Sold to KEDS	22
a. Net Output of the Generators excluding Auxiliary Power provided from within the generating station as measured by the following meters (KEK / KOSTT Border).....	22
95834894	22
95834896	22
95834898	22
Auxiliary Power provided from offsite sources to the generating station as measured by the following meters:.....	22
1. Energy delivered by KOSTT to Kosova A Substation (primarily for Auxiliary Power) measured by the following meters	22
95834890	22
95834892	22
2. Energy Delivered by KOSTT at 220 and 110KV for auxiliary Power measured by the following meters.....	22
95834900	22
95834888	22
3. Energy delivered from Kosovo A Substation to KEDS Distribution and measured by the following meters.....	22
94825069 (Fushe Kosova Substation)	22
94825070 (Mazgati Substation)	22
4. Energy Delivered to the Mine	23
94825071 (Bardhi I Madh Substation)	23
94825068 (Seperacioni)	23
94825072 (Mirashi)	23
96256401 (Mine Office)	23
5. Energy delivered to commercial customers located in Land of Mines and Generation which is billed by KEDS as measured by the following meters.....	23
94825073(Kosova Thengjilli Sh.a. Ngrohtorja)	23
94825067(DPQ Sh.a Kosova Thengjilli)	23
4694230 (S-KEK "Metalkos" Zyre te Drejtorise)	23
96256414 (Ben-Af Sh.p.k. Arben Gega)	23
35720921 (EVKO, Ymer Grajqevci).....	23
96256448(Instituti Inkos Sh.a).....	23
96256260(Instituti Mjekesise se Punes sh.a)	23
96256261(Instituti Mjekesise se Punes sh.a)	23
31978147 (Kiosk)	23
30000043 (TE DIS, I Punes Izet Rama)	23
4694322 (Shoq. Humanitare Shoq.Per Lufte).....	23
4692997 (Kiosk Mehdi Raqi)	23

MJD

96256474 (Kilo Kost-I-Kosova A)	23
b. Net Auxiliary Power provided from offsite sources = 1 + 2 - 3 - 4 - 5	23
I. Net output of Kosovo A Purchased by KEDS = a - b.....	23
Computation of Net Output of Kosovo B to be Sold to KEDS	23
c. Net Output of the Generators excluding Auxiliary Power provided from within the generating station as measured by the following meters (KEK / KOSTT Border).....	23
77049075 (A+).....	23
77049073 (A+).....	23
Auxiliary Power provided from offsite sources to the generating station as measured by the following meters:	24
6. Energy provided to Kosovo B Power Plant for Auxiliary Power measured by the following bidirectional meters	24
77049075 (A-).....	24
77049073 (A-).....	24
7. Energy provided to Kosovo B for Auxiliary Power from Overhead line 290 measured by the following meter	24
77049083 (A-).....	24
8. Energy delivered to the mine from Kosovo B measured by the following meters	24
97830303	24
97830304	24
9. Energy delivered to commercial customers located in Land of Mines and Generation which is billed by KEDS as measured by the following meters	24
4691533 (Hysen Hasan Ibrahim).....	24
4694296 (Kiosk Myrvete Gashi)	24
96256473(Kilo Kost-I-Kosova B)	24
96257431 (Ben-Af sh.p.k. Arben Gega	24
61047660 (IPKO)	24
d. Net Auxiliary Power provided from offsite sources = 6 + 7 - 8 - 9.....	24
II. Net output of Kosovo B Purchased by KEDS = c - d.....	24
The total energy to be purchased by KEDS from KEK is equal to the Net Output of Kosovo A (I above) plus the Net Output of Kosovo B (II above).....	24

MJD

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 Klinton Boulevard, Pristina, 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 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 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 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 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 KEK shall maintain in good order and ensure the optimum availability of generating capacity at the Kosovo A and Kosovo B power generation facilities according to Prudent Utility Practices and save only as otherwise expressly provided in this Agreement, sell to KEDS, all the electrical energy which can be supplied from those facilities 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 and capacity 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 Kosovo A and Kosovo B
- 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 produced at Kosovo A and Kosovo B, 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 duty in law 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 from Kosovo A and Kosovo B, to the extent then declared available under Clause 5.4.
- 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.
- 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 off-take from KOSTT electrical energy nominated for supply by KEDS under this Agreement.
- 5.14 The Tariff payable by KEDS, to KEK for electrical energy supplied under this Agreement shall be as set out in Clause 6.
- 6. Tariff**
- 6.1 The Tariff will be comprised of Energy Charges and Capacity Charges with respect to each of Kosovo A and Kosovo B payable by KEDS, to KEK, on a Monthly basis.
- 6.2 The Energy Charges and Capacity Charges shall be the so described charges for energy delivered from and the availability of each of Kosovo A and Kosovo B expressed in Euros per MWh as determined from time to time by the ERO in accordance with the pricing rules as costs which KEDS can recover under its regulated tariffs for the supply of electrical energy.
- 6.3 The Tariff 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 fifth (5th) day of each Month, KEK shall invoice KEDS with respect to the Tariff payable by KEDS for the previous Month. The Invoice shall show how the Energy Charge and the Capacity Charge has been calculated, any Applicable Taxes payable on such charges and the total sum payable.
- 7.2 Subject to Clause 7.3, KEDS shall pay all sums properly due under any such invoice no later than the tenth (10th) day of such Month or five (5) days after receipt of KEK's invoice if such invoice is received later than the fifth (5th) day in a Month.
- 7.3 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 (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 (8%) 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

MSD

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 Tariff under Clauses 6 and 7.

12. Termination

12.1 As of the date of this Agreement KEDS is aware of the KRPP PPA and the Kosovo B (Retrofitted PPA and this is without prejudice to KEDS's right to negotiate entirely these documents. With respect to these and/or any subsequent power purchase agreement(s) as may arise from alternative power projects which KEDS may have entered into ("Power Purchase Agreement(s)");



- 12.1.2 promptly following the first Day on which KEDS has the ability to receive the full capacity of the generation facilities under the Power Purchase Agreement(s); and
- 12.1.2 that capacity exceeds the maximum demand for electrical energy arising under KEDS's Public Supply Function;

KEDS shall notify KEK and KEK may terminate this Agreement on notice to KEDS no later than thirty (30) days following such notification by KEDS. KEDS may terminate this Agreement on notice to KEK at any time thereafter if KEK has not done so or been entitled to do so.

- 12.2 KEK shall have no right of termination under Clause 12.1 if at the time it can serve notice of termination:

- 12.2.1 Kosovo A remains operational and has capacity to generate electrical energy; and/or
- 12.2.2 the Reserved Supply Margin is insufficient for the needs of KEDS's supply/demand match and security of electrical energy supplies for KEDS's customers;

and when making its notification under Clause 12.1 KEDS shall advise KEK whether or not these conditions exist. Provided always that nothing in this Clause 12.2 may require KEK to continue the operation of Kosovo A beyond the date of its planned decommissioning as that date is understood at the time of entering into this Agreement.

- 12.3 Consequences of Termination

- 12.3.1 KEDS, shall pay all outstanding amounts to KEK.
- 12.3.2 KEDS, shall allow or procure the right of KEK and/or KOSTT to enter KEDS's premises in order to remove KEK's/KOSTT's equipment, provided that KEK/KOSTT shall not cause any damage to property or injury to employees of KEDS and/or KEDS and shall indemnify, defend and hold KEDS, harmless against any such damage or any third party claims arising in relation to such damage or the event causing such damage.
- 12.3.3 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 that as of the date of this Agreement:

- (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, 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

KEK:

Kosova B Power Plant

Obiliq/Kastriot, Republic of Kosovo

For the attention of: Managing Director; and

18.1.2 Notices given in writing and delivered by hand or sent by first class prepaid post, 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 or facsimile number by prior notice to the other Party.

MSD

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.

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

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

Kosovo Energy Corporation J.S.C.

Signed by **Arben Gjukaj**

for and on behalf of

**KOSOVO ENERGY CORPORATION
J.S.C.**

.....

Managing Director

Signed by **Fadil Çitaku**

for and on behalf of

**KOSOVO ENERGY CORPORATION
J.S.C.**

.....

Chairman, Board of Directors, KEK

KEDS

Signed by **Mujë Rugova**

for and on behalf of

KEDS

.....

Director of Board of Directors, KEDS

AND 

SCHEDULE 1

Part 1

DEFINITIONS

Agreement – shall mean this Bulk 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 any 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;

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

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;

Completion Date – has the meaning assigned to that term in the Share sale and Purchase 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 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;

Kosovo A – means the power generation facility of that name;

Kosovo B – means the power generation facility of that name;

Kosovo B (Retrofitted) PPA – means the power purchase agreement of that name as disclosed to the Parties prior to the date of this 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;

KRPP PPA – shall mean the power purchase agreement of that name as disclosed to the Parties prior to the date of this Agreement;

“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, 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

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;

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;

Power Purchase Agreement(s) – shall have the meaning given to that expression in Clause 12.1;

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;

Reserved Supply Margin – shall mean the reserved uncalled generation capacity inherent within the Republic of Kosovo as may be determined from time to time;

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;

Tariff – shall mean the charges payable by KEDS to KEK under Clause 6;

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
- (i) 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

Interconnection Points

KEDS will purchase energy from KEK based on the gross electrical output of Kosovo A and Kosovo B Generating Stations less all "Auxiliary Power" consumed by each of the Generating Stations.

The electrical configuration is complex since the generating stations and electric facilities were constructed in prior times without regard for commercial arrangements; therefore, the computation of auxiliary consumption is complex, as shown in the table below:

Computation of Net Output of Kosovo A to be Sold to KEDS	
a. Net Output of the Generators excluding Auxiliary Power provided from within the generating station as measured by the following meters (KEK / KOSTT Border)	95834894
	95834896
	95834898
Auxiliary Power provided from offsite sources to the generating station as measured by the following meters:	
1. Energy delivered by KOSTT to Kosova A Substation (primarily for Auxiliary Power) measured by the following meters	95834890
	95834892
2. Energy Delivered by KOSTT at 220 and 110KV for auxiliary Power measured by the following meters	95834900
	95834888
3. Energy delivered from Kosovo A Substation to KEDS Distribution and measured by the following meters	94825069 (Fushe Kosova Substation)
	94825070 (Mazgati Substation)



4. Energy Delivered to the Mine	94825071 (Bardhi I Madh Substation) 94825068 (Seperacioni) 94825072 (Mirashi) 96256401 (Mine Office)
5. Energy delivered to commercial customers located in Land of Mines and Generation which is billed by KEDS as measured by the following meters	94825073(Kosova Thengjilli Sh.a. Ngrohtorja) 94825067(DPQ Sh.a Kosova Thengjilli) 4694230 (S-KEK "Metalkos" Zyre te Drejtorise) 96256414 (Ben-Af Sh.p.k. Arben Gega) 35720921 (EVKO, Ymer Grajqevci) 96256448(Instituti Inkos Sh.a) 96256260(Instituti Mjekesise se Punes sh.a) 96256261(Instituti Mjekesise se Punes sh.a) 31978147 (Kiosk) 30000043 (TE DIS, I Punes Izet Rama) 4694322 (Shoq. Humanitare Shoq.Per Lufte) 4692997 (Kiosk Mehdi Raqi) 96256474 (Kilo Kost-I-Kosova A)
b. Net Auxiliary Power provided from offsite sources = 1 + 2 – 3 – 4 - 5	
I. Net output of Kosovo A Purchased by KEDS = a – b	

Computation of Net Output of Kosovo B to be Sold to KEDS	
c. Net Output of the Generators excluding Auxiliary Power provided from within the generating station as measured by the following meters (KEK / KOSTT Border)	77049075 (A+) 77049073 (A+)

Auxiliary Power provided from offsite sources to the generating station as measured by the following meters:	
6. Energy provided to Kosovo B Power Plant for Auxiliary Power measured by the following bidirectional meters	77049075 (A-) 77049073 (A-)
7. Energy provided to Kosovo B for Auxiliary Power from Overhead line 290 measured by the following meter	77049083 (A-)
8. Energy delivered to the mine from Kosovo B measured by the following meters	97830303 97830304
9. Energy delivered to commercial customers located in Land of Mines and Generation which is billed by KEDS as measured by the following meters	4691533 (Hysen Hasan Ibrahim) 4694296 (Kiosk Myrverte Gashi) 96256473 (Kilo Kost-I-Kosova B) 96257431 (Ben-Af sh.p.k. Arben Gega) 61047660 (IPKO)
d. Net Auxiliary Power provided from offsite sources = 6 + 7 - 8 - 9	
II. Net output of Kosovo B Purchased by KEDS = c - d	

The total energy to be purchased by KEDS from KEK is equal to the Net Output of Kosovo A (I above) plus the Net Output of Kosovo B (II above).



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

Table of Contents

1.	Agreement.....	1
2.	Definitions	1
3.	Commencement and Termination.....	1
4.	Effective Date	2
5.	Sale and Purchase of Electricity	2
6.	Price	4
7.	Payment of Charges	4
8.	Grid Code, Metering Code and System Connection.....	5
9.	Not Used.	5
10.	Force Majeure	5
11.	Liabilities and Indemnities.....	6
12.	Termination.....	7
13.	Severability	7
14.	Variation	7
15.	Representations and Warranties.....	7
16.	Confidentiality and Publicity	9
17.	Assignment, Transfers of Interest	9
18.	Notices	9
19.	Entirety of Agreement.....	10
20.	Waiver.....	10
21.	Successors	10
22.	Relationship of Parties	10
23.	Good Faith	10
24.	Further Assurance	10
25.	Sovereign Immunity.....	10
26.	Costs.....	11
27.	Counterparts.....	11
28.	Dispute resolution and governing law	11
	SCHEDULE 1	15
	Part 1 15	
	DEFINITIONS.....	15
	SCHEDULE 2	19

MJD

A

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 (15th) day of the Month, or if not a Business Day the immediately following Business Day or (b) the third (3rd) 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.



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

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

Kosovo Energy Corporation J.S.C.

Signed by **Arben Gjukaj**

for and on behalf of

**KOSOVO ENERGY CORPORATION
J.S.C.**

.....

Managing Director

Signed by **Fadil Çitaku**

for and on behalf of

**KOSOVO ENERGY CORPORATION
J.S.C.**

.....

Chairman, Board of Directors, KEK

KEDS

Signed by **Mujë Rugova**

for and on behalf of

KEDS

.....

Director of Board of Directors, KEDS



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, 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 – Bujanove	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

NT
F