



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

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

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 Çalik Limak Energy Sh.A.** a company established by the Consortium and incorporated under the laws of the Republic of Kosovo with registration number 70888645 whose registered address is at Qyteza Pejton, Mbreti Zog I. No. 09 Prishtinë 10000, Kosovë (the “**Purchaser**”).

RECITALS

- (A) The Seller, through the Privatisation Committee, has undertaken a competitive tender process for selecting private sector investors to acquire the shares owned by it, and generally to participate, in Kompania Kosovare Per 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 with 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 is 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

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.