

Power Purchase Agreement

between

Republic of Kosovo
acting through the **Ministry of Economic Development**

(as NKEC)

and

ContourGlobal Terra 6 S.à r.l.

(as GenCo)

**HUNTON &
WILLIAMS**

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THIS POWER PURCHASE AGREEMENT (this “**Agreement**”) is made as of the ___ day of January 2018 (the “**Execution Date**”) by and between:

- (1) The Government of Kosovo acting through the Ministry of Economic Development (“**NKEC**”); and
- (2) ContourGlobal Terra 6 S.à r.l. (“**GenCo**”), a private limited liability company (société à responsabilité limitée) organized under the laws of the Grand Duchy of Luxembourg, with its registered office at 35-37 Avenue de la Liberté, L-1931 Luxembourg, Grand Duchy of Luxembourg and registered with the Luxembourg Trade and Companies Register under number B 195.738.

Each of NKEC and GenCo is hereinafter referred to as a “**Party**” and, collectively, as the “**Parties.**”

RECITALS

- A. The Government of Kosovo (“**GOK**”) has recognized the need for additional power plant capacity to meet the long-term security-of-supply concerns present in Kosovo;
- B. GOK intends as a matter of policy to involve the private sector in an infrastructure project that includes the development, design, construction, financing, ownership, operation, and maintenance of the KRPP Facility (as hereinafter defined) and rehabilitation of the Site (as hereinafter defined) by GenCo (the “**Kosovo e Re Project**”);
- C. GenCo intends to form a new entity organized under the Laws of Kosovo (“**CG Kosovo**”), and following the formation of CG Kosovo, GenCo intends to assign all of its right, title and interest in and to, and delegate its obligations under, this Agreement to CG Kosovo and NKEC acknowledges and consents to such assignment;
- D. In connection with the Kosovo e Re Project, GenCo was selected pursuant to a competitive process to develop, design, construct, finance, own, operate, and maintain the lignite-fired electric power generation facility to be located on the Site at Obiliq, Kosovo, all in accordance with the Environmental Standards (as hereinafter defined);
- E. GOK, together with the ERO, has recognized the need for a long-term power purchase agreement as the only financially affordable solution for Kosovo to attract the private sector investment necessary to satisfy the long-term environmental and security-of-supply concerns present in the country;
- F. GOK and GenCo previously agreed on the Agreed €/MWh Target (as such term is defined herein) of €80/MWh, which amount is equal to 101.78% of the €78.6/MWh target as described in a memorandum of understanding in November 2015.
- G. GOK intends to form the New Kosovo Electric Company, a joint stock company organized under the Laws of Kosovo (“**New Kosovo Electric Company**”), and following the formation of New Kosovo Electric Company, NKEC intends to assign all of its right, title and interest in and to and delegate its obligations under this Agreement to New Kosovo Electric Company and GenCo acknowledges and consents to such assignment;
- H. Simultaneously with the entry by NKEC and GenCo into this Agreement, NKEC is entering into the Back-to-Back Power Purchase Agreement (as hereinafter defined) to effectuate the intent of providing for the electrical capacity and energy of the KRPP Facility to be available to the public supplier;
- I. GenCo wishes to sell and NKEC wishes to purchase the Declared Available Capacity (as hereinafter defined) up to the Contract Capacity (as hereinafter defined) and all of the Net Electrical Output (as hereinafter defined) on and pursuant to the terms and conditions contained herein; and

J. On the date hereof, GenCo is entering into the Implementation Agreement with GOK and the Lignite Supply Agreement (as hereinafter defined) with KEK Mining, among other Project Agreements (as hereinafter defined).

NOW, THEREFORE, for and in consideration of the promises and mutual covenants contained herein, and intending to be legally bound, the Parties hereby agree as follows:

Article 1 Definitions; Interpretation

1.1 Definitions

Whenever the following capitalized terms appear in this Agreement, the Schedules, or the Annexes, they shall have the meanings stated below:

“½-Year Period” – Each period of one-half (1/2) of an Agreement Year (which in the ordinary course shall be six (6) consecutive Months commencing on the Commercial Operations Date and on each six-month anniversary thereof and ending at the end of the Day immediately prior to each immediately following six-month anniversary of the Commercial Operations Date).

“½-Year Revenue Requirement” – GenCo’s revenue requirement for a ½-Year Period, as calculated in accordance with Section 3.1.1(a) of Schedule 1.

“Abandonment (GenCo)” – The voluntary cessation for a period of 30 consecutive Days of the construction or operation of the KRPP Facility, and the withdrawal of all, or substantially all, personnel by GenCo from the KRPP Facility for reasons other than:

- (a) a breach or default by NKEC under this Agreement;
- (b) a Specified POE Action or Inaction or a GOK Event of Default (as defined in the Implementation Agreement) under the Implementation Agreement; or
- (c) a Force Majeure Event.

“Accountants” – An independent firm of international chartered accountants agreed between the Parties, which shall not have a significant portion of its international business in Kosovo and shall not represent either GenCo or any GenCo Party or NKEC or any NKEC Party. If the Parties are unable to agree within fifteen (15) Business Days, either party may request appointment by the ICC Centre for Expertise.

“Accrual Start Date” – December 20, 2017.

“Actual Debt” – The actual indebtedness incurred under the Financing Documents (which may include one or more senior debt facilities) approved by NKEC in accordance with Section 3.13 from the Financial Closing and through the Final Draw Date, including: any capitalized Actual IDC; the Debt Service Reserve Account, the Working Capital Reserve Account, and other reserve accounts funded from debt; the initial amount of the Working Capital Amount funded from the debt; and other Project Costs funded from debt. The Actual Debt includes the debt proceeds associated with the payment to GenCo as a lump sum at Financial Closing of the Development Costs incurred before the Financial Closing and the debt proceeds applied to the payment of the Permitted GOK Advisor Fees.

“Actual Equity” – The sum of:

- (a) the actual amount of cash contributed to GenCo by the Sponsor HoldCo and the Ultimate Sponsor; and

- (b) the actual amount of any disbursements made to GenCo by the Sponsor HoldCo or the Ultimate Sponsor or Affiliates of the Sponsor HoldCo or the Ultimate Sponsor to GenCo pursuant to any Shareholder Loans,

in each case through the Final Draw Date to finance the Kosovo e Re Project.

“Actual IDC” – The amount of interest paid, or capitalized, in accordance with the Financing Documents approved by GenCo in accordance with Section 3.13, by GenCo on the Actual Debt during the period commencing on Financial Closing and ending on the Commercial Operations Date.

“Actual KOSTT Grid Conditions” – The actual power factor at the Connection Point, the actual KOSTT Grid Frequency, and the actual KOSTT Grid voltage, each as applicable during a given period of time.

“Additional Land” – Has the meaning given thereto in the Site Transfer Agreement.

“Additional Payments” – A payment associated with a Start-Up or Hot Standby Mode to be paid by NKEC to GenCo pursuant to Section 17.1, as calculated in accordance with Schedule 1.

“Additional Property” – Has the meaning given thereto in the Implementation Agreement.

“Administrative Services” – Those services typically performed under an administrative services agreement that will be performed by the Administrative Services Contractor for GenCo, including:

- (a) providing such organizational design, recruiting and staffing services as are necessary and appropriate for GenCo;
- (b) providing such office and infrastructure organizational services as are necessary and appropriate for GenCo, including the establishment of a business office and necessary offices at the Site;
- (c) designing and implementing systems, policies and procedures to address routine events related to the Kosovo e Re Project;
- (d) serving as the point of contact for, and managing communication with, GenCo’s counterparties under the Project Agreements and any Public Authority;
- (e) making all filings and obtaining all GenCo Consents;
- (f) registering, marketing, or selling of any Emission Reduction Rights;
- (g) monitoring insurance coverage required of GenCo and its counterparties under the Project Agreements, obtaining and maintaining all insurance required to be maintained by GenCo under the Project Agreements, conducting periodic risk management surveys of the operations of the project, handling all claims and insuring proper collection for any insurance coverage, and providing copies of policies, endorsements, inspections, claims, quotes and other reports or documentation to GenCo;
- (h) performing such loan administration tasks as are necessary and appropriate for GenCo, including principal and interest calculations, coordination of payments, compliance list preparation and administration, and issuance of reports and notices to lenders;
- (i) preparing the annual O&M budgets in accordance with Schedule 1;

- (j) designing and implementing GenCo’s public relations program and managing relationships with Public Authorities;
- (k) developing and updating financial models for the Kosovo e Re Project, including models used to prepare invoices and implement the tariff;
- (l) providing such administrative transition services from construction to operations that are necessary for GenCo until the occurrence of the Commercial Operations Date;
- (m) developing the Ammonia, Fuel Oil, and Limestone Tender Policy;
- (n) administering, enforcing, or amending the Project Agreements, including (i) calculating and presenting invoices, and collecting payments on behalf of GenCo (ii) reviewing invoices received by GenCo and making payments on behalf of GenCo;
- (o) supervising, monitoring, and enforcing GenCo’s and each counterparty’s compliance with the terms and conditions of all Project Agreements under which GenCo has any obligations or rights;
- (p) establishing all accounting policies and creating all systems appropriate and necessary in connection with administering the Project Agreements, GenCo, and the KRPP Facility, including all accounting associated with the development and updating of the Base Availability Credit or any other aspect of the tariff, and other tasks necessary to set the Base Availability Credits provided for in this Agreement, and other tasks necessary to set the Base Availability Credits provided for in this Agreement;
- (q) preparing and filing returns and performing all administrative tasks related to the payment of Taxes applicable to GenCo, the KRPP Facility, and GenCo’s other assets;
- (r) salaries and related expenses such as payroll taxes, pensions, and workers’ compensation, together with travel, telephone, postage, and office rent and office maintenance expenses and all costs of officers of GenCo not located at the KRPP Facility and of officers and employees of Affiliates of GenCo who perform, and for the time and to the extent they perform, functions relating to GenCo or this Agreement and any work or services undertaken by any employee of GenCo or its Affiliates who is not based in Kosovo full-time with a primary focus on the Kosovo e Re Project, including executive office support, administrative support, operations management support, business development support and legal support (excluding outside litigation services and other outside legal services), finance and accounting support, management information systems support, technical services support, human resources support and benefits support rendered by employees of Affiliates of GenCo; and
- (s) all other administrative functions related to GenCo, the KRPP Facility, and GenCo’s other assets.

“Administrative Services Agreement” – The agreement entered or to be entered into between GenCo and the Administrative Services Contractor in accordance with Section 3.15 as such agreement may be amended by the parties thereto from time to time.

“Administrative Services Contractor” – An Affiliate of the Ultimate Sponsor to be formed, or any successor entity.

“AEUDC” – An allowance for equity used during construction.

“Affiliate” – As to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person; provided that “Affiliate” shall in no event (other than in connection with the confidentiality obligation and permissible disclosure set forth under Section 27.16(c)(i)) include any Person holding a direct or indirect equity interest in the Ultimate Sponsor. For purposes of this definition, “control” (including with correlative meanings, the terms “controlling,” “under common control with,” and “controlled by”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting stock or other equity interests, by contract, or otherwise. For purposes of this definition, each Specified POE (other than NKEC) and GOK shall be an “Affiliate” of NKEC.

“Affiliated Lender” – With respect to any proposed Change Order, any lender that is either (i) an Affiliate of the GenCo Contractor that is the counterparty to such Change Order (or an Affiliate of a supplier of major components thereto and such Change Order concerns such supplier) or (ii) a state-owned enterprise (as defined by the Organisation for Economic Co-operation and Development in Guidelines on Corporate Governance of State-Owned Enterprises, available at <http://www.oecd-ilibrary.org/docserver/download/2615061e.pdf>) of the same country as the GenCo Contractor that is the counterparty to such Change Order (or of suppliers of major components and such Change Order concerns such suppliers), but only if such GenCo Contractor or supplier, as applicable, is also a state-owned enterprise.

“AGC” – Automatic generation control equipment, which equipment is used for the automatic regulation of the output of the KRPP Facility in response to a change in KOSTT Grid Frequency and to maintain other operating limits, primarily through the use of a governor.

“Agreed €/MWh Target” – €80/MWh.

“Agreement” – Has the meaning given thereto in the introductory paragraph.

“Agreement Year” – Each period of twelve (12) consecutive Months commencing on the Commercial Operations Date and on each anniversary thereof and ending at the end of the Day immediately prior to each immediately following anniversary of the Commercial Operations Date.

“Ambient Conditions” – Refers to operations of the KRPP Facility at Ambient Site Conditions and Actual KOSTT Grid Conditions using the Lignite, Fuel Oil, Ammonia, Limestone, and Water actually being consumed by the KRPP Facility, as applicable during a given period of time.

“Ambient Site Conditions” – Ambient temperature, atmospheric pressure, and humidity, as such condition exists from time to time at the KRPP Facility as measured and recorded by the Weather Station.

“Ammonia” – Ammonia appropriate for operation of the KRPP Facility to achieve the Net Electrical Output and the Contracted Operating Characteristics required under this Agreement within the Environmental Standards.

“Ammonia, Fuel Oil, and Limestone Tender Policy” – GenCo’s Ammonia, Fuel Oil, and Limestone procurement policy establishing the mechanisms by which GenCo shall tender for Ammonia, Fuel Oil, and Limestone and the responsibilities of employees involved in such tendering, required documentation of procurement proceedings and decisions, procurement documentation, and other related GenCo procurement policies, which policy has been approved by NKEC and as may be amended from time to time with NKEC’s consent, and which policy may provide for a procurement action without a tendering in circumstances provided for under Section 35 of the Law on Public Procurement, 2011, as amended by

the Law Amending the Law on Public Procurement in Kosovo (05/L-092), if GOK has approved GenCo's proposed procurement action, provided that GOK shall respond within two (2) Business Days to a GenCo proposal and in the event GOK fails to so respond within two (2) Business Days of receipt of the proposed action along with a notice of the potential waiver of rights that may result from a failure to respond within such period then GOK shall be deemed to have approved such proposal.

"Ancillary Services" – Services provided by GenCo from the KRPP Facility other than the provision of Declared Available Capacity and Net Electrical Output, such services being Reactive Power and voltage support, and frequency regulation.

"AnnualEU28PPI" – The arithmetic mean of the twelve (12) Monthly EU 28 PPIs of a Year.

"Annual Capacity Test" – Has the meaning given thereto in Section 9.4.1.

"Applicable Counterparty Cure Period" – Period applicable for cure of an event of default by NKEC under this Agreement, as set forth in this Agreement.

"Applicable Standards" – Collectively,

- (a) the Environmental Standards;
- (b) the Health & Safety Standards;
- (c) the Resettlement Standards;
- (d) the Social Standards; and
- (e) to the extent not described above, any other Laws of Kosovo and any Consents setting standards concerning environmental, social, labor, health and safety or security risks of the type contemplated by the IFC Environmental and Social Sustainability Standards or imposing liability for the breach thereof.

"Applicable Standards (EPC/O&M/Enviro/Admin)" – Collectively,

- (a) the Environmental Standards;
- (b) the Health & Safety Standards;
- (c) the Social Standards; and
- (d) to the extent not described above, any other Laws of Kosovo and any Consents setting standards concerning environmental, social, labor, health and safety or security risks of the type contemplated by the IFC Environmental and Social Sustainability Standards or imposing liability for the breach thereof.

"Approved Change Order" –

- (a) Any Change Order necessitated on, or resulting from, the following grounds:
 - (i) ground conditions not reasonably foreseeable;

- (ii) Pass-Through Environmental/Archaeological Conditions (but not Specified Environmental/Archaeological Conditions), but only, without limiting Article 24, in relation to a Change Order providing for a schedule change;
 - (iii) any Change Orders required by the terms of the EPC Contract (which contract was approved by NKEC and GOK under Section 3.9 and which contract has not been amended without NKEC and GOK approval, other than through Approved Change Orders), the Specified Environmental Condition Remediation Contract (which contract was approved by NKEC and GOK under Section 3.11 and which contract has not been amended without NKEC and GOK approval, other than through Approved Change Orders)), or the GenCo Connection Works EPC Contract (which contract was approved by NKEC and GOK under Section 6.3 and which contract has not been amended without NKEC and GOK approval, other than through Approved Change Orders);
 - (iv) any Change Order required as a result of Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, Change in Raw Water Quality, failure to perform by NKEC under this Agreement or failure to perform by GOK or a Specified POE under any other Project Agreement;
 - (v) any Change Order providing for schedule extensions in relation to the EPC Contract, the Specified Environmental Condition Remediation Contract, or the GenCo Connection Works EPC Contract due to any force majeure event as described in the EPC Contract, the Specified Environmental Condition Remediation Contract, or the GenCo Connection Works EPC Contract;
 - (vi) any Change Order required for the KRPP Facility to be in compliance with the Applicable Standards shall qualify as an Approved Change Order, but only so long as neither NKEC nor GOK nor a Specified POE shall be required to incur any cost or expense under this Agreement or any Project Agreement and it shall have no impact on any schedule or date under this Agreement or any material adverse effect on NKEC, GOK, or any Specified POE under any Project Agreement;
 - (vii) Change Orders in respect of delays attributable to NKEC inability to accommodate GenCo's test schedule, as provided in Section 9.1.3;
- (b) (A) any Change Order approved by the Lenders in accordance with the terms for approval of such in the Financing Documents (without taking into consideration any approval by any Affiliated Lender) or permitted under the express terms of the Financing Documents that would, alone or together with other Change Orders (excluding those expressly approved by NKEC and GOK under subclause (c), except if such inclusion is a condition of NKEC in its grant of approval under subclause(c)), not (i) cause a delay in substantial completion under the EPC Contract, the Specified Environmental Condition Remediation Contract, or the GenCo Connection Works EPC Contract by more than twenty-eight (28) days or (ii) increase amounts payable under the EPC Contract, the Specified Environmental Condition Remediation Contract, or the GenCo Connection Works EPC Contract, as applicable, beyond the remaining Contingency Amount or (B) any Change Order or series of Change Orders that would, alone or together with other Change Orders approved under this subclause (b)(B) and other increased costs applied to the GenCo Contingency Sub-Amount, not increase amounts payable under the EPC Contract, the Specified Environmental Condition Remediation Contract, or the GenCo Connection Works EPC Contract, as applicable, beyond the GenCo Contingency Sub-Amount; and

- (c) any other Change Order not constituting an Approved Change Order under subclauses (a) or (b) above that is actually approved by NKEC and GOK, in its discretion; provided, however, that unless NKEC or GOK objects to a request in writing to approve any Change Order within fifteen (15) Days following the receipt of such request, written approval from NKEC or GOK shall not be required for GenCo to proceed with such Change Order and shall be deemed approved by NKEC and GOK.

“Archaeological Conditions” – Means archaeological conditions on the Site that require assessment and protection in accordance with the Laws of Kosovo and the Environmental Standards.

“Ash and Gypsum Disposal Agreement” – The agreement by that name between GenCo and KEK Mining dated on the Execution Date.

“Ash/Gypsum Slurry Pipeline System” – Has the meaning given thereto in the Ash and Gypsum Disposal Agreement.

“Availability Factor” – A factor measuring the availability factor (%) of the KRPP Facility during a given ½-Year Period (as declared by GenCo pursuant to Section 12.4.4 of the Agreement (adjusted from forecasted Ambient Conditions to Reference Conditions in accordance with the Technical Correction Factor Methodology), except to the extent such capacity is dispatched and not delivered) as a percentage of the total that the KRPP Facility could produce if operating at Contract Capacity for all hours of a given ½-Year Period (such that there are not any outages or deratings in such period).

“Availability Payment” – The amount payable pursuant to Section 16.1, in respect of any Month, as calculated in accordance with Section 2.1 of Schedule 1.

“Average Consumption Rate” – The amount of lignite consumed to produce 1 kWh at Bid Case 1.

“B&M Mines/Sibovc South Field Mine Reclamation Plan” – Has the meaning given thereto in the Ash and Gypsum Disposal Agreement.

“BAC Correction Factor” – Has the meaning given thereto in Section 3.3.5(b) of Schedule 1.

“BAC Report (Annual)” – Has the meaning given thereto in Section 3.3.5 of Schedule 1 and is further illustrated Section 3.3.1 of Schedule 1.

“BAC Report (Close-Out Reconciliation)” – Has the meaning given in Section 3.3.7 of Schedule 1.

“BAC Report (Initial)” – Has the meaning given thereto in Section 3.3.1 of Schedule 1 and is further illustrated in Section 3.3.1 of Schedule 1.

“BAC Report (Second)” – Has the meaning given thereto in Section 3.3.3 of Schedule 1 and is further illustrated in Section 3.3.1 of Schedule 1.

“Back-to-Back Power Purchase Agreement” – The agreement, if any, by that name between NKEC and KESCO and/or any similar agreement, if any, entered into between NKEC and any Other Supplier, in each case that may be entered into at any time in accordance with the Law on Electricity, 2016 or the Laws of Kosovo.

“Base Availability Credit” or “BAC” – With respect to the KRPP Facility in a given ½-Year Period, the applicable credit, per MW, as determined in accordance with Schedule 1.

“Base Case Financial Model” – The financial model set forth in an Excel spreadsheet sent by email by Cong Ta to Lorik Fejzullahu on the Execution Date (and confirmed in an email by Lorik Fejzullahu to Cong Ta as the Base Case Financial Model), which shall be used to determine the amount of the cost per MWh (using a simple arithmetic average over the anticipated Term of this Agreement) calculated:

- (a) including all amounts (including Availability Payments, Energy Payments, Additional Payments, and other payments described in the tariff or in the Project Agreements) reasonably anticipated to be payable by NKEC to GenCo;
- (b) excluding Permitted GOK Advisor Fees anticipated to be payable by GenCo;
- (c) based on the eventual bid from the winning EPC/LTM Bidder Consortium;
- (d) based on a price for Lignite of €12/ton;
- (e) notwithstanding the requirements of the Implementation Agreement and the Sponsor Support Agreement, contributions to the Community Development Fund shall be modeled as €0 prior to the Commercial Operations Date;
- (f) based on the Expected Availability Factor;
- (g) including the Contingency Amount and the GenCo Contingency Sub-Amount in the Project Budget;
- (h) excluding any payments under the Specified Environmental Condition Remediation Contract and (without duplication) all other costs and expenses to evaluate, control, address, remediate and/or remove the Specified Environmental/Archaeological Conditions, which costs and expenses shall be addressed in accordance with Section 15.2;
- (i) based on a load factor (total energy generation) equal to 97.76% from the time available; and
- (j) based on no CO2 emissions costs and no ETS (emissions trading scheme).

“Bid Case 1” – A bid case to be required from the EPC/LTMA Bidder Consortia to reflect the average operating conditions of the KRPP Facility and at full load.

“Bid Cases” – The operating points agreed by the Parties and included in the Tender (Plant). Each Bid Case shall guarantee the lignite and fuel oil usage and, as agreed by the Parties in connection the Tender (Plant), provide other commodity guarantees or consumption rates of the KRPP Facility under specific operating conditions.

“Bid Supporting Financial Institution” – Has the meaning given thereto in Section 3.9.5(d).

“Bomb Assessment Survey” – A detailed survey of any bombs that may be present on the Site undertaken by the GOK-Appointed Independent Engineer, subject to review by GenCo.

“Budgeted Monthly Administrative Services Costs” – Has the meaning given thereto in Section 3.15(d)(ii).

“Budgeted Monthly O&M Costs” – Has the meaning given thereto in Section 3.14(e)(ii).

“Business Day” – Any Day other than a Saturday, Sunday, or a Day on which commercial banks in Pristina, Kosovo are legally permitted to be closed for business.

“Buy-Out Date” – Has the meaning given thereto in the Implementation Agreement.

“Capacity Test” – The tests to determine the Tested Capacity of the KRPP Facility at the time of Commissioning of the KRPP Facility, which is to be carried out pursuant to Sections 9.1 and 9.3, and as is more particularly described in Schedule 4.

“Capacity Test Certificate” – A certificate to be issued by the GOK-Appointed Independent Engineer under Section 9.3.3(a) in connection with the Capacity Test or Section 9.4.5 in connection with an Annual Capacity Test and in either case containing the information specified in Schedule 4.

“Certificate of Readiness for Commissioning” – A certificate to be issued by the GOK-Appointed Independent Engineer to GenCo and NKEC under Section 9.3.1 certifying that the KRPP Facility is ready for the NKEC Acceptance Tests to be carried out.

“Certificate of Readiness for Synchronization” – The certificate to be issued by the GOK-Appointed Independent Engineer to GenCo and NKEC under Section 9.2 certifying that the KRPP Facility has passed the necessary no load, full speed tests and that the KRPP Facility is in a condition that is ready for and capable of synchronization with the KOSTT Grid.

“CG Kosovo” – Has the meaning given thereto in the recitals.

“Change in Law” –

- (a) The adoption, promulgation, repeal, modification, or reinterpretation after the Execution Date by any Public Authority of any Law of Kosovo, including any Change in Tax;
- (b) the adoption, promulgation, repeal, modification, or reinterpretation after the Execution Date of the Grid Code or the Metering Code to the extent applicable to GenCo, including any change that makes the Market Rules applicable to GenCo other than the voluntary accession thereto by GenCo in writing;
- (c) the imposition by a Public Authority of any material term or condition in connection with the issuance, renewal, extension, replacement, or modification after the Execution Date of any GenCo Consent;
- (d) the imposition by a Public Authority of any additional GenCo Consent; or
- (e) any of the foregoing that occurs with respect to any counterparty to any Project Agreement, Construction/Maintenance Contract, or Financing Document,

that in any such case:

- (i) establishes any requirement that affects the development, design, construction, financing, ownership, operation, or maintenance relating to the Kosovo e Re Project that is different from the requirements or affects the profits, costs or risks associated with the same
 - (A) in effect as of the Execution Date,

- (B) specified in any applications, or other documents filed in connection with such applications, for any GenCo Consent filed by GenCo, or
 - (C) agreed to in any of the Project Agreements, or the Construction/Maintenance Contracts; and
- (ii) has a Material GenCo Effect.

“Change in Raw Water Quality” – A condition in which a water quality standard of the Water available from the Water Supplier under the Water Supply Agreement is above a maximum or below a minimum Specified Raw Water Quality Standard or a Rejection Point Raw Water Quality Standard that continues or is expected to continue for an extended period of time and no abatement of such condition is reasonably expected for an extended period of time or the Parties agree that such condition should be treated as permanent. For clarity, the Parties agree that a Raw Water Force Majeure Event that meets the definition of a Change in Raw Water Quality shall also be deemed a Change in Raw Water Quality.

“Change in Tax” – The adoption, promulgation, bringing into effect, repeal, expiration other than as explicitly provided by a sunset provision as provided in the Laws of Kosovo in effect as of the Execution Date, amendment, reinterpretation, change in interpretation, or other modification after the Execution Date of any Law of Kosovo by any Public Authority, relating to any Tax, duty, license, fee, royalty, or other revenue-producing measure, including any application of any tax (including withholding taxes on distributions to the Sponsor HoldCo or shareholders of GenCo to the extent such withholding taxes are final tax liabilities of such parties and are not subject to any credit or adjustment, including any credit or adjustment against any other tax liability), duty, license fee, royalty, or other revenue-producing measure which is applicable to or imposed on GenCo or any GenCo Contractor and causes GenCo to incur for itself or on behalf of any GenCo Contractor and in connection with the Kosovo e Re Project, any Tax, withholding obligation, duty, license, fee, royalty, or similar revenue producing fee that is greater than or less than those GenCo would have incurred under the Laws of Kosovo in effect as of the Execution Date.

“Change in Tax Notice” – Has the meaning given thereto in Section 23.4.1(a).

“Change Order” – A change order in relation to the EPC Contract, the Specified Environmental Condition Remediation Contract, or the GenCo Connection Works EPC Contract, or any amendment or similar modification to having the same effect.

“Charter Documents” – With respect to any particular entity:

- (a) all organizational and governance documents, including all documents adopted or filed in connection with the creation, formation, or organization of such entity;
- (b) all shareholders agreements, voting agreements, voting trust agreements, company agreements, operating agreements, joint venture agreements, registration rights agreements, or similar agreements; and
- (c) any amendment or supplement to any of the foregoing.

“Check Metering System” – All meters and metering devices (including any remote terminal units and an electronic data recording system) used to measure Net Electrical Output and Reactive Power, which is to be used as back-up to the Metering System.

“Cold Start-Up” – A Start-Up that commences within a specified number of hours after the point in time when the KRPP Facility was last synchronized with the KOSTT Grid, which specified number of hours is set forth in Section 8.1 of Schedule 2.

“Commercial Operations Date” – The Day immediately following the date on which the KRPP Facility is Commissioned and the other conditions specified in Section 9.3.3(b) have been satisfied or waived by NKEC; provided, however, that in no event shall the Commercial Operations Date occur earlier than ninety (90) Days prior to the Required Commercial Operations Date without the prior written approval of NKEC.

“Commissioned” – The successful completion of Commissioning of the KRPP Facility for continuous operation and Real-Time Electrical Dispatch in accordance with Article 9 and Schedule 4 and the certification of such successful completion of Commissioning of the KRPP Facility to NKEC and GenCo by the GOK-Appointed Independent Engineer.

“Commissioning” – The undertaking of the NKEC Acceptance Tests on the KRPP Facility.

“Community Development Fund” – Has the meaning given thereto in the Implementation Agreement.

“Competitively Tendered Ammonia Price” – The price, as it varies from time to time, that GenCo pays (or would pay if such Ammonia were so acquired) for Ammonia acquired pursuant to a competitive tender process undertaken by GenCo by exercising that degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from a skilled and experienced generator of electricity engaged in the acquisition of Ammonia under the same or similar circumstances and conditions to those pertaining to GenCo’s acquisition thereof and in accordance with (i) the Ammonia, Fuel Oil, and Limestone Tender Policy, and (ii) the obligation to comply with EU Utilities Procurement Directive as set forth in Section 3.12.

“Competitively Tendered Fuel Oil Price” – The price, as it varies from time to time, that GenCo pays (or would pay if such Fuel Oil were so acquired) for Fuel Oil acquired pursuant to a competitive tender process undertaken by GenCo by exercising that degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from a skilled and experienced generator of electricity engaged in the acquisition of Fuel Oil under the same or similar circumstances and conditions to those pertaining to GenCo’s acquisition thereof and in accordance with (i) the Ammonia, Fuel Oil, and Limestone Tender Policy, and (ii) the obligation to comply with EU Utilities Procurement Directive as set forth in Section 3.12.

“Competitively Tendered Limestone Price” – The price, as it varies from time to time, that GenCo pays (or would pay if such Limestone were so acquired) for Limestone acquired pursuant to a competitive tender process undertaken by GenCo by exercising that degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from a skilled and experienced generator of electricity engaged in the acquisition of Limestone under the same or similar circumstances and conditions to those pertaining to GenCo’s acquisition thereof and in accordance with (i) the Ammonia, Fuel Oil, and Limestone Tender Policy, and (ii) the obligation to comply with EU Utilities Procurement Directive as set forth in Section 3.12.

“Connection Agreement” – The agreement by that name between GenCo and KOSTT dated on the Execution Date (as defined in the Connection Agreement).

“Connection Area” – Has the meaning given thereto in the Implementation Agreement.

“Connection Point” – The physical point or points where the KRPP Facility and the KOSTT Grid are to be connected, as specified in the Connection Agreement.

“Connection Upgrade Easement” – Has the meaning given thereto in the Connection Agreement.

“Consent” – All approvals, consents, authorizations, notifications, concessions, acknowledgements, licenses, permits, decisions, or similar items that are required from any Public Authority with jurisdiction over the Kosovo e Re Project under any Law of Kosovo for any or all of GenCo, the Lenders, the Sponsor HoldCo, the Ultimate Sponsor and the GenCo Contractors with respect to the Kosovo e Re Project.

“Construction/Maintenance Contracts” – The EPC Contract, the LTM Agreement, the O&M Contract, the GenCo Connection Works EPC Contract, the Specified Environmental Condition Remediation Contract, and the Administrative Services Agreement, collectively.

“Construction Deposit” – Has the meaning given thereto in Section 3.1.1(a).

“Construction Letter of Credit” – Has the meaning given thereto in Section 3.1.1(a).

“Construction Period” – The period commencing on the date of Financial Closing and expiring on the Commercial Operations Date.

“Construction Report” – A report to be submitted by GenCo pursuant to Section 4.7.1, which report shall address the matters identified in, and shall be substantially in the form set out in Schedule 3.

“Construction Security” – Has the meaning given thereto in Section 3.1.

“Construction Security Drawing Event” – Any event, condition, or circumstance identified in Section 3.1 that entitles NKEC to draw on the Construction Security.

“Construction Start Date” – The date of issuance of the full “notice to proceed” by GenCo to the EPC Contractor and the satisfaction of all other conditions precedent to the obligation of the EPC Contractor to commence the construction of the KRPP Facility.

“Contingency Amount” – The amount in the Project Budget to cover cost overruns, schedule delays or other uncertainties or unforeseeable elements of time/cost in the estimate of Project Costs associated with the development, construction and commissioning of the Kosovo e Re Project.

“Contract Capacity” – Has the meaning given thereto in Section 4.4.1.

“Contracted Operating Characteristics” – The limits and constraints in Schedule 2 relating to the operation, maintenance, and Real-Time Electrical Dispatch of the KRPP Facility.

“Contractors” – The direct contractors of either Party and any of their direct subcontractors, in each case, that are involved in the performance of this Agreement, a Construction/Maintenance Contract or any activity related to the Kosovo e Re Project.

“Data Room” – An electronic data room intended to make available technical and other information to bidders seeking to become a GenCo Contractor or the Owner’s Engineer.

“Day” – A period of twenty-four (24) hours, commencing at 00:00 of each day, and “Daily” shall be construed accordingly.

“Day-Ahead Revised Scheduling Instruction” – Has the meaning given thereto in Section 12.5.1(b).

“Day-Ahead Scheduling Instruction” – Has the meaning given thereto in Section 12.5.1(a).

“Debt Service Reserve Account” – Any debt service reserve account required by the terms of the Financing Documents.

“Declaration Deadline” – Has the meaning given thereto in Section 12.4.2(a).

“Declared Available Capacity” – In respect of each hour of an Operating Day, the net generating capacity of the KRPP Facility, expressed in MW at the Reference Conditions at the Connection Point, that GenCo has declared available to NKEC in accordance with Section 12.4.2(a) without regard to NKEC’s or KOSTT’s ability or inability to receive energy from the KRPP Facility at the Connection Point (except to the extent caused by a GenCo Event of Default).

“Declared Operating Characteristics” – The limits and constraints (of the sort described in Schedule 2) relating to the operation, maintenance, and Real-Time Electrical Dispatch of the KRPP Facility, as may be declared from time to time by GenCo in the event that the actual limits and constraints are different from the Contracted Operating Characteristics.

“Deemed Compensation Period” – Has the meaning given thereto in Section 24.5.2(b).

“Degradation Factor” – An expected lowering of the efficiency of the KRPP Facility over time. For purposes of this Agreement, Degradation Factor will be (a) based on the then applicable Equivalent Operating Hours and (b) applied as an Hourly Operating Condition in the Technical Correction Factor Methodology.

“Delay Liquidated Damages” – Has the meaning given thereto in Section 4.5(a).

“Delayed Payment Rate” – Euribor plus five percent (5%) per annum, compounded semi-annually, calculated for the actual number of Days that the relevant amount remains unpaid on the basis of the number of Days in the applicable Agreement Year.

“Delivery Point (Lignite)” – The Lignite delivery point described in the Lignite Supply Agreement.

“Delivery Point (Water)” – The Water delivery point described in the Water Supply Agreement.

“Demonstration Period” – Commencing with the first anniversary of the Commercial Operations Date, a period of sixty (60) Days following the last Day of the last Month in the Maintenance Months in each Year, or such other sixty (60) Day period as may be agreed between NKEC and GenCo, during which GenCo shall carry out the Annual Capacity Test.

“Development Costs” – Has the meaning given thereto in the Implementation Agreement.

“Development Costs Budget” – A Development Costs budget for the period prior to Financial Closing.

“Dispatched & Delivered Net Electrical Output (KOSTT)” – The amount of Dispatched Net Electrical Output (KOSTT) that is delivered to KOSTT during the relevant period, which shall be calculated after having calculated the Dispatched & Delivered Net Electrical Output (NKEC) and shall be the amount of Net Electrical Output delivered at the Connection Point during the relevant period minus the amount of Dispatched & Delivered Net Electrical Output (NKEC) (but never more than the amount dispatched by

KOSTT). For an illustration of the calculation of Dispatched & Delivered Net Electrical Output (KOSTT), see table under the definition of Dispatched & Delivered Net Electrical Output (NKEC + KOSTT).

“Dispatched & Delivered Net Electrical Output (NKEC)” – The amount of Dispatched Net Electrical Output (NKEC) that is delivered to NKEC during the relevant period (but never more than the amount dispatched by NKEC). For an illustration of the calculation of Dispatched & Delivered Net Electrical Output (NKEC), see table under the definition of Dispatched & Delivered Net Electrical Output (NKEC + KOSTT).

“Dispatched & Delivered Net Electrical Output (NKEC + KOSTT)” – The sum of (a) the Dispatched & Delivered Net Electrical Output (NKEC) and (b) the Dispatched & Delivered Net Electrical Output (KOSTT) (but never more than the amount dispatched by NKEC and KOSTT). For an illustration of the calculation of Dispatched & Delivered Net Electrical Output (NKEC + KOSTT), see below.

	Hour	Actual NEO	NKEC (DA)	KOSTT (RT)	NKEC + KOSTT	Comment
Dispatched NEO	1		200	+0	200+0=200	
	2		200	+0	200+0=200	
	3		200	+0	200+0=200	
	4		200	+5	200+5=205	
	5		200	+5	200+5=205	
	6		200	+5	200+5=205	
	7		200	-5	200-5=195	
	8		200	-5	200-5=195	
	9		200	-5	200-5=195	
Dispatched & Delivered NEO	1	200	200	200-200=0	200+0=200	
	2	201	200	201-200=1 0	200+0=200	Actual exceeded dispatch
	3	199	199	199-199=0	199+0=199	GenCo will be assessed for balancing energy as set forth in Schedule 1
	4	205	200	205-200=5	200+5=205	
	5	206	200	206-200=6 5	200+5=205	Actual exceeded dispatch
	6	204	200	204-200=4	200+4=204	GenCo will be assessed for balancing energy as set forth in Schedule 1
	7	195	195	195-195=0	195+0=195	
	8	196	195	196-195=1 0	195+0=195	Actual exceeded dispatch
	9	194	194	194-194=0	194+0=194	GenCo will be assessed for balancing energy as set forth in Schedule 1

“Dispatched Net Electrical Output (KOSTT)” – The Net Electrical Output requested to be generated by the KRPP Facility during the relevant period in accordance with instructions from KOSTT in the form of a Real-Time Electrical Dispatch Instruction (i.e., above or below that requested by NKEC). Dispatched Net Electrical Output (KOSTT) for an hour includes Net Electrical Output required by GenCo to comply with a Real-Time Electrical Dispatch Instruction for a future hour to account for the Ramp Rate and other Contracted Operating Characteristics set forth in Schedule 2. For an illustration of the calculation of Dispatched Net Electrical Output (KOSTT), see table under the definition of Dispatched & Delivered Net Electrical Output (NKEC + KOSTT).

“Dispatched Net Electrical Output (NKEC)” – The Net Electrical Output requested to be generated by the KRPP Facility during the relevant period in accordance with instructions from NKEC, in the form of a Day-Ahead Scheduling Instruction or Day-Ahead Revised Scheduling Instruction, as the case may be. For an illustration of the calculation of Dispatched Net Electrical Output (NKEC), see table under the definition of Dispatched & Delivered Net Electrical Output (NKEC + KOSTT).

“Dispatched Net Electrical Output (NKEC + KOSTT)” – The sum of the Dispatched Net Electrical Output (NKEC) and the Dispatched Net Electrical Output (KOSTT). For an illustration of the calculation of Dispatched Net Electrical Output (NKEC + KOSTT), see table under the definition of Dispatched & Delivered Net Electrical Output (NKEC + KOSTT).

“Dispute” – Any dispute, disagreement, controversy, or difference between the Parties arising under, out of, or in connection with this Agreement, including any dispute, disagreement, controversy, or difference concerning the existence, legality, validity or enforceability of this Agreement or any provision hereof or the performance or breach of a Party under any provision hereof and also including any dispute, disagreement, controversy or difference between the Parties, GOK, any Specified POE, Sponsor HoldCo, or the Ultimate Sponsor concerning non-contractual obligations arising under, out of, or in connection with this Agreement.

“Due Date” – Has the meaning given thereto in Section 17.2(a).

“E&S Management Plan” – Any environmental and social management plan prepared in accordance with Applicable Standards by or on behalf of GenCo (or incorporated by or on behalf of GenCo from a plan prepared by other parties) pursuant to and in accordance with the ESIA (GenCo).

“Early Stage Additional Development Costs” – Any Early Stage Development Costs in excess of nine million six hundred and sixty-four thousand Euros (€9,664,000.00), but not in excess of the total amount of such Early Stage Additional Development Costs indicated in the Development Costs Budget. For the avoidance of doubt, Early Stage Additional Development Costs are not Pre-Approved Costs, and, in any event, GenCo shall not be entitled to accrue a return on Early Stage Additional Development Costs prior to Financial Closing.

“Early Stage Development Costs” – Development Costs incurred by GenCo, the Sponsor HoldCo, the Ultimate Sponsor, or any of their Affiliates during the period from January 1, 2016 to the Execution Date, which includes both Early Stage Pre-Approved Development Costs and Early Stage Additional Development Costs.

“Early Stage Pre-Approved Development Costs” – A fixed amount of Early Stage Development Costs equal to nine million six hundred and sixty-four thousand Euros (€9,664,000.00), which amount is comprised of nine million Euros (€9,000,000.00) in Development Costs plus an agreed accrued equity return on such amount up to the Accrual Start Date of six hundred and sixty-four thousand Euros (€664,000.00). Such aggregate amount of Early Stage Pre-Approved Development Costs shall be entitled to earn a return after the Accrual Start Date in accordance with the terms hereof.

“EBRD Environmental and Social Policy” – The Environmental and Social Policy published by the European Bank for Reconstruction and Development, available as at the Execution Date (subject to future relocation) at <http://www.ebrd.com/downloads/research/policies/2008policy.pdf> or such later version required to be met by any Lender under the Financing Documents.

“Effective Date” – Has the meaning given thereto in Section 2.1(a).

“Emission Reduction Rights” – Any credit, reduction right, offset, allocated pollution right, emission reduction allowance, or other proprietary or contractual right, whether or not tradable:

- (a) resulting from or otherwise related to the generation, purchase, or sale of electricity under this Agreement;
- (b) resulting from the actual or assumed displacement of emissions from generating facilities owned or operated by GenCo against emissions from any facility from which NKEC purchases electricity, wherever located, as a result of the purchase by NKEC of electricity during the Term; or
- (c) otherwise resulting or arising in any manner whatsoever from the purchase of electricity by NKEC during the Term.

“Encumbrance” – Any mortgage, pledge, security interest, lien, levy, charge, claim, condition, equitable interest, option, right of way, easement, tenancy, encroachment, servitude, restriction, right of first option, right of first refusal, or other encumbrance or restriction of any kind whatsoever, or any conditional sale contract, title retention contract, or other contract giving effect to any of the foregoing.

“Energy Payment” – The amounts payable under Section 16.1 for Net Electrical Output delivered by GenCo (including in relation to certain testing as described in Section 16.4), as determined in accordance with Schedule 1.

“Environmental Condition” – Any conditions, circumstances, or other matters of fact relating to or otherwise affecting the environment that violate or otherwise result in liability arising under the Environmental Standards, including with respect to any natural resources (including flora and fauna), soil, surface water, ground water, any present or potential drinking water supply, subsurface strata, or the ambient air. Environmental Conditions include:

- (a) conditions, circumstances, or other matters of fact relating to or arising out of the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping discharging, injecting, escaping, leaching, disposal (including the abandonment or discarding of ash, barrels, containers, and other closed receptacles containing any Hazardous Material), dumping, or threatened release of Hazardous Materials, excluding trace materials inherent to lignite disposed of in accordance with the Project Agreements and the Environmental Standards; and
- (b) conditions, circumstances, or other matters of fact resulting in the exposure of any Person to Hazardous Materials.

“Environmental/Archaeological Condition” – includes Archaeological Conditions and Environmental Conditions, collectively.

“Environmental Remediation” – Has the meaning given thereto in Section 15.3.1(a).

“Environmental Remediation Cost Estimate” – Has the meaning given thereto in Section 15.3.1(a)(i).

“Environmental Remediation Costs” – The costs incurred by GenCo in prosecuting an Environmental Remediation. All such costs may be pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, shall be otherwise reasonably and prudently incurred (and not otherwise Tariff Exclusions).

“Environmental Remediation Period” – Has the meaning given thereto in Section 15.3.1(a)(ii).

“Environmental Remediation Schedule” – Has the meaning given thereto in Section 15.3.1(a)(ii).

“Environmental Standards” – With respect to any Party, collectively, with respect to such Party’s participation in the Kosovo e Re Project and solely to the extent applicable to such Party or the Kosovo e Re Project,

- (a) the environmental components of the E&S Management Plan;
- (b) the environmental standards set forth in the World Bank Environmental and Social Safeguard Policies;
- (c) the environmental standards set forth in the World Bank Group EHS Guidelines;
- (d) the environmental standards set forth in the IFC Environmental and Social Sustainability Standards;
- (e) the environmental standards set forth in the MIGA Policy on Social & Environmental Sustainability;
- (f) the environmental standards set forth in the EBRD Environmental and Social Policy; and
- (g) the requirements imposed by any Law of Kosovo related to the environment and the protection and preservation thereof,

except to the extent that the provisions set forth in two or more of the above are such that such Party cannot simultaneously comply with such provisions, in which case the order of the standards listed above shall be the order of precedence, and the relevant provisions of the relevant lower-ranked standard (or standards, if necessary) shall not apply to the extent necessary to enable such Party to comply with the higher-ranked standard. For the avoidance of doubt, nothing herein shall reduce the obligation of a Party to comply with the most stringent of the foregoing standards.

“EOH-Year” – The number of Equivalent Operating Hours in a year as specified by the EPC/LTM Bidder Consortium in Paragraph (m) of Schedule 13.

“Emissions Options” – Has the meaning given thereto in Section 3.9.2.

“EPC Buy-Down Event” – Has the meaning given thereto in Section 4.4.3.

“EPC Contract” – The turnkey, fixed-price agreement entered into or to be entered into between GenCo and the EPC Contractor for the design, engineering, procurement, construction, completion, startup, testing, and commissioning by the EPC Contractor of the KRPP Facility, as it may be amended by the parties thereto from time to time.

“EPC Contractor” – The Contractor or Contractors appointed by GenCo to perform the EPC Works pursuant to the Tender (Plant).

“EPC Works” – The design, engineering, procurement, construction, installation and completion of the KRPP Facility, and the start-up, testing and Commissioning of the KRPP Facility.

“EPC/LTM Bid Submission Form” – Means the form of that name as set forth in Schedule 13, as updated pursuant to Section 3.9.2.

“EPC/LTM Bidder Consortia” – Has the meaning given thereto in Section 3.9.1(a).

“Equity Rate of Return” – A nominal rate of twenty percent (18.5%) per annum, or such lower rate as GenCo may specify in a written notice to NKEC and GOK from time to time (as such rate may be adjusted in accordance with Schedule 1).

“Equity Rate of Return (½-Year)” – The conversion of the Equity Rate of Return (applicable on a per annum basis) into a nominal equity yield per ½-Year Period, as calculated in accordance with the following where “*EqRoR*” means the Equity Rate of Return per annum:

$$EqRoR \frac{1}{2} Yr = (EqRoR + 1)^{0.5} - 1 .$$

“Equivalent Operating Hour” or “EOH” - An operating hour or Start-Up hour.

“ERO” – The Energy Regulatory Office, and any successor or substitute regulatory agency with authority and jurisdiction over the energy sector in Kosovo.

“ESIA (GenCo)” – An environmental and social impact assessment that relates to the Kosovo e Re Project performed by, or on behalf of, GenCo in accordance with the Laws of Kosovo, Applicable Standards, and the requirements of the Lenders.

“ESMPs-Admin” – Has the meaning given thereto in Schedule 20.

“ESMPs-Enviro” – Has the meaning given thereto in Schedule 19.

“ESMPs-EPC (Connection)” – Has the meaning given thereto in Schedule 18.

“ESMPs-EPC (Plant)” – Has the meaning given thereto in Schedule 15.

“ESMPs-O&M” – Has the meaning given thereto in Schedule 17.

“ESMS-Admin” – Has the meaning given thereto in Schedule 20.

“ESMS-Enviro” – Has the meaning given thereto in Schedule 19.

“ESMS-EPC (Connection)” – Has the meaning given thereto in Schedule 18.

“ESMS-EPC (Plant)” – Has the meaning given thereto in Schedule 15.

“ESMS-O&M” – Has the meaning given thereto in Schedule 17.

“EU 28 PPI” – The EU 28 industrial domestic output prices - total industry (excluding construction), as published Monthly by Eurostat (or any successor or replacement agency thereto).

“EU Utilities Procurement Directive” – The Directive 2014/25/EC of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport, and postal services sectors.

“EU Industrial Emissions Standards” – The emissions standards applicable to large combustion plants established by the European Commission in Commission Implementing Decision (EU) 2017/1442 of 31 July 2017, issued under Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010.

“Euribor” – The then-effective European Banking Federation Interbank Offer Rate for Euro deposits for a period equal to three (3) Months, which appears on the appropriate page of the Reuters service at or about 11:00 a.m. Central European Time, or in the event that the Reuter’s service, or any successor thereto, no longer provides such information, such other service as agreed to by the Parties that provides a comparable rate.

“Euro” or “€” – The single currency of participating member states of the European Union.

“Excessive Outage Rate” – The liquidated damages payable for each MWh of unavailability during the relevant period calculated in accordance with Section 2.3.2(a) of Schedule 1.

“Execution Date” – Has the meaning given thereto in the introductory paragraph.

“Existing Financing” – Has the meaning given thereto in Section 16.6.4(b)(i).

“Expected Availability Factor” – For a given ½-Year Period, means an Availability Factor determined based on a pro rata adjustment to the guaranteed effective availability factor for the ½-Year Period as guaranteed by the winning EPC/LTM Bidder Consortium (with the applicable pro rata adjustment being made at Financial Closing to make all ½-Year Periods in the Term of this Agreement follow the same curve as the guarantee made by the winning EPC/LTM Bidder Consortium, but with average of the Availability Factors across all such periods equal to 89.0%).

“Final Draw Date” – Means the date on which GenCo makes its final draws of Actual Debt in relation to the Kosovo e Re Project, but no later than the date specified therefor in the Financing Documents.

“Financial Closing” – In connection with the Initial Financing, the execution and delivery of the Financing Documents and the satisfaction of all conditions precedent for the initial availability of funds under the Financing Documents (other than the occurrence of the Transfer Date under the Site Transfer Agreement), including any conditions precedent requiring evidence of commitments for such equity as is required by GenCo to satisfy the requirements of the Lenders.

“Financing Costs” – The fees, costs and expenses (however defined) incurred by GenCo or its Affiliates to enter into, and pursuant to, any Financing Documents entered into for the Initial Financing or a Refinancing, respectively, or any amendments thereto approved or deemed to be approved by GOK pursuant to Section 3.4 of the Implementation Agreement.

“Financing Documents” – Loan agreements, and all related notes, indentures, security agreements, guarantees, agreements, or other instruments providing security to the Lenders (including consents and acknowledgements of assignment and direct agreements in respect to documents assigned as security to the Lenders), any World Bank Group guarantee-related or insurance-related agreements, interest rate swap agreements related to the financing of the Kosovo e Re Project, and other documents entered into by GenCo, and any of its Affiliates in relation to the financing of the Kosovo e Re Project or any material part thereof, including any credit support facilities or Working Capital Facilities (and if any of the proceeds of the loan agreements or other related documents constituting the “Financing Documents” are on-lent by an Affiliate of GenCo to GenCo in relation to the Kosovo e Re Project, including any such documents entered into by the borrower and GenCo), as such agreement, instruments, guarantees, and

documents may be amended from time to time. For the avoidance of doubt, Financing Documents include the Financing Documents entered into in connection with the Initial Financing and any Refinancing, but do not include any Shareholder Loans.

“Financial Impacts” – Without duplication of any Restoration Costs or costs incurred by NKEC under Section 24.5, and to the extent not covered by other payments by NKEC pursuant to any other provision of this Agreement or by a Specified POE under any other Project Agreement, and not including Tariff Exclusions or consequential damages, all Losses, costs and expenses of GenCo (or the Sponsor HoldCo or the Ultimate Sponsor) resulting from, or required to comply with or overcome, a Change in Law, Political Force Majeure Event, Raw Water Force Majeure Event, or Change in Raw Water Quality, including, as applicable, any Pre-Approved Cost increases or reasonable and prudent increases in Project Costs, Taxes, Permitted Ongoing Miscellaneous Operational Charges, Budgeted Monthly Administrative Services Costs, Budgeted Monthly O&M Costs, Financing Costs, LTMA Costs, the cost of additional quantities or higher quality of consumables, insurance deductibles, or other costs and expenses. Financial Impacts shall include all fees, penalties, and expenses (including Change Orders) payable by GenCo to GenCo Contractors pursuant to the terms of any of the Construction/Maintenance Contracts, Project Agreements or any other agreement approved by NKEC and GOK.

“Financial Impacts Estimate” – Has the meaning given thereto in Section 24.6.

“Financing Letter of Credit” – Has the meaning given thereto in the Sponsor Support Agreement.

“Financing Security” – Has the meaning given thereto in the Sponsor Support Agreement.

“Fixed Monthly LTMA Fee” – The amount of fixed monthly fee paid by GenCo to the LTM Contractor in relation to the maintenance of the KRPP Facility in a Month, specified in Paragraph (e) of the EPC/LTM Bid Submission Form (on an inflation-adjusted basis), provided, however, that such amount actually paid shall not be for Administrative Services.

“Flood Risk Assessment Study” – A flood risk assessment study undertaken by the GOK-Appointed Independent Engineer, subject to review by GenCo, to determine the nature and risk of flooding from the nearby watercourse, and to design such flood protection measures as may be necessary to protect the site from a one in one hundred year flood and ensure that the KRPP Facility storm water drainage design takes account of the twenty-four (24) hour and thirty (30) year storm intensities prevailing at the Site.

“Force Majeure Event” – Has the meaning given thereto in Section 24.1.

“Forced Outage or Partial Forced Outage” – From and after the Commercial Operations Date of the KRPP Facility, a total or partial interruption of the KRPP Facility’s generating capability (excluding periods, if any, that the KRPP Facility is being operated by NKEC pursuant to Section 5.2 of Implementation Agreement), including any total or partial interruption that is not the result of:

- (a) a request by NKEC or KOSTT in accordance with or as contemplated by this Agreement;
- (b) a Scheduled Outage or a Maintenance Outage;
- (c) a Force Majeure Event;
- (d) a condition caused solely by NKEC or solely by Grid Constraints; or
- (e) a condition that is caused solely by GOK.

“Fuel Charge” – The charge calculated in accordance with Section 4.2 of Schedule 1.

“Fuel Oil” – Heavy fuel oil or light fuel oil, as specified by the EPC/LTM Bidder Consortium pursuant to Paragraph (c) of Schedule 14 as part of the Tender (Plant), of the sort appropriate for operation of the KRPP Facility to achieve the Net Electrical Output and the Contracted Operating Characteristics required under this Agreement within the Environmental Standards.

“Full Environmental Remediation Report” – Has the meaning given thereto in Section 15.3.3(a).

“Full Restoration Report” – Has the meaning given thereto in Section 24.7.3(a).

“Full Speed No Load Mode” – A condition in which the KRPP Facility is:

- (a) disconnected from the KOSTT Grid;
- (b) ready to be immediately synchronized to the KOSTT Grid; and
- (c) using Lignite and, to the extent required, Fuel Oil to maintain such state.

“GenCo” – Has the meaning given thereto in the introductory paragraph.

“GenCo Action or Inaction” – The action or inaction of GenCo or any GenCo Party, which action or inaction constitutes a material breach or default of GenCo’s obligations under this Agreement or any Project Agreement to which it is a party, or constitutes a material violation of the Laws of Kosovo by GenCo or any GenCo Party and which action or inaction has a material adverse effect on GOK’s or any Specified POE’s ability to perform its obligations or exercise its rights under this Agreement or any Project Agreement; provided, however, that no such action or inaction shall be considered a GenCo Action or Inaction if such action or inaction is caused in whole or significant part by a Specified POE Action or Inaction.

“GenCo Connection Assets” – The facilities and equipment to be designed, constructed, or installed on GenCo’s side of the Connection Point, including any telemetering equipment, transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment, telecommunications devices, telemetering, and data interface for the SCADA System, protective devices and safety equipment.

“GenCo Connection Works” – Those works and activities described in the Connection Agreement to be undertaken by or on behalf of GenCo for the design, engineering, construction, installation, and commissioning of GenCo Connection Assets, KOSTT New Connection Assets, or Infrastructure Reinforcement Assets.

“GenCo Connection Works EPC Contract” – The turnkey, fixed-price agreement entered or to be entered into between GenCo and the GenCo Connection Works EPC Contractor for, inter alia, the design, engineering, procurement, construction, completion, testing, and commissioning of the GenCo Connection Works, as such agreement may be amended by the parties thereto from time to time.

“GenCo Connection Works EPC Contractor” – The GenCo Contractor or GenCo Contractors appointed by GenCo to perform the GenCo Connection Works following the tender conducted in accordance with Section 6.3, and any successor or successors thereto.

“GenCo Consents” – All Consents (including the Generation License) that GenCo or any of GenCo Contractors is required to obtain (other than from NKEC) and thereafter to maintain to fulfill its obligations under this Agreement; provided, however, that in no event shall GenCo Consents include any concessions or exemptions from the Laws of Kosovo unless they are expressly granted pursuant to the terms of the Implementation Agreement or by another Public Authority in accordance with the Laws of Kosovo.

“GenCo Contingency Sub-Amount” – A portion of the Contingency Amount equal to €5 million, which GenCo may use at its discretion without NKEC or GOK approval to cover Change Orders, cost overruns, schedule delays or other uncertainties or unforeseeable elements of time/cost in the estimate of Project Costs associated with the development, construction and commissioning of the Kosovo e Re Project.

“GenCo Contractor” – The EPC Contractor, the LTM Contractor, the O&M Contractor, the GenCo Connection Works EPC Contractor, the Specified Environmental Condition Remediation Contract, the Administrative Services Contractor, and any of GenCo’s other Contractors involved in the Kosovo e Re Project, excluding any Specified POE.

“GenCo Event of Default” – Has the meaning given thereto in Section 25.1.

“GenCo Exclusive Ash Landfill” – Has the meaning given thereto in the Ash and Gypsum Disposal Agreement.

“GenCo Exclusive Gypsum Landfill” – Has the meaning given thereto in the Ash and Gypsum Disposal Agreement.

“GenCo Lignite Delivery Easement” – Has the meaning given in the Lignite Supply Agreement.

“GenCo Party” – A stockholder, director, officer, employee, GenCo Contractor, representative, agent, member, manager, or Affiliate of GenCo.

“Generation License” – The license issued by ERO permitting the generation and supply of electricity from the KRPP Facility as contemplated by this Agreement.

“Geological and Geotechnical Survey” – A detailed geological and geotechnical survey for the Site undertaken by the GOK-Appointed Independent Engineer, subject to review by GenCo.

“GJ” – One billion (1×10^9) Joules.

“GOK” – The Republic of Kosovo, acting through the Government of Kosovo.

“GOK-Appointed Independent Engineer” – Has the meaning given thereto in the Implementation Agreement.

“GOK Party” – Has the meaning given thereto in the Implementation Agreement.

“Government Guarantee” – Has the meaning given thereto in the Implementation Agreement.

“Good International Industry Practice” or “GIIP” – Has the meaning given thereto in Section 3.7(c).

“Grid Code” – The grid code prepared by KOSTT and approved by ERO in effect as of the Execution Date, available at http://www.kostt.com/website/index.php?option=com_content&view=article&id=543&Itemid=481&lang=en.

“Grid Constraints” – Constraints on the KOSTT Grid (including variations in frequency, voltage, or power factor outside the Contracted Operating Characteristics) that cause GenCo to be unable to meet its obligations hereunder.

“Guaranteed Heat Rate” – Means, with respect to the KRPP Facility, the quantity of Lignite in GJ required to generate one kWh of Net Electrical Output under the circumstances specified in the Bid Case 1 multiplied by 1.05.

“Hazardous Materials” – Any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance or waste, any flammable, explosive, or radioactive material regulated under, or subject to, any Environmental Standard.

“Health & Safety Standards” – Collectively, with respect to GenCo’s participation in the Kosovo e Re Project only and solely to the extent applicable to GenCo or the Kosovo e Re Project, the requirements imposed by:

- (a) the health and safety standards set forth in the World Bank Group EHS Guidelines;
- (b) the health and safety standards set forth in the IFC Environmental and Social Sustainability Standards;
- (c) the health and safety standards set forth in the EBRD Environmental and Social Policy; and
- (d) any Law of Kosovo related to safety and health at work,

except to the extent that the provisions set forth in two or more of the above are such that GenCo cannot simultaneously comply with such provisions, in which case the order of the standards listed above shall be the order of precedence, and the relevant provisions of the relevant lower-ranked standard (or standards, if necessary) shall not apply to the extent necessary to enable GenCo to comply with the higher-ranked standard. For the avoidance of doubt, nothing herein shall reduce the obligation of a Party to comply with the most stringent of the foregoing standards.

“Heat Rate” – A measure of generating station thermal efficiency, commonly (but not exclusively) stated in kJ/kWh.

“Heat Rate Test” – Has the meaning given thereto in Section 9.5(a).

“HFO” – Means heavy fuel oil with caloric value as set forth in Table 1 to Schedule 13.

“HMT” – Her Majesty’s Treasury (of the United Kingdom).

“Hot Standby Mode” – Means that the KRPP Facility is:

- (a) disconnected from the KOSTT Grid; and
- (b) the boiler steam temperature, the boiler steam pressure, and other operating characteristics of the KRPP Facility are being maintained at not less than the temperature necessary to enable the KRPP Facility to be connected to the KOSTT Grid and capable of producing electricity within three (3) hours of being so dispatched.

“Hourly Operating Conditions” – Has the meaning given thereto in Schedule 1.

“Hot Start-Up” – A Start-Up that commences within a specified number of hours after the point in time when the KRPP Facility was last synchronized with the KOSTT Grid, which specified number of hours is set forth in Section 8.1 of Schedule 2.

“Hourly Availability Payment” – With respect to the KRPP Facility, the hourly component of the Availability Payment, calculated in accordance with Section 2.2 of Schedule 1.

“Hourly Energy Payment” – The charge calculated in accordance with Section 4.2 of Schedule 1.

“IBA Rules” – The IBA Rules on the Taking of Evidence in International Arbitration (2010), as may be amended or supplemented from time to time.

“ICC Rules” – Has the meaning given thereto in Section 26.5(c).

“ICSID” – The International Centre for Settlement of Investment Disputes.

“ICSID Convention” – Has the meaning given thereto in Section 26.5(a).

“ICSID Rules” – Has the meaning given thereto in Section 26.5(a).

“IDA” – The International Development Association, a member of the World Bank Group.

“IFC Environmental and Social Sustainability Standards” – The IFC Performance Standards on Environmental and Social Sustainability published by the International Finance Corporation, available as at the Execution Date (subject to future relocation) at http://www1.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES or such later version required to be met by any Lender under the Financing Documents.

“Implementation Agreement” – The agreement by that name between GenCo and GOK dated on or about the Execution Date relating to the Kosovo e Re Project.

“Indemnification Acknowledgement” – Has the meaning given thereto in Section 20.5.1(c).

“Indemnification Notice” – Has the meaning given thereto in Section 20.5.1(a).

“Indemnity Basket” – Means (i) with respect to GenCo or the GenCo Parties or the Sponsor HoldCo or the Sponsor HoldCo Parties and the Ultimate Sponsor or the Ultimate Sponsor Parties, an amount of Losses equal to €250,000 as a combined amount applicable to all such parties in relation to all Project Agreements; and (ii) with respect to GOK or the GOK Parties and NKEC or the NKEC Parties and KEK Generation or the KEK Generation Parties and KEK Mining or KEK Mining Parties and the Water Supplier or the Water Supplier or the Water Supplier Parties and any Specified POEs or its related Parties, an amount of Losses equal to €250,000 as a combined amount applicable to all such parties in relation to all Project Agreements.

“Independent E&S Consultant” – An environmental and social consultant hired in accordance with Section 3.10 of the Implementation Agreement and with duties as set forth in Section 4.3 of this Agreement.

“Index Adjustment Factor” – Has the meaning given thereto in Section 7.1(a) of Schedule 1.

“Indexation Reference Date” – January 1, 2018.

“Infrastructure Reinforcement Assets” – The upgrades carried out by GenCo on the KOSTT Grid pursuant to the Connection Agreement, including upgrades of or other modifications to existing portions of the KOSTT Grid and construction of new portions of the KOSTT Grid (exclusive of the KOSTT New Connection Assets).

“Initial Financing” – Means the financial indebtedness incurred by GenCo or its Affiliates on the date of Financial Closing in connection with the Kosovo e Re Project.

“Initial Property” – Has the meaning given thereto in the Implementation Agreement.

“International Financial Reporting Standards” – The International Financial Reporting Standards promulgated by the International Accounting Standards Board, as such standards may be amended or otherwise modified during the term of the Agreement.

“Invoice Dispute Notice” – Has the meaning given thereto in Section 17.3.1.

“Island Mode” – Means a mode of operation in which the KRPP Facility that has been connected to the KOSTT Grid and is suddenly disconnected from the KOSTT Grid successfully reduces the generation of electricity to a level at which it is generating sufficient electricity for its own auxiliary requirements, operating on its own boiler, and consuming Lignite as required or in which the KRPP Facility remains connected to a small island of the KOSTT Grid that has been disconnected from the remainder of the KOSTT Grid and successfully reduces the generation of electricity to a level at which it is supplying only within that reduced portion of the KOSTT Grid and generating sufficient electricity for its own auxiliary requirements, operating on its own boiler, and consuming Lignite as required.

“Joule” – The energy exerted by the force of one (1) Newton acting to move an object through a distance of one (1) meter.

“KEK Generation” – Kosovo Energy Corporation, J.S.C., a joint stock company organized under the laws of Kosovo, with its principal office at Nënë Tereza nr. 36, Pristina, Kosovo, and business registration number 70325399, operating through its business unit responsible for generation capacity.

“KEK Generation Party” – Has the meaning given thereto in the Site Transfer Agreement.

“KEK Mining” – Kosovo Energy Corporation, J.S.C., a joint stock company organized under the laws of Kosovo, with its principal office at Nënë Tereza nr. 36, Pristina, Kosovo, and business registration number 70325399, operating through its business unit responsible for mining.

“KEK Mining Party” – Has the meaning given thereto in the Lignite Supply Agreement.

“KESCO” – Kosovo Electricity Supply Company J.S.C., a joint stock company organized under the laws of Kosovo, with its principal office at Bulevardi Bill Clinton No. 3, Pristina, Kosovo, and business registration number 70606119.

“kJ” – One thousand (1,000) Joules.

“Kosovo” – The Republic of Kosovo.

“Kosovo B Facility” – The existing approximately 530 MW (net) lignite-fired electric generating facility located at Obiliq, Kosovo commonly known as “Kosovo B.”

“Kosovo CPI” – The Kosovo index of consumer prices (CPI), as published monthly by the Statistical Agency of Kosovo (or any successor or replacement agency thereto).

“Kosovo e Re Project” – Has the meaning given thereto in the recitals.

“KOSTT” – “OPERATOR SISTEMI, TRANSMISIONI DHE TREGU – KOSTT” SH.A., a joint stock company organized under the laws of Kosovo, with its principal office at St. Isa Boletini Nr. 39, 1000 Pristina, Kosovo, and business registration number 70325350, or its successor in interest in the event that KOSTT ceases to perform any of the functions of the TSMO under the Grid Code.

“KOSTT New Connection Assets” – The facilities and equipment to be designed, constructed, or installed on KOSTT’s side of the Connection Point in order to facilitate the connection of the KRPP Facility to the KOSTT Grid, including any telemetering equipment, transmission lines and associated equipment, transformers and associated equipment, relay and switching equipment, telecommunications devices, telemetering, and data interface for the SCADA System, protective devices and safety equipment.

“KOSTT Grid” – The transmission facilities operated by KOSTT (excluding the GenCo Connection Assets) through which:

- (a) the Net Electrical Output will be received and transmitted to NKEC; and
- (b) electrical energy will be delivered to the KRPP Facility, as required.

“KOSTT Grid Frequency” – The frequency of the KOSTT Grid from time to time, measured in hertz.

“KRPP Facility” – The lignite-fired electric power generation station comprised of an electric power generating unit and the associated facilities located on the Site and GenCo Connection Assets having a design capacity of 450 MW (+/- 20 MW) (net), as determined pursuant to the Tender (Plant), to be developed, designed, constructed, financed, owned, operated, and maintained by GenCo during the Term, whether completed or at any stage in its construction, including without limitation or regard to level of development, engineering and design documents, all energy producing equipment and its auxiliary equipment, fuel handling facilities and equipment, Water transportation and treatment systems, all spare parts stored at the Site or otherwise acquired by GenCo, the Ash/Gypsum Slurry Pipeline System, and other equipment used to remove and dispose of Ash (as defined in the Ash and Gypsum Disposal Agreement) and Gypsum (as defined in the Ash and Gypsum Disposal Agreement) from the Site, all GenCo Connection Assets, and all other equipment or facilities necessary for delivery of electricity to NKEC at the Connection Point, which KRPP Facility is described in the Technical Specifications.

“kWh” – A unit of electrical energy equal to 1 kilowatt-hour electrical or 1,000 watt-hours electrical.

“Land Acquisition Costs” – Those costs that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred by GenCo (and not otherwise Tariff Exclusions) in connection with the land and land rights necessary for the performance of the Connection Area works pursuant to Section 3.5 (*Acquisition of Land*) of the Implementation Agreement, including the costs of implementing any Resettlement Action Plan (as defined in the Implementation Agreement) approved pursuant to Section 3.5 of the Implementation Agreement.

“Lapse of Consent” – Any GenCo Consent or NKEC Consent:

- (a) not being issued, renewed, replaced, or, having lapsed, not being renewed or replaced (within a certain period if required under the Laws of Kosovo) following properly and timely made and

diligently pursued application by GenCo or NKEC (each for its own Consents) for that Consent to be issued, renewed, or replaced, as the case may be, and as a result GenCo's or NKEC's, as the case may be, ability to perform its obligations under the Project Agreements or the Construction/Maintenance Contracts being materially and adversely affected;

- (b) being made subject, upon renewal, reissuance or replacement, to any terms or conditions that materially and adversely affect the Party's ability to perform its obligations under the Project Agreements or the Construction/Maintenance Contracts; or
- (c) being withdrawn, canceled, modified, or suspended other than as provided under the non-discriminatory Laws of Kosovo and as a result GenCo's ability to perform its obligations under the Project Agreements or the Construction/Maintenance Contracts is materially and adversely affected,

in each of the above instances despite such Party's compliance with the applicable procedural and substantive requirements as applied in a "non-discriminatory" (as provided for in the Implementation Agreement) manner.

"Laws of Kosovo" – The laws of Kosovo, and all statutes, treaties, codes, ordinances, orders, rules, regulations, executive orders, judicial decisions, notifications, decisions, regulations and secondary legislation, or other similar directives issued by any Public Authority pursuant thereto, in each case, that is applicable to the Parties, the Kosovo e Re Project or in relation to a Project Agreement, a Financing Document or a Construction/Maintenance Contract and as any of them may be amended, supplemented, replaced, reinterpreted or otherwise modified by a Public Authority of Kosovo, from time to time.

"Lender" – Any financial institution, trust, fund or other entity participating in the financing of the Kosovo e Re Project and any of their agents that is a party to the Financing Documents, or any financial institution, trust, fund or other entity participating in the financing of the Kosovo e Re Project or any of their agents that subsequently becomes a party to the Financing Documents, together with their respective successors and assigns.

"LFO" – Means light fuel oil with caloric value as set forth in Table 1 of Schedule 13.

"Licensed NKEC Successor" – A Person that is licensed under the Laws of Kosovo to perform the electricity trading functions in the electricity sector of Kosovo.

"Lignite" – Lignite supplied to GenCo in accordance with the terms of the Lignite Supply Agreement.

"Lignite Price" – Has the meaning given thereto in the Lignite Supply Agreement.

"Lignite Supply Agreement" – The agreement by that name between KEK Mining and GenCo dated on or about the Execution Date.

"Limestone" – Limestone (or lime, depending on the design of the KRPP Facility) of the sort appropriate for operation of the KRPP Facility to achieve the Net Electrical Output and the Contracted Operating Characteristics required under this Agreement within the Environmental Standards.

"Liquidated Damages Cap" – Has the meaning given thereto in Section 4.6(a).

"Load Percentage" – A percentage, which is calculated by dividing (i) the Dispatched & Delivered Net Electrical Output (NKEC + KOSTT) in an Operating Hour (and thus equivalent to the average power in

effect in such Operating Hour) by (ii) the initial Contract Capacity, as described in Section 4.4.1 at the Execution Date and prior to any adjustment thereof in relation to construction.

“Long-Term Maintenance Plan” – The long-term maintenance plan set forth in Schedule 6 based on the manufacturer’s recommended maintenance guidelines, which plan describes the scheduled maintenance and inspection plan, including all Major Overhauls and other maintenance.

“Loss” – Any loss, damage, liability, payment, or obligation (excluding any indirect or consequential loss, damage, liability, payment, or obligation except in the case any of the same arises out of any gross negligence or willful misconduct of the indemnifying Party) and all costs and expenses (including reasonable legal fees) related thereto.

“Lower Heating Value” or “LHV” – The amount of heat released by combusting a fuel where any water component of the fuel remains in a vapor state at the end of the combustion process so that the latent heat of vaporization is not recovered.

“LTM Agreement” or “LTMA” – The agreement to be entered into by GenCo and the LTM Contractor in accordance with Section 3.9.5(b), as such agreement may be amended by the parties thereto from time to time.

“LTM Contractor” – The Contractor or Contractors appointed by GenCo pursuant to the Tender (Plant) to perform long-term maintenance services under the LTM Agreement.

“LTMA Availability LDs” – Charges payable to GenCo under the LTMA for lack of availability of the KRPP Facility up to the availability guaranteed by the LTM Contractor.

“LTMA Costs” – The costs and expenses incurred by GenCo pursuant to the LTM Agreement entered into with the winning EPC/LTM Bidder Consortium or the winning bidder of an LTMA Replacement respectively.

“LTMA Gain” – The amount (if any) by which the average of the monthly payments of fees and expenses of GenCo under the LTM Agreement are reduced as a result of any LTMA Replacement.

“LTMA Reliability Bonuses” – Additional bonus compensation payable to the LTM Contractor under the LTMA for availability of the KRPP Facility in excess of the availability guaranteed by the LTM Contractor.

“LTMA Replacement” – Any replacement of all or part of the LTM Agreement, including if any new LTM Contractor is retained or the existing LTM Agreement is renegotiated.

“LTMA Replacement Costs Report” – In respect of any LTMA Replacement, a written report prepared by GenCo setting out:

- (a) GenCo’s projection of the average of the Monthly payments of fees and expenses to be paid by GenCo pursuant to the LTMA Replacement and the basis for such projection; and
- (b) GenCo’s projection for the LTMA Gain, if any, and the basis for such projection.

“Maintenance Months” – The Months of June, July, and August, or any other three (3) Month period (or if it does not commence on the first (1st) Day of a Month, any approximately ninety (90) Day period) in a

Year, at least two (2) Months or approximately sixty (60) such Days of which must be consecutive, designated by NKEC in accordance with Section 13.2.

“Maintenance Outage” – An interruption or reduction of the KRPP Facility’s generating capability that:

- (a) is not a Scheduled Outage;
- (b) has been scheduled in accordance with Section 13.3; and
- (c) is for the purpose of performing work on specific components, which, considering Prudent Utility Practices, should not, in the reasonable opinion of GenCo, be postponed until the next Scheduled Outage.

“Major Equipment Failure” – The failure of any major piece of equipment, systems, or facilities forming part of the KRPP Facility that materially interrupts or materially and adversely affects the continued operation of the KRPP Facility.

“Major Maintenance Expenses” – Amounts payable by GenCo under the LTMA.

“Major Maintenance Reserve Amount” – An amount equal to €1,000,000.

“Major Maintenance Reserve Fund” – Has the meaning given thereto in Section 18.1.1(a).

“Major Overhaul” – A major overhaul of the KRPP Facility, the scope and frequency of which is set out in the Long-Term Maintenance Plan.

“Major Subcontractor” – Any subcontractor or supplier of any GenCo Contractor, the value of whose subcontract or supply contract with respect to the Kosovo e Re Project exceeds either

- (a) a total contract value of twenty million Euros (€20,000,000), or
- (b) an average annual contract value of four million Euros (€4,000,000) per Year for five Years or more.

“Market Rules” – The market rules prepared by KOSTT and approved by ERO in effect as of the Execution Date, available at http://www.kostt.com/website/images/stories/PO-MO-001-The_market_rules_transition_1.pdf, or any similar codes, rules, or similar instruments that regulate the functioning of the electricity market of Kosovo, which the Parties agree are not applicable to GenCo or the Kosovo e Re Project under this Agreement or any of the Project Agreements.

“Material GenCo Effect” – A material and adverse effect on:

- (a) GenCo or its ability to perform its obligations or exercise its rights or realize the full benefits (economic or otherwise) under any Project Agreement, Construction/Maintenance Contract, or Financing Document;
- (b) the development, design, construction, financing, use, operation, maintenance or performance of the KRPP Facility;
- (c) the interests of the Sponsor HoldCo or the Ultimate Sponsor or the return of or on their investment in relation to GenCo’s participation in the Kosovo e Re Project; or

- (d) the ability of any counterparty to any Project Agreement, Construction/Maintenance Contract, or Financing Document to perform its obligations thereunder.

“Meteorological Survey” – A detailed meteorological survey for the Plant Site (KRPP) undertaken by the GOK-Appointed Independent Engineer, subject to review by GenCo.

“Metering Code” – The metering code prepared by KOSTT and approved by ERO in effect as of the Execution Date, available at http://www.kostt.com/website/images/stories/dokumente/tjera/Metering_Code.pdf.

“Metering System” – All meters and metering devices (including any remote terminal units and an electronic data recording system) to be used to measure the Net Electrical Output and Reactive Power from the KRPP Facility.

“MIGA” – The Multilateral Investment Guarantee Agency, a member of the World Bank Group.

“MIGA Policy on Social & Environmental Sustainability” – The Policy on Social & Environmental Sustainability published by MIGA, available as at the Execution Date (subject to future relocation) at http://www.miga.org/documents/envIRON_social_review_021507.pdf or such later version required to be met by any Lender under the Financing Documents.

“Minimum Availability Factor” – For a given ½-Year Period, means an Availability Factor determined based on a pro rata adjustment to the guaranteed effective availability factor for the ½-Year Period as guaranteed by the winning EPC/LTM Bidder Consortium (with the applicable pro rata adjustment being made at Financial Closing to make all ½-Year Periods in the Term of this Agreement follow the same curve as the guarantee made by the winning EPC/LTM Bidder Consortium, but with average of the Availability Factors across all such periods equal to 83.2%).

“Minimum Generation” – The lowest Net Electrical Output that the KRPP Facility is able to maintain on a stable and continuous basis while complying with the Contracted Operating Characteristics and remaining fully compliant with the relevant Environmental Standards. Subject to the foregoing, if required, Fuel Oil may be used to achieve Minimum Generation.

“Month” – A calendar month according to the Gregorian calendar.

“MW” – A unit of electric generation capacity equal to 1 Megawatt electrical or 1,000,000 Watts electrical.

“MWh” – A unit of electrical energy equal to 1 megawatt-hour.

“Net Electrical Output” – The net electrical energy expressed in kWh that is generated by the KRPP Facility and delivered to the Connection Point, as measured by the Metering System or the Check Metering System, as the case may be.

“Network Emergency” – An event or circumstance affecting the KOSTT Grid that:

- (a) materially and adversely affects the ability of NKEC to maintain safe, adequate and continuous electrical service to its customers, having regard to the then-current standard of electrical service provided to its customers; and/or

(b) presents a physical threat to persons or property or the security, integrity or reliability of the KOSTT Grid,

or that NKEC reasonably expects to have the effects specified in clause (a) or clause (b).

“New Kosovo Electric Company” – Has the meaning given thereto in the Recitals.

“NKEC” – Has the meaning given thereto in the introductory paragraph.

“NKEC Acceptance Tests” – The tests to be carried out pursuant to Section 9.3.1(b) and Schedule 4.

“NKEC Acceptance Test Energy” – The Net Electrical Output generated during the Commissioning of the KRPP Facility.

“NKEC Acceptance Test Energy Payment” – Has the meaning given thereto in Section 16.3(a).

“NKEC Consents” – All Consents that NKEC is required to obtain and thereafter to maintain to fulfill its obligations under this Agreement.

“NKEC Event of Default” – Has the meaning given thereto in Section 25.2.

“NKEC Party” – A stockholder, director, officer, employee, representative, agent, member, manager, or Affiliate of NKEC or any direct contractor of NKEC involved in the Kosovo e Re Project.

“NKEC Reorganization or Privatization” – Any of:

- (a) the reorganization of NKEC such that NKEC’s electricity trading operations are transferred to a separate Publicly Owned Enterprise;
- (b) the transfer of NKEC shares from GOK to a Person other than a Public Authority such that NKEC no longer qualifies as a Publicly Owned Enterprise, or the sale by NKEC of all or substantially all of the assets of NKEC to a Licensed NKEC Successor, or the occurrence of a similar transaction resulting in a Licensed NKEC Successor assuming NKEC’s obligation to conduct electricity trading in Kosovo; or
- (c) the occurrence of a change to the Laws of Kosovo that has the effect of relieving NKEC of the obligation to conduct electricity trading in Kosovo and assigning such obligation to a Licensed NKEC Successor.

“Non-Conforming Water” – Has the meaning given thereto in the Water Supply Agreement.

“Non-Maintenance Months” – Any Month (or part thereof) that is not a Maintenance Month (or part thereof).

“O&M Contract” – The agreement entered or to be entered into between GenCo and the O&M Contractor in accordance with Section 3.13 as such agreement may be amended by the parties thereto from time to time.

“O&M Contractor” – An Affiliate of the Ultimate Sponsor to be formed, or any successor entity.

“OFAC” – The Office of Foreign Assets Control of the U.S. Department of Treasury.

“On-Site Water Storage Facility” – Has the meaning given thereto in the Water Supply Agreement.

“Operating Characteristics Liquidated Damages” – Liquidated damages resulting from a failure of the KRPP Facility to perform in accordance with the Contracted Operating Characteristics of the KRPP Facility, as described in Section 4.4 of Schedule 1.

“Operating Day” – Each period of twenty-four (24) consecutive hours beginning at 00:00, the first such period commencing at 00:00 on the Commercial Operations Date.

“Operating Hour” – Each period of sixty (60) consecutive minutes beginning at 00:00.

“Operating Procedures” – The procedures for the operational interfaces between the KRPP Facility and the KOSTT Grid to be agreed or finalized in accordance with Section 8.2.

“Other (Non-Income) Taxes” – All taxes and similar revenue-producing imposts, including value-added taxes levied by a Public Authority, other than:

- (a) those taxes that are recovered pursuant to the provisions of Schedule 1 other than through Section 3.1.4 of Schedule 1 or are otherwise recovered under this Agreement;
- (b) any taxes that may become payable with respect to:
 - (i) dividends paid by GenCo to the shareholders in GenCo; or
 - (ii) interest paid on Shareholder Loans.

“Other Force Majeure Event” – Has the meaning given thereto in Section 24.1.2(d).

“Other Supplier” – Has the meaning given thereto in the Site Transfer Agreement.

“Overload Capacity” – The highest Net Electrical Output that the KRPP Facility is able to maintain on a stable and continuous basis for a period of four (4) consecutive hours while complying with the Contracted Operating Characteristics and remaining fully compliant with the relevant Environmental Standards. Subject to the foregoing, if required, Fuel Oil may be used to achieve Overload Capacity.

“Owner’s Engineer” – The GenCo Contractor or GenCo Contractors appointed by GenCo pursuant to a tender in accordance with Section 3.10, for the purposes of providing (a) technical and engineering support and assistance with negotiations during the selection of the EPC Contractor and LTM Contractor, and (b) support to ensure that the GenCo Contractors working on the EPC Contract and the LTM Agreement are performing the work in accordance with the requirements of such contracts and the Technical Specifications, as applicable.

“Party” and “Parties” – Have the meanings given thereto in the introductory paragraph.

“Pass-Through Environmental/Archaeological Condition” – Any Environmental/Archaeological Condition existing at the Site at or prior to the Transfer Date, whether or not such Environmental/Archaeological Condition is known as of the Transfer Date or otherwise discovered after the Transfer Date, that is not a Specified Environmental/Archaeological Condition, including those Environmental/Archaeological Conditions listed in Schedule 8.

“Payment Dispute” – A Dispute that relates to any actual or contingent payment obligation (other than those which arise directly from a termination of this Agreement) which may arise between the Parties

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 with relevant experience.

“Permitted Encumbrances” – Means:

- (a) statutory Encumbrances for Taxes or other governmental charges or assessments not yet due or delinquent or the validity of which are being contested in good faith by appropriate proceedings;
- (b) zoning, entitlement, environmental or conservation restrictions and other land use and environmental regulations imposed on the Site that are either in effect at Financial Closing or do not constitute or are reasonably unlikely to have a material effect on either Party or GOK;
- (c) recorded or unrecorded easements, rights-of-way, restrictions, covenants, encroachments, licenses and other matters affecting the Site provided for under the Project Agreements;
- (d) the covenants and restrictions set forth in any Project Agreement;
- (e) any Encumbrances in favor of a Public Authority arising in the ordinary course of business by operation of the Laws of Kosovo with respect to a liability that is not yet due or delinquent or which is being contested in good faith that are either (i) in public records or disclosed to GenCo in writing by GOK prior to the Financial Closing, or (ii) do not constitute or are reasonably unlikely to have a material effect on either Party or GOK; and
- (f) those minor imperfections of title and Encumbrances that in the aggregate are not substantial in amount, do not detract from the value of the property subject thereto, or impair the Site or operations that are listed in Schedule 2 of the Site Transfer Agreement nor constitute or are reasonably unlikely to have a material effect on either Party or GOK.

“Permitted GOK Advisor Fees” – Has the meaning given thereto in the Implementation Agreement.

“Permitted Ongoing Miscellaneous Operational Charges” – Costs and expenses (excluding Tariff Exclusions) incurred or reimbursed by GenCo, Sponsor HoldCo, the Ultimate Sponsor or any of their Affiliates from and after the Final Draw Date with respect to the Kosovo e Re Project, including (without duplication) the following:

- (a) Pre-Approved Costs incurred after the Final Draw Date;
- (b) funds deposited into the Community Development Fund pursuant to the Implementation Agreement;
- (c) any Land Acquisition Costs incurred;
- (d) all costs of insurance (including premiums, insurance broker and insurance consultant fees) required by or specified under the terms of the Project Agreements, the Construction/Maintenance Contracts, or the Financing Documents, except deductibles, co-pays or similar amounts;
- (e) Financing Costs;
- (f) any costs, fees and expenses associated with a guarantee issued by a member of the World Bank Group in connection with the Kosovo e Re Project;

- (g) any insurance premiums that are payable to the World Bank Group in connection with any political risk policy issued by MIGA (or any other political risk insurance policy approved by NKEC and GOK);
- (h) all costs for the operation and maintenance of the GenCo Connection Assets, KOSTT New Connection Assets, or Infrastructure Reinforcement Assets payable to KOSTT and, to the extent not included as GenCo Connection Assets or KOSTT New Connection Assets or Infrastructure Reinforcement Assets under the Connection Agreement, all costs for the operation and maintenance of electronic data recording systems, telecommunications and tele-protection equipment, communications unit compatible with KOSTT communications system and tele-metering and data interface system;
- (i) GenCo's share of all costs for dredging the riverbed of the Sitnica River in accordance with the Site Transfer Agreement;
- (j) to the extent that the Environmental Standards require the water treatment sludge generated by the KRPP Facility to be disposed of in a manner other than disposal of such sludge in the GenCo Exclusive Ash Landfill, any costs and expenses associated with the disposal of such sludge;
- (k) all Permitted GOK Advisor Fees;
- (l) all taxes, fees, and similar assessments imposed by any Public Authority for the generation and sale of electricity from the KRPP Facility;
- (m) all costs and expenses associated with GenCo's sampling, analysis and preparation of related quality reports for Lignite under the Lignite Supply Agreement, including costs and expenses associated with analysis performed by alternate labs;
- (n) all costs and expenses arising from GenCo's cooperation with or provision of consultancy services or similar assistance to GOK or KEK Mining associated with GOK's or KEK Mining's efforts to take any corrective action in connection with KEK Mining's compliance with the Applicable Standards in relation to KEK Mining's ownership, development (including with respect to any resettlement), and operation of the Sibovc South Mine Field and the Mining Assets (each as defined in the Lignite Supply Agreement);

provided, however, that none of such charges shall (x) relate to the period prior to the Final Draw Date or (y) be for Administrative Services.

"Person" – Any individual, corporation, partnership, joint venture, association, business trust, unincorporated organization, Public Authority, limited liability company, or other entity.

"Phase 2 Bid Evaluation Model" – The final version of the bid evaluation model agreed between GOK and GenCo pursuant to Section 3.9.2(e)(iv), or as resolved as a Technical Dispute in accordance with Section 3.9.2(e)(iv).

"Plant Site (KRPP)" – Has the meaning given thereto in the Site Transfer Agreement.

"Political Force Majeure Event" – Has the meaning given thereto in Section 24.1.2(a).

"Power Plant Water Quality Standards" – Means the water quality requirements specified in the "Guidelines for Feed Water, Boiler Water and Steam Quality for Power Plants / Industrial Plants"

published by VGB PowerTech e.V. in 2004, on which water quality the KRPP Facility is to be constructed.

“Pre-Approved Costs” – Means any of the following costs or expenses:

- (a) any costs or expenses approved by NKEC, GOK or a Specified POE or incurred in accordance with budgets or estimates approved by NKEC, GOK or a Specified POE (including the Development Costs Budget and any approved budget for the O&M Contractor or the Administrative Services Contractor) (including budgets or estimates deemed to be approved because NKEC, GOK or a Specified POE, as the case may be, does not object to such budget or estimate with a specified period of time);
- (b) all Early Stage Pre-Approved Development Costs and all Pre-Approved Project Costs;
- (c) any costs or expenses expressly specified in the Project Agreements;
- (d) any costs or expenses incurred under the Construction/Maintenance Contracts and any other contracts previously approved or deemed approved by NKEC, GOK or a Specified POE;
- (e) any costs approved or contemplated under the Financing Documents;
- (f) any costs and expenses incurred with respect to an Approved Change Order identified in item (a) in the definition of “Approved Change Order” for which either:
 - (i) GenCo has submitted a request to NKEC and GOK that the costs associated with such Approved Change Order be considered Pre-Approved Costs along with a cost justification thereof and NKEC and GOK have approved in writing the costs associated with the Approved Change Order; or
 - (ii) GenCo has submitted a request to NKEC and GOK that the costs associated with such Approved Change Order be considered Pre-Approved Costs along with a cost justification thereof and NKEC does not respond within fifteen (15) Days; or
- (g) any costs and expenses incurred with respect to an Approved Change Order identified in item (b) or item (c) in the definition of “Approved Change Order”.

“Pre-Approved Project Costs” – Means Project Costs pre-approved by NKEC and GOK in accordance with Section 3.16.

“Preliminary Environmental Remediation Estimate” – Has the meaning given thereto in Section 15.3.1(a).

“Preliminary ESIA (GOK)” – Version 6 (labeled “draft”) of the environmental and social impact assessment document that relates to the Kosovo e Re Project performed by GOK in accordance with the Laws of Kosovo.

“Preliminary Restoration Estimate” – Has the meaning given thereto in Section 24.7.1(a).

“Procurement Guidelines” – Procurement procedures that:

- (a) comply with the World Bank’s Guidelines for the Procurement of Goods, Works, and Non-Consulting Services, available as of the Execution Date at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentM>

[DK:20060840~pagePK:84269~piPK:60001558~theSitePK:84266,00.html](#) and any other guidelines related to the procurement of goods or services that would apply in the event that (i) a member of the World Bank Group issues a partial risk guarantee in respect of the Kosovo e Re Project or (ii) the Multilateral Investment Guarantee Agency issues an investment guarantee or other form of political risk insurance in respect of the Kosovo e Re Project;

- (b) comply with the requirements laid out in this Agreement; and
- (c) comply with all applicable Laws of Kosovo;
- (d) are developed by GenCo and approved by NKEC and GOK in writing, and
- (e) give due regard to economy and efficiency;

except to the extent that the provisions set forth in two or more of the above are such that such Party cannot simultaneously comply with such provisions, in which case the order of the standards listed above shall be the order of precedence, and the relevant provisions of the relevant lower-ranked standard (or standards, if necessary) shall not apply to the extent necessary to enable such Party to comply with the higher-ranked standard. For the avoidance of doubt, nothing herein shall reduce the obligation of a Party to comply with the most stringent of the foregoing standards.

“Project Agreements” – Has the meaning given thereto in the Implementation Agreement.

“Project Budget” – The budget for the period from Financial Closing through the Final Draw Date approved by the Lenders, which shall include construction costs, funds for reimbursement to GenCo of Development Costs payable at Financial Closing, payment to GOK at Financial Closing of Permitted GOK Advisor Fees, the Development Costs Budget, the Soft Costs Budget, other Project Costs, and a Contingency Amount.

“Project Cost” – Any cost or expense (including, if applicable, a Pre-Approved Project Cost) that is incurred prior to the Final Draw Date to develop (including Development Costs and Soft Costs), design, engineer, finance, insure, construct, commission, test, start-up and complete (including completion of punch list items) the KRPP Facility, including without duplication:

- (a) RESERVED;
- (b) Financing Costs and Actual IDC;
- (c) costs or expenses to establish the Debt Service Reserve Account and/or other reserve accounts;
- (d) costs or expenses to fund the Working Capital Reserve Account, to the extent required by Lenders under the Financing Documents;
- (e) amounts payable under Construction/Maintenance Contracts prior to the Final Draw Date (including for all costs and expenses to control, address, remediate or remove the Specified Environmental/Archaeological Conditions), the costs and expenses of conducting the ESIA (GenCo), and the costs to construct the Infrastructure Reinforcement Assets (as defined in the Connection Agreement);
- (f) any amount payable to the O&M Contractor or the LTM Contractor prior to the Commercial Operations Date and any other operation and maintenance expenses (including long-term maintenance expenses) incurred during the construction, installation, commissioning and start-up

of the KRPP Facility (without duplication of costs included in the NKEC Acceptance Test Energy Payment);

- (g) any amounts for commodities (including fuel oil, water and Lignite) necessary for the Commissioning of the KRPP Facility but not used to produce NKEC Acceptance Test Energy or recoverable from the EPC Contractor;
- (h) insurance premia with respect to insurance required under the Project Agreements or Financing Documents and incurred during the construction, installation, Commissioning and start-up of the KRPP Facility and any insurance deductibles payable by GenCo prior to the Final Draw Date (other than deductibles payable in respect of casualty events caused by GenCo's gross negligence or willful misconduct);
- (i) Taxes incurred by GenCo or any GenCo Affiliate, including income and asset taxes, value-added taxes and import duties, incurred during the construction, installation, commissioning and start-up of the KRPP Facility;
- (j) the costs of any letters of credit issued pursuant to the Financing Documents or the Project Agreements;
- (k) to the extent that the Environmental Standards require the water treatment sludge generated by the KRPP Facility to be disposed of in a manner other than disposal of such sludge in the GenCo Exclusive Ash Landfill, any costs and expenses associated with the disposal of such sludge; and
- (l) the costs of a spare autotransformer, to the extent a spare autotransformer is required under the terms of the Tender (Plant) and the EPC Contract;

but, in each case, excluding Tariff Exclusions. For the avoidance of doubt, "Project Costs" may include the reimbursement of GenCo and/or its Affiliates for any of the foregoing costs, including Development Costs incurred and paid by any of such Persons, and also for the avoidance of doubt, Early Stage Additional Development Costs shall not accrue a return prior to Financial Closing and shall only be considered as Project Costs if they are reasonable and prudent, actually and demonstrably incurred and not otherwise Tariff Exclusions.

"Project Costs Total" – The total amount of Project Costs.

"Prudent Electrical Practices" – The use of equipment, practices or methods, as required to comply with applicable industry codes, standards, and regulations in Kosovo, including the Grid Code and Metering Code to protect:

- (a) the KOSTT Grid, employees, agents, and customers from malfunctions occurring at the KRPP Facility; and
- (b) the KRPP Facility and GenCo's employees and agents at the KRPP Facility from malfunctions occurring on the KOSTT Grid.

Prudent Electrical Practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods and acts that could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety.

"Prudent Utility Practices" – Those practices, methods, and procedures conforming to safety and legal requirements that are attained by exercising that degree of skill, diligence, prudence, and foresight that

would reasonably and ordinarily be expected from a skilled and experienced generator of electricity engaged in the same or a similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in Kosovo and satisfying the health, safety, and environmental standards of reputable international electric generation companies. Prudent Utility Practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods and acts that could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety.

“Public Authority” – Any of the following with jurisdiction over GenCo, NKEC, the Kosovo e Re Project, or any part thereof:

- (a) GOK, any subdivision thereof, or any local governmental authority;
- (b) any department, authority, instrumentality, agency, or judicial body of any Public Authority described in Section (a) above;
- (c) courts and tribunals in Kosovo;
- (d) any independent regulatory agency having jurisdiction over GenCo, NKEC, the Kosovo e Re Project, or any part thereof; or
- (e) any national, city, provincial, municipal, local or regional authorities, departments, bodies, bureaus, instrumentalities, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof, including but not limited to, any Person (whether autonomous or not) exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any of the foregoing entities.

“Publicly Owned Enterprise” – A “publicly owned enterprise,” as defined in the Law on Publicly Owned Enterprises, 2008, as amended by the Law Amending the Law on Publicly Owned Enterprises (no. 05/L-009).

“Qualified Bank” – A commercial bank whose long-term senior unsecured debt obligations denominated in Euros is rated at or above A by S&P or its equivalent from another internationally recognized major credit rating institution and that, when initially issuing the Construction Letter of Credit or Financing Letter of Credit, (i) in GOK’s sole discretion, would not be adverse to the national security interests of Kosovo, and (ii) is not engaged in any material litigation with GOK or any Public Authority.

“Ramp Rate” – The rate, expressed in MW per minute, of change in the Net Electrical Output.

“Raw Water Analysis” – An analysis of the raw water available for the KRPP Facility undertaken by the GOK-Appointed Independent Engineer, subject to review by GenCo, and which is intended to review all reasonably available historical water quality data and to perform reasonable raw water sampling over a period of time no shorter than six (6) Months to assist the Parties in determining the Specified Raw Water Quality Standards in accordance with Section 3.6.

“Raw Water Force Majeure Event” – Has the meaning given thereto in Section 24.1.2(c).

“Reactive Power” – The wattless component of the product of voltage and current.

“Real-Time Electrical Dispatch” – The exercise by KOSTT (or NKEC) pursuant to Section 12.6 of its right to specify the Net Electrical Output and Ancillary Services to be generated by the KRPP Facility or to instruct GenCo to place the KRPP Facility on Hot Standby Mode or other mode.

“Real-Time Electrical Dispatch Instruction” – Has the meaning given thereto in Section 12.6.

“Reference Conditions” – Refers to the operation of the KRPP Facility at the reference conditions, as applicable, as set forth in Table 3 of Annex 2 to Schedule 1.

“Refinancing” – At any time, any refinancing of all or part of any existing financial indebtedness (including a refinancing intended to increase the debt to equity ratio) of GenCo or its Affiliates in connection with the Kosovo e Re Project at that time.

“Refinancing Costs Report” – In respect of any Refinancing, a written report prepared by GenCo setting out:

- (a) the average of the Monthly payments of principal, interest, and fees and expenses to be paid by GenCo pursuant to the Refinancing;
- (b) for each Month following the proposed date of the Refinancing until the Month in which no amounts are scheduled to be remain payable pursuant to the Refinancing, the difference between the average of the monthly payments of principal, interest, and fees and expenses that will be payable pursuant to:
 - (i) the Initial Financing; and
 - (ii) the Refinancing; and
- (c) the Refinancing Gain.

“Refinancing Gain” – Either:

- (a) to the extent the Refinancing results in a reduction of the principal, interest, and fees and expenses, the amount (if any) by which the average of the monthly payments of principal, interest, and fees and expenses of GenCo or its Affiliates over the term of the credit facilities made available under the relevant Financing Documents are reduced as a result of any Refinancing; and/or
- (b) to the extent the Refinancing does not result in a reduction of the principal, interest, and fees and expenses but results in another reduction in the Base Availability Credits (such as by reducing reserve requirements), then the amount of the reduction of the Base Availability Credits that would result from such Refinancing.

“Rejection Point Raw Water Quality Standards” – The minimum and/or maximum water quality standards set forth on Schedule 24.

“Reliability Test” – The test to be carried out pursuant to Section 9.3.1(a) and as described in Schedule 4.

“Remediation Expert” – Has the meaning given thereto in Section 15.3.1.

“Replacement Failure Drawing Event” – Any event, condition, or circumstance identified in Section 3.1.3 that entitles NKEC to draw on the Construction Security.

“Required Commercial Operations Date” – The earlier of:

- (a) the date that occurs fifty-six (56) Months after the Transfer Date occurs; and
- (b) any earlier date specified in the EPC/LTM Bid Submission Form or that is set forth as the date of substantial completion in the EPC Contract,

as such date may be extended:

- (i) pursuant to Section 9.1.3;
- (ii) by reason of a Force Majeure Event;
- (iii) by reason of a Pass-Through Environmental/Archaeological Condition that impedes or makes impracticable or impossible the performance by GenCo of its obligations under this Agreement;
- (iv) by reason of a failure by the GOK-Appointed Independent Engineer to satisfy its obligations under this Agreement;
- (v) by reason of a failure by NKEC to satisfy its obligations under this Agreement; or
- (vi) by reason of a failure by GOK or a Specified POE to satisfy its obligations under any of the Project Agreements; or
- (vii) by reason of an Approved Change Order.

“Required Settlement Information” – Has the meaning given thereto in Schedule 1.

“Resettlement Standards” – Collectively, with respect to the Kosovo e Re Project and solely to the extent applicable to the Kosovo e Re Project:

- (a) the resettlement standards set forth in the World Bank Environmental and Social Safeguard Policies;
- (b) the resettlement standards set forth in the IFC Environmental and Social Sustainability Standards;
- (c) the resettlement standards set forth in the MIGA Policy on Social & Environmental Sustainability;
- (d) the resettlement standards set forth in the EBRD Environmental and Social Policy; and
- (e) the requirements imposed by any Law of Kosovo related to involuntary resettlement,

except to the extent that the provisions set forth in two or more of the above are such that the Person conducting such resettlement cannot simultaneously comply with such provisions, in which case the order of the standards listed above shall be the order of precedence, and the relevant provisions of the relevant lower-ranked standard (or standards, if necessary) shall not apply to the extent necessary to enable such Person to comply with the higher-ranked standard. For the avoidance of doubt, nothing herein shall reduce the obligation of a Party to comply with the most stringent of the foregoing standards.

“Restoration” – Has the meaning given thereto in Section 24.7.1(a).

“Restoration Cost Estimate” – Has the meaning given thereto in Section 24.7.1(a)(i).

“Restoration Costs” – The documented costs that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred or to be incurred by GenCo (and not otherwise Tariff Exclusions) to effect a Restoration, including: the cost of any material modifications or material capital additions to the KRPP Facility that are necessary for GenCo to come into compliance with a Change in Law or to overcome a Political Force Majeure Event, Raw Water Force Majeure Event or Change in Raw Water Quality, consistent with the requirements of the applicable Laws of Kosovo and Prudent Utility Practices.

“Restoration Expert” – Has the meaning given thereto in Section 24.7.1.

“Restoration Period” – The period of restoration established in the Restoration Schedule and as defined in Section 24.7.1(a)(ii).

“Restoration Schedule” – Has the meaning given thereto in Section 24.7.1(a)(ii).

“Restricted Party” – A person that is:

- (a) listed on any Sanctions List;
- (b) with a primary place of business in, incorporated or organized under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions; or
- (c) otherwise a target of Sanctions (“target of Sanctions” signifying a person with whom a United States person or other national of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities).

“RR Corporate Income Tax Component” – The component of the ½-Year Revenue Requirement calculated in accordance with Section 3.1.4 of Schedule 1.

“RR Fixed Admin Component” – The component of the ½-Year Revenue Requirement calculated in accordance with Section 3.1.7 of Schedule 1.

“RR Fixed LTMA Component” – The component of the ½-Year Revenue Requirement calculated in accordance with Section 3.1.8 of Schedule 1.

“RR Fixed O&M Component” – The component of the ½-Year Revenue Requirement calculated in accordance with Section 3.1.6 of Schedule 1.

“RR Miscellaneous Operational Charges Component” – The component of the ½-Year Revenue Requirement calculated in accordance with Section 3.1.9(a) of Schedule 1.

“RR Other (Non-Income) Taxes Component” – The component of the ½-Year Revenue Requirement calculated in accordance with Section 3.1.5 of Schedule 1.

“RR Repayment of Tariff Debt/Interest Component” – A component of the ½-Year Revenue Requirement calculated in accordance with Section 3.1.2 of Schedule 1.

“RR Tariff Equity Repayment & Return Component” – A component of the ½-Year Revenue Requirement calculated in accordance with Section 3.1.3 of Schedule 1.

“RR Working Capital Component” – A component of the ½-Year Revenue Requirement calculated in accordance with Section 3.1.9 of Schedule 1.

“Sanctions” – The economic sanctions, laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctions Authorities.

“Sanctions Authorities” – Any of:

- (a) the United States government;
- (b) the United Nations;
- (c) the European Union;
- (d) the United Kingdom;
- (e) France;
- (f) Japan; or
- (g) the respective governmental institutions and agencies of any of the foregoing, including, without limitation, OFAC, the United States Department of State and/or HMT.

“Sanctions List” – The “Specially Designated Nationals and Blocked Persons” list maintained by OFAC, the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by HMT, or any similar list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities.

“SCADA System” – A supervisory control and data acquisition system.

“Scheduled Commercial Operations Date” – The date estimated based on the construction schedule of the EPC Contractor set forth in the EPC Contract, as such date may be modified by GenCo from time to time in the Construction Reports or in other written notices from GenCo to NKEC.

“Scheduled Outage” – A planned interruption of the KRPP Facility’s generating capability or any material part thereof that:

- (a) has been scheduled by GenCo in accordance with Section 13.1; and
- (b) is for inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement of the KRPP Facility or any material part thereof.

“Scheduling Agency Terms” – The terms pursuant to which GenCo appoints NKEC, or, at NKEC’s election, KESCO, as its agent for the purpose of scheduling with KOSTT the electrical capacity, Net Electrical Output, and Ancillary Services of the KRPP Facility, as set forth in Schedule 9.

“Seismic Study” – A detailed seismic and geotechnical study undertaken by the GOK-Appointed Independent Engineer, subject to review by GenCo, to determine the approach and seismic design factors to be employed in the design of the foundations and civil structure proposals of the KRPP Facility and all other structures on the Site (other than structures that are in existence as of the Transfer Date, if any).

“Shareholder Loans” – Loans that are made to GenCo by the Sponsor HoldCo or the Ultimate Sponsor or Affiliates of the Sponsor HoldCo or the Ultimate Sponsor prior to the Final Draw Date to finance the Kosovo e Re Project; provided, however, any such loans shall be subordinated to the indebtedness under the Financing Documents on terms that are reasonably satisfactory to NKEC.

“Site” – The land, easements, way-leaves, licenses and other rights in land, including all rights to waterways, roads, wells, and other fixtures or appurtenances that are ancillary to such rights in land, in each case as acquired or to be acquired by GenCo, on which all or on any part of the KRPP Facility is to be built. The Site includes the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, the Plant Site (KRPP), the Additional Land, the Initial Property, the Additional Property, the GenCo Lignite Delivery Easement, and the Connection Upgrade Easement.

“Site Transfer Agreement” – The agreement by that name between KEK Generation and GenCo dated on or about the Execution Date.

“Social Standards” – Collectively, with respect to GenCo’s participation in the Kosovo e Re Project and solely to the extent applicable to GenCo or the Kosovo e Re Project,

- (a) the social components of the E&S Management Plan;
- (b) the social standards set forth in the World Bank Environmental and Social Safeguard Policies;
- (c) the social standards set forth in the IFC Environmental and Social Sustainability Standards;
- (d) the social standards set forth in the MIGA Policy on Social & Environmental Sustainability;
- (e) the social standards set forth in the EBRD Environmental and Social Policy; and
- (f) the requirements imposed by any Law of Kosovo related to the social safeguards and sustainability,

except to the extent that the provisions set forth in two or more of the above are such that GenCo cannot simultaneously comply with such provisions, in which case the order of the standards listed above shall be the order of precedence, and the relevant provisions of the relevant lower-ranked standard (or standards, if necessary) shall not apply to the extent necessary to enable GenCo to comply with the higher-ranked standard. For the avoidance of doubt, nothing herein shall reduce the obligation of a Party to comply with the most stringent of the foregoing standards.

“Soft Costs” – Any costs or expenses that would qualify as Development Costs but for the fact that such costs and expenses are incurred after the Financial Closing and before the Final Draw Date.

“Soft Costs Budget” – A category of the Project Budget (including any reasonable contingency for Soft Costs included within the Project Budget).

“Special GOK Notice of Default” – Has the meaning given thereto in Section 25.3.

“Specified Environmental/Archaeological Condition” – Any Environmental/Archaeological Condition known to exist at the Site as of the Execution Date and identified in Schedule 7.

“Specified Environmental Condition Remediation” – The actions necessary to evaluate, control, address, remediate, and remove the Specified Environmental/Archaeological Conditions.

“Specified Environmental Condition Remediation Contract” – The agreement entered or to be entered into between GenCo and the Specified Environmental Condition Remediation Contractor for, inter alia, the carrying out of the Specified Environmental Condition Remediation, as such agreement may be amended by the parties thereto from time to time.

“Specified Environmental Condition Remediation Contractor” – The GenCo Contractor or GenCo Contractors appointed by GenCo to perform the Specified Environmental Condition Remediation following the tender conducted in accordance with Section 3.11, and any successor or successors thereto.

“Specified POE” and “Specified POEs” – Any or all of KEK Mining, KEK Generation, NKEC, KOSTT, Water Supplier, and any other Publicly Owned Enterprise that is a party to a Project Agreement, as the context requires. Notwithstanding anything herein to the contrary, any Person that is not a Publicly Owned Enterprise who succeeds to the interest of a Specified POE under any Project Agreement will be deemed to be a Specified POE.

“Specified POE Action or Inaction” – The action or inaction of any Specified POE, other than a Change in Law, which action or inaction constitutes a material breach or default of the relevant Specified POE’s obligations under any of the Project Agreements to which the relevant Specified POE is a party or constitutes a violation of the Laws of Kosovo and which action or inaction of such Specified POE has a Material GenCo Effect; provided, however, that no such action or inaction shall be considered a Specified POE Action or Inaction if such action or inaction is caused in whole or significant part by a GenCo Action or Inaction.

“Specified POE Force Majeure Event” – Any force majeure event (however defined) that impacts, delays or prevents the performance of a Specified POE under any Project Agreement (other than Political Force Majeure Events).

“Specified Raw Water Quality Standards” – Has the meaning given thereto in Section 3.6.

“Sponsor HoldCo” – Has the meaning given thereto in the Sponsor Support Agreement.

“Sponsor HoldCo Party” – Has the meaning given thereto in the Sponsor Support Agreement.

“Sponsor Support Agreement” – The agreement by that name between GOK, the Sponsor HoldCo, and GenCo dated on or about the Execution Date.

“Start-Up” – After the Commercial Operations Date of the KRPP Facility, any start-up of the KRPP Facility necessary for GenCo to comply with a Day-Ahead Scheduling Instruction (or a Day-Ahead Revised Scheduling Instruction) or a Real-Time Electrical Dispatch Instruction and that is deemed to be successfully completed upon the KRPP Facility:

- (a) starting, synchronizing with the KOSTT Grid, and fully loading to the level of the Day-Ahead Scheduling Instruction (or Day-Ahead Revised Scheduling Instruction) or Real-Time Electrical Dispatch Instruction within the time specified in Section 8.2 of Schedule 2;
- (b) starting, synchronizing with the KOSTT Grid, and being held in Full Speed No Load Mode such that full loading to the level of the Day-Ahead Scheduling Instruction (or Day-Ahead Revised Scheduling Instruction) or Real-Time Electrical Dispatch Instruction is not achieved within the time specified in Section 8.2 of Schedule 2; or

- (c) being stopped pursuant to a Real-Time Electrical Dispatch Instruction at any point that is more than fifty percent (50%) of the time required for a Start-Up, as specified in Section 8.2 of Schedule 2.

A Start-Up shall include all activities necessary to start, synchronize, and load the KRPP Facility.

“Target Debt to Equity Ratio” – No less than seventy percent (70%) debt to thirty percent (30%) equity, with the percentage of equity including any Shareholder Loans, as such ratio may be adjusted by mutual agreement of the Parties.

“Target Equity Ratio” – The equity component of the Target Debt to Equity Ratio, expressed as a percentage.

“Tariff Adjustments” – Has the meaning given thereto in Section 24.8.

“Tariff AEUDC” – The AEUDC applicable on Tariff Equity. Tariff AEUDC shall be determined, as of the Final Draw Date as follows:

$$TfAEUDC = \sum_{i=1}^n \{SemiAnnEqCtrb_i \times CmpdIntFactor_i\}$$

where:

TfAEUDC means the amount of the Tariff AEUDC;

CmpdIntFactor_i means the factor used to calculate the amount of return deemed earned on the amounts of Tariff Equity contributed during the ‘ith’ semi-annual period (where each semi-annual period consists of six months from the Accrual Start Date and each six-month period thereafter and any partial six-month period until the earlier of the Commercial Operations Date or the Required Commercial Operations Date), calculated as follows:

$$[(1 + EqRoR)^{M_i/12} - 1]$$

where:

EqRoR means the Equity Rate of Return.

M_i means the number of Months from the end of the ith semi-annual period starting on the Accrual Start Date until the earlier of the Commercial Operations Date or Required Commercial Operations Date.

SemiAnnEqCtrb_i means the sum of the amounts of Tariff Equity contributed during the ‘ith’ semi-annual period starting on the Accrual Start Date until the earlier of the Commercial Operations Date or Required Commercial Operations Date, calculated as follows:

$$SemiAnnEqCtrb_i = SemiAnnActEqCtrb_i \times \left(\frac{TfEq}{ActEq} \right)$$

where:

SemiAnnActEqCtrb_i means in the case of each semi-annual period ‘i’ (where each semi-annual period consists of six months from the Accrual Start Date and each six-month period thereafter and any partial six-month period until the earlier of the Commercial Operations

Date or the Required Commercial Operations Date), the sum of the contributions of Actual Equity made during the ith semi-annual period;

TfEq means the amount of Tariff Equity;

ActEq means the amount of Actual Equity.

“Tariff Debt” – Actual Debt incurred under the Financing Documents to finance Project Costs, but excluding any indebtedness associated with Tariff Exclusions.

“Tariff Equity” – The equity contributed by the Sponsor HoldCo and the Ultimate Sponsor (whether through equity contributions or contributions through Shareholder Loans) to fund the Project Costs, but excluding any equity associated with Tariff Exclusions. For the avoidance of doubt, (i) Early Stage Additional Development Costs shall not accrue a return prior to Financial Closing and (ii) Early Stage Pre-Approved Development Costs shall be deemed to be contributed on the Accrual Start Date.

“Tariff Equity Including AEUDC” – The sum of Tariff Equity and Tariff AEUDC.

“Tariff Exclusions” means any of the following:

- (a) costs or expenses incurred for matters not directly, indirectly or otherwise related to the Kosovo e Re Project;
- (b) costs or expenses that are not reasonable and prudent and actually and demonstrably incurred (provided that all Pre-Approved Costs shall be deemed reasonable and prudent);
- (c) costs or expenses (other than Development Costs, Soft Costs or, to the extent applicable, Pre-Approved Costs to the extent clearly designated as being provided by Affiliates) associated with goods or services provided by Affiliates of GenCo, unless such work was provided on terms consistent with an arm’s length transaction or under the O&M Contract, Administrative Services Agreement or the LTMA to the extent an Affiliate of GenCo provides goods or services under the LTMA;
- (d) proceeds recovered from insurance maintained by GenCo or that GenCo is obligated to maintain pursuant to any of the Project Agreements or any material amounts that are recoverable from an insurance provider;
- (e) costs or expenses incurred as a result of the occurrence of an Other Force Majeure Event (other than a Specified POE Force Majeure Event), including any deductibles in relation to builder’s risk or delay in start-up insurance claims arising out of such Other Force Majeure Event (but excluding any insurance premia);
- (f) insurance deductibles, co-pays, or similar amounts (excluding insurance premia and other than amounts for which NKEC is responsible under Article 24 of the Agreement);
- (g) except as otherwise provided by a final and binding order or judgment or in accordance with the express terms of this Agreement or any Project Agreement, costs or expenses incurred in connection with litigation or arbitration or other dispute resolution under this Agreement or under any Project Agreement;
- (h) costs or expenses incurred in connection with litigation or arbitration or other dispute resolution with a third party other than GOK or a Specified POE or any Losses in relation thereto (other than amounts for which NKEC is responsible under the Project Agreements);
- (i) costs or expenses in relation to claims by GenCo or its Affiliates against any third party other

- than GOK or a Specified POE under a Project Agreement;
- (j) Losses paid or payable by GenCo pursuant to Section 20.1.2 (*GenCo's Indemnification*) of the Agreement or other Losses paid or payable for personal injury or death to persons or damage to property arising out of any negligence or willful misconduct by GenCo or any GenCo Party in connection with this Agreement;
 - (k) Losses paid or payable by GenCo pursuant to Section 20.1.2 (*GenCo's Indemnification*) of the Agreement or other Losses paid or payable by GenCo in relation to any claim or action by a third party resulting from, arising out of, or related to GenCo's violation of any non-discriminatory Law of Kosovo (as described in the Implementation Agreement) to be complied with by GenCo under this Agreement;
 - (l) Losses paid or payable by GenCo pursuant to Section 20.1.2 (*GenCo's Indemnification*) of the Agreement or other Losses paid or payable by GenCo in relation to any claim or action by a third party resulting from, arising out of, or related to GenCo's breach or default of any of its covenants or representations and warranties under this Agreement;
 - (m) costs or expenses incurred to generate incremental income for GenCo from unanticipated credits or unanticipated revenues payable to GenCo netted out as *OIC_p* under Schedule 1;
 - (n) costs or expenses that are identified in any of the Project Agreements as being at GenCo's own cost or similar and in respect of which GenCo is not otherwise reimbursed or entitled to reimbursement under such agreement or compensated through Schedule 1;
 - (o) payments to recover amounts drawn on Financing Security or Construction Security required to be posted by GenCo or its Affiliates or any costs or expenses incurred associated with such a draw;
 - (p) costs or expenses arising or resulting from GenCo's breach of its obligations under any Project Agreement, any Construction/Maintenance Contract, or any other contract with a third party;
 - (q) fines or penalties levied upon GenCo for violation of any non-discriminatory Law of Kosovo (as described in the Implementation Agreement) by any Public Authority, except for those caused by NKEC, any Specified POE or any Project Agreement counterparty;
 - (r) donations for charitable or related purposes, except for such amounts contributed to the Community Development Fund in accordance with the Project Agreements;
 - (s) dues, fees or similar payments to trade or other professional organizations, except as required or permitted by a Project Agreement or the Laws of Kosovo;
 - (t) any entertainment expenses (which do not include any amounts paid pursuant to the Construction/Maintenance Contracts or other costs of travel, lodging, food and related items for employees and contractors incurred as a result of the Kosovo e Re Project);
 - (u) any Soft Costs that exceed the Soft Costs Budget except with the written approval of NKEC and GOK;
 - (v) costs or expenses in any amount above the Contingency Amount associated with any Change Order, other than an Approved Change Order;
 - (w) any costs or expenses arising from GenCo or its Affiliates' fraud, willful misconduct, or resulting from any act in which GenCo intentionally and unreasonably causes a waste of material funds that is beyond the bounds of common practice associated with the construction of similar projects;

- (x) except as expressly provided to the contrary in any Project Agreement, any costs or expenses associated with an unexcused delay in construction of the KRPP Facility and for which liquidated damages or other compensation has been received or are due and owing from the applicable GenCo Contractor; or
- (y) except as expressly provided to the contrary in any Project Agreement, any costs or expenses associated with unexcused and unexpected breakdowns in equipment following the Commercial Operations Date (other than amounts payable under the LTMA, O&M Contract and/or any other Construction/Maintenance Contract).

Notwithstanding anything to the contrary set forth herein, costs, expenses, charges, payments and amounts described in subclauses (e), (f), (h), (i) and (x) above may be paid or reimbursed (i) from the GenCo Contingency Sub-Amount or (ii) to the extent such payment or reimbursement is permitted by the Lenders (or otherwise permitted under the Financing Documents) and NKEC and GOK approve such costs, expenses, charges, payments and/or amounts (such approval not to be unreasonably withheld or delayed by NKEC and GOK should such costs or expenses be incurred in accordance with Prudent Utility Practices), from the Contingency Amount; provided, however, that, in respect of costs, expenses, charges, payments and amounts described in subclauses (h) and (i) above, reimbursement or payment from the Contingency Amount shall be limited to 50% of such amounts and NKEC and GOK approval shall not be required for such reimbursement or payment from the Contingency Amount. Such amounts paid or reimbursed from the GenCo Contingency Sub-Amount or the Contingency Amount shall not be deemed to be a Tariff Exclusion for any purpose under the Project Agreements.

“Tax” – Any tax, charge, impost, tariff, duty, basis for assessing taxes (including the rates of or periods for depreciation of assets for tax assessment purposes), fiscal concession or allowance, including any corporate income tax, value added tax, sales tax, water or environmental or energy tax, import or customs duty, withholding tax, excise tax, tax on foreign exchange transactions or property tax. The term “Tax” shall not include any fee or charge payable to a Public Authority as consideration for goods or services provided by such Public Authority in relation to a commercial activity carried out by such Public Authority.

“Technical Correction Factor Methodology” – Has the meaning given thereto in Schedule 1.

“Technical Dispute” – 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, including as to whether or not a Change Order is an Approved Change Order.

“Technical Specifications” – The technical specifications for the construction, operation, and maintenance of the KRPP Facility to be provided by the winning EPC/LTM Bidder Consortium of the Tender (Plant) conducted by GenCo, which description shall include all required characteristics of the KRPP Facility described in the Tender (Plant) Technical Specifications.

“Tender (Connection)” – Has the meaning given thereto in Section 6.3.1, which tender is as required under Section 13 of the Connection Agreement.

“Tender (Connection) Evaluation Criteria” – Has the meaning given thereto in Section 6.3.2(d).

“Tender (Environmental)” – Has the meaning given thereto in Section 3.11.1(a).

“Tender (Environmental) Evaluation Criteria” – Has the meaning given thereto in Section 3.11.2(d).

“Tender (OE)” – Has the meaning given thereto in Section 3.10.

“Tender (OE) Evaluation Criteria” – Has the meaning given thereto in Section 3.10(h).

“Tender (Plant)” – Has the meaning given thereto in Section 3.9.1.

“Tender (Plant) Evaluation Criteria” – Has the meaning given thereto in Section 3.9.2.

“Tender (Plant) Pre-Qualification Criteria” – Has the meaning given thereto in Section 3.9.1(b).

“Tender (Plant) Technical Specifications” – The requirements and standards specified in Schedule 14, as updated pursuant to Section 3.9.2(b).

“Tendered PPA Inputs” – Has the meaning given thereto in Section 3.9.8.

“Term” – Has the meaning given thereto in Section 2.1(a).

“Termination Notice” – Has the meaning given thereto in Section 25.4.

“Termokos” – District Heating Termokos, J.S.C., a joint stock company organized under the laws of Kosovo.

“Tested Capacity” – Initially, the net generation capacity of the KRPP Facility as demonstrated by the NKEC Acceptance Tests, as certified by the GOK-Appointed Independent Engineer in the Capacity Test Certificate, which shall be applicable at and from the Day following the date of completion of Commissioning until revised by the Annual Capacity Test pursuant to Section 9.1. Subsequently, the net generation capacity of the KRPP Facility, as demonstrated in the most recent Annual Capacity Test pursuant to Section 9.4.

“Thermal Efficiency and BAT Study” – A detailed analysis undertaken by the GOK-Appointed Independent Engineer to determine whether the design of the KRPP Facility, as set forth in the EPC Contract, satisfies the applicable Environmental Standards relating to thermal efficiency and best available technology.

“Threshold Amount” – An amount equal to:

- (a) prior to the Commercial Operations Date, €200 million; or
- (b) at and following the Commercial Operations Date, the greater of:
 - (i) twenty percent (20%) of the then-unredeemed Actual Debt and Actual Equity; and
 - (ii) Five million Euros (€5,000,000).

“Tonne” or “t” – One thousand (1×10^3) kilograms.

“Topographical Survey” – A detailed topographical survey for the Site undertaken by the GOK-Appointed Independent Engineer, subject to review by GenCo.

“Transfer Date” – Has the meaning given thereto in the Site Transfer Agreement.

“Transportation Study” – A detailed survey of the transportation infrastructure available in Kosovo, which will allow EPC/LTM Bidder Consortia to calculate transportation costs and timing, undertaken by the GOK-Appointed Independent Engineer, subject to review by GenCo.

“TSMO” – The system operator, transmission network owner, and market operator, as defined in the Grid Code.

“Ultimate Sponsor” – Has the meaning given thereto in the Sponsor Support Agreement.

“Ultimate Sponsor Party” – A stockholder, director, officer, employee, representative, agent, member, manager, or Affiliate of the Ultimate Sponsor.

“Underground Obstacles Survey” – A detailed survey for the Site identifying any underground obstacles such as pipes and cables, undertaken by the GOK-Appointed Independent Engineer, subject to review by GenCo.

“Uninsurable Event” – Has the meaning given thereto in the Implementation Agreement.

“Variable LTMA Charge” – Has the meaning given in Section 4.2 of Schedule 1.

“Variable O&M Charge” – The charge determined in accordance with Section 4.2 of Schedule 1.

“Warm Start-Up” – A Start-Up that, based upon the time since last synchronization to the KOSTT Grid, is neither a Cold Start-Up or a Hot Start-Up.

“Water” – Has the meaning given thereto in the Water Supply Agreement.

“Water Supplier” – Has the meaning given thereto in the Water Supply Agreement.

“Water Supplier Party” – Has the meaning given thereto in the Water Supply Agreement.

“Water Supply Agreement” – The agreement by that name between GenCo and the Water Supplier dated on or about the Execution Date.

“Weather Station” – The equipment specified in the Technical Specifications purchased, installed, owned and maintained by GenCo on the Plant Site (KRPP) for the purpose of measuring the Ambient Site Conditions, which equipment shall be subject to inspection by NKEC and testing at the request of NKEC upon reasonable advance notice.

“Week” – Each period of seven (7) consecutive Days beginning at 12:00 midnight falling between a Saturday and a Sunday.

“World Bank” and “World Bank Group” – Have the meaning given thereto in the Implementation Agreement.

“World Bank Environmental and Social Safeguard Policies” – The Environmental and Social Safeguard Policies published by the World Bank, available as at the Execution Date (subject to future relocation) at <http://go.worldbank.org/WTA1ODE7T0> or such later version required to be met by any Lender under the Financing Documents.

“World Bank Group EHS Guidelines” – The World Bank Group’s Environmental, Health and Safety Guidelines, available as at the Execution Date (subject to future relocation) at <http://www.ifc.org/ehsguidelines> or such later version required to be met by any Lender under the Financing Documents, including the applicable sections of the: (i) Environmental, Health and Safety Guidelines on for Thermal Power Plants(2008), Mining (2007) and Waste Management Facilities (2007),

and (ii) Section 2.0 of the Environmental, Health and Safety (EHS) Guidelines: Occupational Health and Safety (April 30, 2007).

“Working Capital Amount” – The actual amount of working capital GenCo maintains from time to time in the form of cash and cash equivalents for purposes of covering liabilities due in the short-term. The Working Capital Amount shall be equal at any time to the sum of (i) initial working capital required by the Lenders to be funded through the Actual Debt and Actual Equity prior to the Final Draw Date; (ii) working capital drawn from the Working Capital Facility; and (iii) working capital self-funded out of BAC payments in accordance with Schedule 1.

“Working Capital Facility” – Means a loan, line of credit, letter of credit, revolving credit facility or other facility used to fund GenCo’s working capital requirements pursuant to the Financing Documents.

“Working Capital Reserve Account” – Any working capital reserve account funded from Tariff Debt and Tariff Equity at Financial Closing as required by Lenders.

“Year” – Each twelve (12) Month period commencing on January 1 and continuing until the end of such calendar year.

1.2 Interpretation

- (a) In this Agreement, unless a clear contrary intention appears:
- (i) the singular number includes the plural number, and vice versa;
 - (ii) calculations other than prices required to be made hereunder shall be expressed with four decimal places of precision;
 - (iii) reference to any Person includes such Person’s permitted successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
 - (iv) reference to any gender includes each other gender;
 - (v) reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; provided, however, that reference to the Applicable Standards (other than the Laws of Kosovo) means the Applicable Standards (other than the Laws of Kosovo) in effect on the Execution Date and, following the execution of the Financing Documents, the versions of the Applicable Standards (other than the Laws of Kosovo) required to be met by any Lender under the Financing Documents.
 - (vi) references to any legislation or legislative provision include references to any statutory modification or re-enactment of such legislation or legislative provision and any legislation or legislative provision substituted for that legislation or legislative provision, provided that nothing in this Section 1.2(a)(vi) shall prevent a Party from seeking relief for a Change in Law as provided in any Project Agreement;
 - (vii) “hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section, Schedule, or other provision hereof, unless otherwise specifically stated;
 - (viii) “including” (and with correlative meaning “include” or “includes”) means including without limiting the generality of any description preceding such term;

- (ix) a letter, document, or other instrument providing that GOK has “no objection” (or “does not object” or other words of similar import) in relation to a particular matter shall be deemed a GOK consent in relation to such matter;
 - (x) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”;
 - (xi) references to documents, instruments, or agreements shall be deemed to refer as well to all addenda, exhibits, schedules, or amendments thereto; and
 - (xii) references to a Party becoming aware or having knowledge of an event or circumstances shall be deemed to refer to personnel of such Party that have responsibility for matters relating to such event or circumstances, or any current or former director or officer, becoming aware or having knowledge.
- (b) Captions and headings in this Agreement are for reference only and do not constitute a part of the substance of this Agreement and shall not be considered in construing this Agreement.
 - (c) References in the body of this Agreement to Articles, Sections, and Schedules (and Annexes thereof) are to Articles and Sections of and Schedules (and Annexes thereof) to this Agreement, unless stated otherwise. References in any Schedule to Articles, Sections, and Annexes are references to Articles, Sections, and Annexes of that Schedule, unless stated otherwise. References in any Schedule (or Annex thereto) to Articles and Sections of the Agreement are references to the body of this Agreement, unless stated otherwise.
 - (d) In carrying out its obligations and duties, and in providing estimates under this Agreement, each Party shall have an implied obligation of good faith.
 - (e) Except as otherwise indicated in this Agreement, references to time are references to Central European Standard Time or Central European Summer Time, as then applicable at the Site.
 - (f) This Agreement was negotiated by the Parties with the benefit of legal representation, and, accordingly, any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party as the drafting party shall not apply to any construction or interpretation hereof.
 - (g) Except as provided in Section 1.2(b) of Schedule 1, to the extent there exists a conflict between any provisions of this Agreement and any Schedule or Annex, the provisions of this Agreement shall prevail, but the absence of a provision in a Schedule or Annex or in this Agreement (as the case may be) shall not constitute a conflict.

Article 2

Effective Date; Term

2.1 Effectiveness; Term

- (a) Subject to Section 2.1(b) and satisfaction or waiver of the conditions contemplated on Schedule 23, this Agreement shall commence and be effective upon its execution by the Parties hereto (such date of effectiveness being the “**Effective Date**”). Unless terminated earlier in accordance with its terms, this Agreement shall continue in full force and effect until the end of the twentieth (20th) Agreement Year (such period, the “**Term**”).
- (b) Notwithstanding Section 2.1(a), it shall be a condition precedent to the effectiveness of this Agreement that each of the items set forth on Schedule 23 has either occurred or been waived by both Parties in writing. If any of the items set forth on Schedule 23 has not occurred and both Parties have not waived such item in writing within sixty (60) Days after the execution of this Agreement, this Agreement shall automatically terminate and shall be deemed to have never been effective.

Article 3
Pre-Construction Obligations

3.1 Construction Security

3.1.1 Issuance and Maintenance of Construction Security

- (a) At the Transfer Date, GenCo shall deliver to NKEC either (i) an irrevocable standby letter of credit (the “**Construction Letter of Credit**”) issued by a Qualified Bank having the terms set forth in Schedule 10 and thereafter continuously maintain such Construction Letter of Credit, or a replacement thereof, in full force and effect in the required amount until the earlier of thirty (30) Days following the Commercial Operations Date and the date that such Construction Letter of Credit has been fully drawn, (ii) a cash transfer in immediately available funds or a cashier’s or certified check in the required amount deposited in a separate NKEC account (a “**Construction Deposit**,” and together with the Construction Letter of Credit, the “**Construction Security**”) or (iii) any combination of Construction Letter of Credit and Construction Deposit. In the event that Delay Liquidated Damages become payable under this Agreement and are undisputed and not paid by GenCo within ten (10) Business Days after the date on which the payment is due from GenCo upon demand by NKEC (or are disputed and are determined to be payable on the basis of the resolution of a Payment Dispute), then a Construction Security Drawing Event shall have occurred and NKEC may draw on the Construction Security in the amount of the undisputed and unpaid Delay Liquidated Damages.
- (b) Within thirty (30) Days following the Commercial Operations Date, NKEC shall return the Construction Security to GenCo after making any draws thereon that NKEC is permitted to make pursuant to this Section 3.1.
- (c) If the Construction Security is in the form of cash or a cashier’s check, it shall be deposited in a separate NKEC account in the name of NKEC, which shall not be commingled with other NKEC funds or otherwise applied by NKEC unless and until the occurrence of a Construction Security Drawing Event.

3.1.2 Obligations of GenCo

GenCo:

- (a) not less than thirty (30) Days prior to the stated expiration date of the then-effective Construction Letter of Credit (if applicable) shall deliver to NKEC:
 - (i) a replacement Construction Letter of Credit effective on such delivery date, a Construction Deposit or a combination thereof; and
 - (ii) if a replacement Construction Letter of Credit is provided, a certification from an officer of GenCo, dated as of the delivery date, certifying that the issuer of such replacement Construction Letter of Credit meets the requirements of a Qualified Bank, and that such Construction Letter of Credit meets the requirements of Schedule 10; and
- (b) shall deliver to NKEC notice within ten (10) Business Days of a reduction of the long-term senior unsecured debt rating of the issuing bank of any Construction Letter of Credit by S&P or another internationally recognized major credit rating institution;
- (c) shall, in the event that a Construction Letter of Credit has been provided and the issuer of such Construction Letter of Credit ceases to meet the qualifications of a Qualified Bank, within twenty (20) Business Days after the date on which GenCo becomes aware or should have reasonably become aware the issuer no longer meets the qualifications of a Qualified Bank, deliver to NKEC a replacement Construction Letter of Credit, Construction Deposit or combination thereof, and if

a replacement Construction Letter of Credit has been provided together with a certification from an officer of GenCo, dated as of the delivery date, certifying that:

- (i) the issuer of such replacement Construction Letter of Credit meets the requirements of a Qualified Bank; and
- (ii) such Construction Letter of Credit meets the requirements of Schedule 10.

3.1.3 Cancellation of Replaced Security or Drawing

- (a) Within ten (10) Business Days after the delivery of any replacement Construction Security pursuant to Section 3.1.2, NKEC shall deliver any Construction Letter of Credit replaced by such replacement Construction Security to the issuer of the replaced Construction Security and notify GenCo of such delivery.
- (b) In the event that GenCo does not deliver a replacement Construction Security as required by Section 3.1.2(a) or Section 3.1.2(b), a Replacement Failure Drawing Event shall have occurred and NKEC may, in its sole discretion, draw on the Construction Security for the full amount thereof; provided, however, that NKEC shall, unless a Construction Security Drawing Event shall have occurred (in which event NKEC may apply the sums drawn as if drawn upon the occurrence of a Construction Security Drawing Event), upon GenCo's delivery of a replacement Construction Security, in accordance with Section 3.1.2, reimburse GenCo for the amount drawn (without interest or penalty).

3.2 Obligation to Obtain Regulatory Approvals

- (a) Promptly following GenCo's receipt of all GenCo Consents that are required pursuant to the Laws of Kosovo to be obtained as a condition to submitting an application for the first phase of the Generation License, GenCo shall use its commercially reasonable efforts to prepare and file with the ERO its application for the first phase of the Generation License.
- (b) GenCo shall promptly give to NKEC notice of issuance by ERO of the Generation License.

3.3 Consents

3.3.1 GenCo Consents

From the Execution Date, GenCo shall, at its own cost and expense (it being acknowledged that GenCo shall recover such costs pursuant to Schedule 1), apply for, procure, diligently pursue and, following receipt, maintain (and, where applicable, cause GenCo Contractors to procure and maintain) all GenCo Consents that are required to be procured and maintained as of any particular date.

3.3.2 Procuring and Renewing GenCo Consents

Upon receiving a written request from GenCo so to do, NKEC shall take such actions as are commercially reasonable under the circumstances to assist GenCo in its efforts to procure or renew any GenCo Consents (including seeking expedited consideration thereof) that it has not received after proper application therefor, provided, however, that, when GenCo makes any such request of NKEC, GenCo shall:

- (a) prior to the date on which its request to NKEC is submitted, have done all such things as it is reasonable for GenCo to have done and as are necessary to procure or renew any GenCo Consent that is the subject of such request;
- (b) notwithstanding the making of any such request, continue diligently to pursue the grant or renewal of any GenCo Consent that is the subject of such a request;
- (c) at the same time as it submits its request, disclose to NKEC the full details of the actions that GenCo has, prior to the date of the request, taken to procure or renew such GenCo Consent and of

the actions it is continuing to take with respect to the procurement or renewal of any such GenCo Consent;

- (d) provide NKEC with such assistance and information as NKEC may reasonably request in connection with GenCo's request; and
- (e) bear all reasonable out-of-pocket costs and expenses, including travel costs, incurred by NKEC (other than ordinary NKEC personnel salaries, and overhead costs, unless such costs are recoverable from GenCo) in relation to such request from GenCo (it being acknowledged that GenCo shall recover such costs pursuant to Schedule 1).

3.3.3 NKEC Consents

NKEC shall, at its own cost and expense, procure, diligently pursue, and thereafter maintain all NKEC Consents.

3.4 Reaffirmation of Representations and Warranties

On each of the Effective Date and the Transfer Date, GenCo shall deliver a certificate to NKEC confirming that the representations in Section 22.1 are true and accurate as at such dates, and NKEC shall deliver a certificate to GenCo confirming that the representations in Section 22.2 are true and accurate as at such dates.

3.5 Obligation to Provide Copies of Implementation Agreement; Amendments

Within ten (10) Days after the Execution Date, if requested by NKEC, GenCo shall submit to NKEC a copy of the Implementation Agreement as executed. GenCo shall submit to NKEC a copy of any amendments to the Implementation Agreement within ten (10) Days after the execution of any such amendment.

3.6 Specified Raw Water Quality Standards

- (a) Prior to issuing the Tender (Plant) in accordance with Section 3.9 or such other deadlines as agreed to by the Parties, NKEC and GOK shall prepare and deliver for GenCo's approval at least sixty (60) Days prior to the anticipated release of the Tender (Plant) a draft of the minimum and/or maximum water quality standards (other than the Rejection Point Raw Water Quality Standards) that (i) are derived from the Raw Water Analysis, (ii) are reasonably suitable for the Tender (Plant), (iii) are set at levels that may reasonably be expected to impact the KRPP Facility, (iv) include a reasonable tolerance so as to include within their range the water quality standards that can be anticipated to occur from time to time in the raw water to be available to the KRPP Facility under the Water Supply Agreement, and (v) include the applicable time periods over which each water quality standard should be measured (the "**Specified Raw Water Quality Standards**").

Prior to issuing the Tender (Plant) in accordance with Section 3.9 or such other deadlines as agreed to by the Parties, NKEC and GOK shall prepare and deliver for GenCo's approval at least sixty (60) Days prior to the anticipated release of the Tender (Plant) a draft of the Rejection Point Raw Water Quality Standards.

- (b) The following shall apply for purposes of agreeing on final Specified Raw Water Quality Standards and Rejection Point Raw Water Quality Standards:
 - (i) GenCo shall provide any comments in writing on the draft Specified Raw Water Quality Standards and Rejection Point Raw Water Quality Standards within fifteen (15) Days following the date the draft Specified Raw Water Quality Standards and Rejection Point Raw Water Quality Standards are received by GenCo, and each Party shall make a representative available to promptly meet within five (5) Days following the end of such fifteen (15) Day period to review each Party's comments on the draft Specified Raw

Water Quality Standards and Rejection Point Raw Water Quality Standards and on the proposed changes and any objections to the proposed changes of a Party;

- (ii) as soon as is practicable after the meeting referred to in Section 3.6(b)(i), but in any event within ten (10) Days following the end of such meeting, NKEC shall provide GenCo with a proposed final draft Specified Raw Water Quality Standards and Rejection Point Raw Water Quality Standards, incorporating to the extent agreed each of the Parties' proposed changes;
 - (iii) GenCo shall provide final comments on the final draft Specified Raw Water Quality Standards and Rejection Point Raw Water Quality Standards within five (5) Business Days after its receipt by GenCo and, within five (5) Business Days after a request from NKEC, GenCo shall make its representatives available in Pristina, Kosovo, to meet and review its comments and proposed changes with NKEC; and
- (c) NKEC shall revise the draft Specified Raw Water Quality Standards and Rejection Point Raw Water Quality Standards to incorporate such undisputed additions or modifications requested by GenCo and shall provide a final draft to GenCo as soon as practicable, and in any event within five (5) Days following receipt of GenCo's comments and proposed changes to the draft Specified Raw Water Quality Standards and Rejection Point Raw Water Quality Standards. Any Dispute between the Parties as to whether any matter should be included in or excluded from or modified in the way it is then treated in the draft Specified Raw Water Quality Standards and Rejection Point Raw Water Quality Standards shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 26 and, if necessary, NKEC shall revise the draft Specified Raw Water Quality Standards and Rejection Point Raw Water Quality Standards to reflect the resolution of any such Technical Dispute.

3.7 Environmental and Social Impact Assessment

- (a) GOK shall within sixty (60) Days following the Effective Date, to the extent not completed and delivered prior to the Execution Date, deliver a copy of the Preliminary ESIA (GOK) to GenCo.
- (b) GenCo shall, upon the completion of the Preliminary ESIA (GOK), prepare or cause to be prepared the ESIA (GenCo), which shall include a study to ascertain the required chimney height, taking into consideration the cooling tower design, wind data, emissions, and allowable ground concentrations, and which shall include a survey consistent with Prudent Utility Practices and the Applicable Standards of Environmental/Archaeological Conditions present on the Site at the time of conducting the ESIA (GenCo), and which shall include a study of any noise and vibrations issues. In addition, the ESIA (GenCo) shall cover the development of the Sibovc South Field Mine (as defined in the Lignite Supply Agreement) as an "associated facility" (as such term is defined in the applicable IFC Environmental and Social Sustainability Standards, the World Bank Environmental and Social Safeguard Policies, and the MIGA Policy on Social & Environmental Sustainability) and include cumulative impact assessment indicating potential cumulative impacts associated with the Kosovo e Re Project taking into account the refurbishment of the Kosovo B Facility, the KRPP Facility, and the additional foreseeable development of an additional 450 MW facility. As part of the ESIA (GenCo), GenCo shall (i) assess airshed quality and classify it as degraded and/or non-degraded; and (ii) perform stack emission dispersion models vis-a-vis nearest receptors. Nothing herein shall require GenCo to rely on the Preliminary ESIA (GOK) in the preparation of the ESIA (GenCo).
- (c) As part of the ESIA (GenCo), GenCo shall perform a phase I and II site investigation. The phase I and II site investigation shall be done in accordance with the Laws of Kosovo, Applicable Standards, and Good International Industry Practice ("GIIP") approach as set forth in the American Society for Testing and Materials Standards (ASTM) "Phase I Environmental Site

Assessment Process,” E1527-13 and ASTM “Phase II Environmental Site Assessment Process,” E1903-11, and ASTM “Standard Guide for Risk-Based Corrective Actions,” E2081-00 (2015), as applicable, in order to assess the likely presence of potential contamination (including as indicated in sections 1.6.6, 7.6, and other relevant sections of the Preliminary ESIA (GOK) and, successively, in case contamination is suspected, define the presence and extent of potential contamination in relation to screening levels, based on applicable laws and GIIP, such as the Risk Based Screening level defined by USEPA Region 3 and available at <http://www2.epa.gov/risk/regional-screening-table-frequent-questions-june-2015>. In addition, if screening levels are exceeded, in the absence of a legal obligation to undertake remedial actions under the Laws of Kosovo in respect of any such contamination, GenCo shall assess the risk posed to the human health, safety, and the environment through site specific human health and ecological risk analyses, which shall establish acceptable contaminant risk based thresholds and, in case of exceedance of any such thresholds, the need for remedial actions. A copy of all material and documentation related to the environmental contamination studies shall be provided to GOK within thirty (30) Days following the issuance of the final drafts of such studies.

- (d) GenCo shall undertake a stakeholder engagement plan and perform stakeholder engagement activities that could reasonably be expected to facilitate completion of the ESIA (GenCo). Further, GenCo shall conduct meetings with affected communities and implement a grievance mechanism to receive and address stakeholders' grievances.
- (e) As part of the ESIA (GenCo), GenCo shall install, in a manner consistent with Prudent Utility Practices, monitoring wells with respect to the Site (including the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill) such that their locations allow adequate assessment of the groundwater (with the understanding that by installing such wells, GenCo shall have no obligation to treat or remediate groundwater contamination existing on the Site but originating at a location upstream or otherwise not on the Site).
- (f) As part of the ESIA (GenCo), GenCo shall undertake an archeological assessment.

The Parties acknowledge that the assessment referenced in this Section 3.6(c) is necessary in order to finalize phase 2 of the Tender (Plant).

3.8 Studies Required for Tender

NKEC shall use commercially reasonable efforts to, as soon as practicable following the Effective Date, cause the GOK-Appointed Independent Engineer to perform the following:

- (a) undertaking the Seismic Study;
- (b) undertaking the Meteorological Survey;
- (c) undertaking the Topographical Survey;
- (d) undertaking the Flood Risk Assessment Study;
- (e) undertaking the Geological and Geotechnical Survey;
- (f) undertaking a Bomb Assessment Survey;
- (g) undertaking an Underground Obstacles Survey;
- (h) undertaking a Raw Water Analysis;
- (i) undertaking a Transportation Study;
- (j) RESERVED; and
- (k) undertaking any other studies or surveys reasonably necessary for EPC Contractors to accept the risk for differing ground conditions.

The Parties acknowledge that the studies referenced in this Section 3.8 are necessary in order to finalize phase 2 of the Tender (Plant).

3.9 Tender for EPC Contractor and LTM Contractor; Tendered PPA Inputs; Future LTM Contractor Replacement

3.9.1 Single Two-Phase International Competitive Tender (Plant)

- (a) GenCo shall conduct a single international competitive tender (the “**Tender (Plant)**”) to procure, within such single Tender (Plant), both the EPC Contractor and the LTM Contractor from the combined EPC Contractor and LTM Contractor consortia submitting bids under such Tender (Plant) (“**EPC/LTM Bidder Consortia**”).
- (b) GenCo shall conduct the Tender (Plant) in two (2) phases through the issuance of:
 - (i) a request for qualifications (phase 1) designed to establish the ability of each EPC/LTM Bidder Consortia to meet reasonable performance and schedule requirements (the “**Tender (Plant) Qualification Criteria**”) based on the EPC/LTM Bidder Consortium’s prior performance on projects that are reasonably similar in nature to the Kosovo e Re Project; and
 - (ii) a two-stage request for proposals (phase 2) from such EPC/LTM Bidder Consortia as were qualified through the request for qualifications (phase 1) (with the understanding that GenCo shall have the right to conduct the Tender (Plant) using “competitive dialogue” techniques to the extent consistent with the Procurement Guidelines).
- (c) The Tender (Plant) shall be prepared and conducted in accordance with the material requirements of the Procurement Guidelines.

3.9.2 Coordination; Design of the Tender (Plant); Evaluation Criteria

- (a) GenCo shall:
 - (i) on a routine basis regularly consult and engage with NKEC and GOK on the preparation of the Tender (Plant) and the development of the Tender (Plant) documents; and
 - (ii) keep GOK and NKEC apprised of all planned key meetings, and GenCo shall permit GOK to participate in all material discussions with potential EPC/LTM Bidder Consortia, material negotiations with the winning EPC/LTM Bidder Consortium, or any material negotiations as to the terms and conditions of the Tender (Plant) held with the potential EPC/LTM Bidder Consortia, lenders and potential lenders associated with the Tender (Plant), and any discussions with any international financial institution in relation to the Tender (Plant).
- (b) GenCo shall deliver to NKEC and GOK as soon as is reasonably possible, and in any event at least thirty (30) days prior to the anticipated release of any request for qualifications or any request for proposals, a copy of such Tender (Plant) documents to be used by GenCo to conduct the Tender (Plant), including:
 - (i) the Tender (Plant) Pre-Qualification Criteria;
 - (ii) Tender (Plant) Evaluation Criteria to be used by GenCo;
 - (iii) the Tender (Plant) Technical Specifications (which shall be as provided for in Schedule 14, as updated as necessary to include specifications related to both a design as set forth in Schedule 14 and a design as set forth in Schedule 14 modified such that the specifications would comply with the EU Industrial Emissions Standards (the “**Emissions Option**”));

- (iv) the EPC/LTM Bid Submission Form (which shall also be updated as necessary to include specifications related to the Emissions Option); and
 - (v) the form of EPC Contract and LTM Agreement to be entered into by the winning EPC/LTM Bidder Consortium.
- (c) Prior to issuing any request for qualifications or any request for proposals, GenCo shall consult with NKEC and GOK and obtain their written approval or non-objection as to the form and substance of the Tender (Plant) documents to be used by GenCo to conduct the Tender (Plant), including:
- (i) the form of the request for qualifications or request for proposals, as applicable, to be issued by GenCo;
 - (ii) the form of Tender (Plant) Pre-Qualification Criteria to be used by GenCo;
 - (iii) the Tender (Plant) Technical Specifications, as updated pursuant to subclause (b) of this section;
 - (iv) the EPC/LTM Bid Submission Form, as updated pursuant to subclause (b) of this section;
 - (v) the form of EPC Contract to be entered into by the winning EPC/LTM Bidder Consortium, which shall be as described in Schedule 15; and
 - (vi) the form of LTM Agreement to be entered into by the winning EPC/LTM Bidder Consortium, which shall be as described in Schedule 16;

provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed to issue its request for qualifications or its request for proposals, provided that , by not objecting to any request for qualifications or any request for proposals, as the case may be, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (Plant) requirements.

- (d) Prior to issuing the Tender (Plant), NKEC and GOK shall prepare and deliver for GenCo's and GOK's approval at least sixty (60) Days prior to the anticipated release of the Tender (Plant) a draft of the Phase 2 Bid Evaluation Model, which shall:
- (i) be consistent with the terms of this Agreement
 - (ii) be used to determine the net present value cost (adjusted to reflect the number of MWs of the KRPP Facility proposed by each EPC/LTM Bidder Consortium, without any inflation) for the Kosovo e Re Project (with or without the Emissions Option as decided by the Parties) based on the bids from an EPC/LTM Bidder Consortium; and
 - (iii) include a variable for a reasonable estimation of the reasonable and prudent costs of GenCo, acting through the Owner's Engineer, to supervise and monitor the EPC Contractor's compliance with the terms of the EPC Contract and industry practice , based on the EPC/LTM Bidder Consortium's experience, reputation, and other applicable factors.
- (e) The following shall apply for purposes of agreeing on a final Phase 2 Bid Evaluation Model:
- (i) GenCo shall provide any comments in writing on the draft Phase 2 Bid Evaluation Model within fifteen (15) Days following the date the draft Phase 2 Bid Evaluation Model is received by GenCo, and each Party shall make a representative available to promptly meet within five (5) Days following the end of such fifteen (15) Day period to review each Party's comments on the draft Phase 2 Bid Evaluation Model and on the proposed changes and any objections to the proposed changes of a Party;

- (ii) as soon as is practicable after the meeting referred to in Section 3.9.2(e)(i), but in any event within ten (10) Days following the end of such meeting, NKEC shall provide GenCo with a proposed final draft Phase 2 Bid Evaluation Model, incorporating to the extent agreed each of the Parties' proposed changes;
 - (iii) GenCo shall provide final comments on the final draft Phase 2 Bid Evaluation Model within five (5) Business Days after its receipt by GenCo and, within five (5) Business Days after a request from NKEC, GenCo shall make its representatives available in Pristina, Kosovo, to meet and review its comments and proposed changes with NKEC; and
 - (iv) NKEC shall revise the draft Phase 2 Bid Evaluation Model to incorporate such undisputed additions or modifications requested by GenCo and shall provide a final draft to GenCo as soon as practicable, and in any event within five (5) Days following receipt of GenCo's comments and proposed changes to the draft Phase 2 Bid Evaluation Model. Any Dispute between the Parties as to whether any matter should be included in or excluded from or modified in the way it is then treated in the draft Phase 2 Bid Evaluation Model shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 26 and, if necessary, NKEC shall revise the draft Phase 2 Bid Evaluation Model to reflect the resolution of any such Technical Dispute.
- (f) GenCo shall consult with NKEC and GOK and obtain their written approval or non-objection prior to determining among all pre-qualified EPC/LTM Bidder Consortia, the EPC/LTM Bidder Consortia bid:
- (i) that, unless otherwise approved by GOK and NKEC, meets all of the Tender (Plant) Technical Specifications and pass/fail criteria specified in Schedule 14;
 - (ii) that contains no material exceptions to the form of EPC Contract and LTM Agreement, or if it contains material exceptions, then such material exceptions have been approved by GenCo, NKEC and GOK or determined by GenCo, NKEC and GOK as being acceptable for further negotiation;
 - (iii) that results in the highest score, taking into account (A) the lowest net present value cost (adjusted to reflect the number of MW of the KRPP Facility proposed by each EPC/LTM Bidder Consortium) based on the Phase 2 Bid Evaluation Model, and on the basis of the prices and other inputs provided in the EPC/LTM Bid Submission Form, and (B) any non-price attributes (x) set forth in Schedule 12 (if any) or (y) otherwise approved by NKEC and GOK (it being acknowledged by the Parties that GOK approval shall be subject to appropriate input by the World Bank) as being consistent with the Procurement Guidelines, which non-price attributes shall be expressed in monetary terms or assessed with merit points when benefits are not quantifiable in monetary terms, but in any case such non-price attributes shall not comprise more than a percentage of the scoring methodology as set forth in Schedule 12

(together, the "**Tender (Plant) Evaluation Criteria**"), with the understanding that GenCo, NKEC and GOK shall be obligated to select the EPC/LTM Bidder Consortium that, having passed the pass/fail criteria and having no material exceptions that GenCo, NKEC or GOK indicate are not acceptable for further negotiation, has the highest-scored proposal (taking into consideration the lowest net present value cost and any applicable non-price attributes (if any) set forth in Schedule 12 or otherwise approved by NKEC and GOK); provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed and make such a determination, provided that, by not objecting to any determination, neither NKEC nor GOK shall

be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (Plant) requirements.

3.9.3 Interface with EPC/LTM Bidder Consortia

- (a) GenCo shall maintain a Data Room to make information, including documents reasonably available to GenCo in relation to the environmental and social obligations, available to all EPC/LTM Bidder Consortia on an equal basis.
- (b) Subject to NKEC's compliance with Section 3.8, to provide EPC/LTM Bidder Consortia with the information necessary to enable EPC/LTM Bidder Consortia to submit bids, GenCo shall provide EPC/LTM Bidder Consortia with copies of the following:
 - (i) the Seismic Study;
 - (ii) the Meteorological Survey;
 - (iii) the Topographical Survey;
 - (iv) the Flood Risk Assessment Study;
 - (v) the Geological and Geotechnical Survey;
 - (vi) the Bomb Assessment Survey;
 - (vii) the Underground Obstacles Survey;
 - (viii) the Raw Water Analysis and the Specified Raw Water Quality Standards;
 - (ix) the ESIA (GenCo); and
 - (x) any other investigations recommended to be performed by the GOK-Appointed Independent Engineer and agreed to by GenCo,

each of which shall be conducted by the GOK-Appointed Independent Engineer and on which each EPC/LTM Bidder Consortium shall be entitled to rely.

- (c) To provide EPC/LTM Bidder Consortia with the information necessary to enable EPC/LTM Bidder Consortia to submit bids, GenCo shall in addition provide EPC/LTM Bidder Consortia with copies of the B&M Mines/Sibovc South Field Mine Reclamation Plan prepared by KEK Mining in accordance with the Ash & Gypsum Disposal Agreement.
- (d) GenCo shall notify each EPC/LTM Bidder Consortium that the EPC/LTM Bidder Consortium may request a no-objection letter from GOK, stating that GOK does not object to such EPC/LTM Bidder Consortium on the grounds specified in Section 5.1.2(b) of the Implementation Agreement.
- (e) GenCo shall consult with NKEC and GOK and obtain their written approval or non-objection prior to providing any response to questions submitted by EPC/LTM Bidder Consortia; provided, however, that unless NKEC or GOK objects in writing within fifteen (15) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed and provide such response, provided that , by not objecting to any such response, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (Plant) requirements

3.9.4 Composition of EPC/LTM Bidder Consortia

- (a) No EPC/LTM Bidder Consortium in which any member has an Affiliate relationship with GenCo may participate in the Tender (Plant).

- (b) No EPC Contractor may join more than one bidding consortium participating in the Tender (Plant).
- (c) Any potential LTM Contractor or Major Subcontractor may submit a bid with more than one EPC Contractor participating in the Tender (Plant) provided that the LTM Contractor or Major Subcontractor has first obtained the written permission of both NKEC and GOK.

3.9.5 Requirements for EPC/LTM Bidder Consortia

- (a) GenCo shall require the EPC/LTM Bidder Consortia to submit with their proposals the EPC/LTM Bid Submission Form, which shall be updated pursuant to Section 3.9.2(b).
- (b) GenCo shall require each EPC/LTM Bidder Consortium to provide a list of any exceptions the EPC/LTM Bidder Consortium wish to take to the form of EPC Contract and the LTM Agreement to be entered into by the winning EPC/LTM Bidder Consortium, which may be in the form of revised drafts of the EPC Contract and the LTM Agreement.
- (c) GenCo shall require EPC/LTM Bidder Consortium to submit with their proposals a bid bond consistent with industry practice. Should any such bid bond become drawable, GenCo and NKEC shall each share a portion of the proceeds from such bid bond (which portions shall be based on actual transaction costs of each Party from January 1, 2016, calculated pro rata) as a shared protection for the work each Party has done on the Kosovo e Re Project prior to the selection of the EPC/LTM Bidder Consortium.
- (d) GenCo shall enable each EPC/LTM Bidder Consortium to enhance its bid by making available financing from an export credit agency or other international development agencies, development financing institution, or similar institution (“**Bid Supporting Financial Institution**”) in accordance with the terms of the Tender (Plant) documents, which shall provide as follows:
 - (i) if a EPC/LTM Bidder Consortium represents that it is able to obtain financing for the benefit of the Kosovo e Re Project, on firm committed terms evidenced by a written letter, from a Bid Supporting Financial Institution that is contingent on the EPC/LTM Bidder Consortium becoming the EPC Contractor and LTM Contractor, the EPC/LTM Bidder Consortium shall include a letter from the Bid Supporting Financial Institution stating the amount of financing, amortization of the financing, and interest rates applicable to such financing;
 - (ii) if the terms of such financing are consistent with those set forth in Section 3.13(d), then the terms of the Bid Supporting Financial Institution shall be reflected in the Phase 2 Bid Evaluation Model in lieu of the most expensive financing otherwise reflected in the Phase 2 Bid Evaluation Model; and
 - (iii) at Financial Closing, if such Bid Supporting Financial Institution financing is not made available to the Kosovo e Re Project on such committed terms, then the EPC Contractor shall be subject to termination and/or reduction in the contract price in an amount intended to reflect, in net present value terms, the difference in the Bid Supporting Financial Institution financing actually made available (if any) and the financing reflected in the Phase 2 Bid Evaluation Model that such Bid Supporting Financial Institution financing replaced for bid evaluation purposes in Section 3.9.5(d)(ii), which amount shall be calculated in accordance with the Phase 2 Bid Evaluation Model or such other financial penalty as the Parties may agree during the Tender (Plant) preparations.
- (e) As set forth in the EPC/LTM Bid Submission Form, GenCo shall require each EPC/LTM Bidder Consortium to specify the amounts of any payments that GenCo will be required to make under the EPC Contract during each calendar quarter of the period commencing on the date of Financial Closing and expiring on the date of the last payment to GenCo (such specified amounts to then be

subject to a retainage of five percent (5%) to ten percent (10%), as set forth in the Tender (Plant), payable upon achievement of substantial completion). The Phase 2 Bid Evaluation Model shall enable EPC/LTM Bidder Consortia to enhance their bid by deferring such payments.

- (f) GenCo shall require EPC/LTM Bidder Consortia to submit proposed Technical Specifications for the KRPP Facility that meet the design requirements specified in the Tender (Plant) Technical Specifications, as updated pursuant to Section 3.9.2(b).
- (g) GenCo shall, at its option, either (i) include in the scope of work under the Tender (Plant), and require EPC/LTM Bidder Consortia to include in their bid (and ultimately, in the EPC Contract) the remediation of the Specified Environmental/Archaeological Conditions or (ii) tender for such remediation to be conducted by the Specified Environmental Condition Remediation Contractor separately through the Tender (Environmental) set forth in Section 3.11.
- (h) GenCo shall require EPC/LTM Bidder Consortia to include in their bid (and ultimately in the EPC Contract) construction of any facilities as are necessary to treat the Water to be obtained by GenCo under the Water Supply Agreement for use in the KRPP Facility such that it is able to process water within the Specified Raw Water Quality Standards.
- (i) As agreed with NKEC and GOK, GenCo shall specify to EPC/LTM Bidder Consortia whether the KRPP Facility to be designed and constructed by the EPC Contractor is required to include a Limestone grinding facility.
- (j) GenCo shall require EPC/LTM Bidder Consortia to construct the KRPP Facility up to the high voltage side of the generator step-up transformer, but not to be responsible for the GenCo Connection Works.
- (k) Any non-compliance by an EPC/LTM Bidder Consortium with the requirements set forth in this Section 3.9.5 shall not be considered a breach by either Party or an Event of Default with respect to either Party under this Agreement, but there shall be no obligation of GenCo or its Affiliates or GOK, NKEC or any Specified POE to accept any material variation from the terms of this Agreement or to achieve the Transfer Date to the extent there is a material variation from the terms of this Agreement.

3.9.6 Selection of Winning EPC/LTM Bidder Consortium

- (a) Using Prudent Utility Practices and in accordance with the Procurement Guidelines, GenCo (in consultation with the Owner's Engineer) shall, in consultation with NKEC and GOK, evaluate the proposals submitted in response to the Tender (Plant) using the Tender (Plant) Evaluation Criteria.
- (b) At least ten (10) Days prior to the selection of the winning EPC/LTM Bidder Consortium in accordance with the Tender (Plant) Evaluation Criteria, GenCo shall deliver to NKEC and to GOK a report detailing the results of Tender (Plant), including:
 - (i) the reasons that each proposal was or was not deemed to meet the Tender (Plant) Technical Specifications and the pass/fail criteria specified in Schedule 14;
 - (ii) an assessment of any exceptions taken in the bid, which shall remain subject to the approval of GenCo, NKEC and GOK in accordance with Section 3.9.2(f)(ii)
 - (iii) a copy of each bid; and
 - (iv) the calculations used to determine the net present value (on a per MWh basis) of each such proposal.

- (c) Prior to the announcement of the selection by GenCo of the winning EPC/LTM Bidder Consortium, GenCo shall have obtained the prior written approval of NKEC and GOK as to the winning EPC Contractor and LTM Contractor as part of the EPC/LTM Bidder Consortium.
- (d) If a bid contains material exceptions to the form of EPC Contract and LTM Agreement, then such material exceptions that have been approved by GenCo, NKEC and GOK or determined by GenCo, NKEC and GOK as being acceptable for further negotiation in accordance with Section 3.9.2(f)(ii) shall be negotiated between the parties, subject to approval of GenCo, NKEC and GOK.

3.9.7 Certification

As a condition precedent to the Transfer Date and Financial Close, NKEC and GOK shall each deliver to the Lenders a duly executed certificate, certifying that (i) except with respect to facts which NKEC or GOK, as applicable, did not have knowledge at the time of such certificate, the Tender (Plant) was conducted by GenCo in accordance with the requirements set forth in this Agreement and the Implementation Agreement and (ii) except with respect to facts which NKEC or GOK, as applicable, did not have knowledge at the time of such certificate, waiving any right of NKEC or GOK, as applicable, to pursue a claim for any non-compliance by GenCo with such obligations in respect of the Tender (Plant) pursuant to this Section 3.9 and Section 3.3 of the Implementation Agreement.

3.9.8 Incorporation of the Tendered PPA Inputs

- (a) The inputs and operating characteristics provided for in this Agreement in respect of the KRPP Facility, including those set forth in Schedule 2, shall be included in the Tender (Plant) documents. Subject to Section 3.9.8(b), following the selection of the winning EPC/LTM Bidder Consortium in accordance with Section 3.9.6, the inputs (including operating characteristics as set forth in Schedule 2) provided by the winning EPC/LTM Bidder Consortium in the EPC/LTM Bid Submission Form (the “**Tendered PPA Inputs**”) shall be deemed incorporated into this Agreement as provided herein. For convenience, the Parties shall amend this Agreement to attach the EPC/LTM Bid Submission Form and as otherwise necessary duplicate into this Agreement, including by amending Schedule 2, the specific prices and other values submitted by the winning EPC/LTM Bidder Consortium in the EPC/LTM Bid Submission Form.
- (b) Notwithstanding the foregoing, to the extent that GenCo, NKEC and GOK have approved in writing a variation from a bid number or other bid variable and such is reflected in the final EPC Contract as approved or the terms of the EPC Contract are otherwise demonstrably inconsistent with the operating characteristics set forth in Schedule 2, the number or other applicable provision set forth in the EPC Contract (and not set forth in the EPC/LTM Bid Submission Form) will be applicable for purposes of this Agreement, and provisions in this Agreement providing for the incorporation of information in the EPC/LTM Bid Submission Form shall in such cases be interpreted to require incorporation from or based on the EPC Contract. For convenience, the Parties shall amend this Agreement to reflect any such variations.

3.9.9 LTMA Replacement Conditions

- (a) GenCo shall obtain written approval from GOK and NKEC prior to any termination of the existing LTM Agreement.
- (b) Any LTMA Replacement shall be done pursuant to a rebidding process substantially similar to that provided in this Section 3.9, unless otherwise authorized in writing by NKEC and GOK; provided, however, that an Affiliate of GenCo may be permitted (i) to perform “LTM Scope C” in accordance with the terms set forth in Schedule 16 and (ii) otherwise participate in an LTMA Replacement tender if approved in writing by IDA.

3.9.10 GenCo Proposed LTMA Replacement

- (a) GenCo may determine from time to time whether an LTMA Replacement would be likely to result in a material LTMA Gain.
- (b) If GenCo wishes to undertake an LTMA Replacement, GenCo shall, prior to undertaking that LTMA Replacement, deliver an LTMA Replacement Costs Report to NKEC. GenCo shall bear all costs and expenses of the preparation of such LTMA Replacement Costs Report.

3.9.11 NKEC Proposed Replacement

- (a) Where NKEC reasonably determines that a material LTMA Gain may exist, NKEC may request by written notice to GenCo that GenCo determine if an LTMA Replacement would be likely to result in a material LTMA Gain. GenCo shall consider in good faith such request from time to time.
- (b) Upon GenCo's receipt of notice by NKEC, GenCo shall deliver an LTMA Replacement Costs Report to NKEC as soon as reasonably practicable, and NKEC shall reimburse GenCo for costs incurred by GenCo in the preparation of the LTMA Replacement Costs Report. All such costs may be pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, shall be otherwise reasonably and prudently incurred (and not otherwise Tariff Exclusions).

3.9.12 Sharing of LTMA Gains

- (a) If the LTMA Replacement results in a material LTMA Gain that justifies undertaking an LTMA Replacement in accordance with Prudent Utility Practices, GenCo shall in good faith pursue such LTMA Replacement and NKEC shall share in fifty-percent (50%) of such LTMA Gain.
- (b) The LTM Agreement components used in the calculations in Schedule 1 shall be properly adjusted to reflect NKEC's fifty-percent (50%) share of the LTMA Gain. Such adjustments shall be calculated by determining the difference in each applicable component that would be payable under:
 - (i) the then-current LTM Agreement; and
 - (ii) the LTMA Replacement.

3.9.13 Methodologies

With respect to any LTMA Replacement, the following methodologies shall be used:

- (a) each LTMA Replacement Costs Report shall be:
 - (i) prepared in accordance with the International Financial Reporting Standards, consistently applied;
 - (ii) accompanied by a certificate of GenCo's auditors that the calculation is correct and that the International Financial Reporting Standards have been properly applied; and
 - (iii) accompanied by a report of an internationally reputable engineering company supporting the basis for any asserted LTMA Replacement; and
- (b) the LTMA Gain shall be calculated after taking into account any costs and expenses that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred by GenCo (and not otherwise Tariff Exclusions) in relation to the LTMA Replacement including:
 - (i) any prepayment, cancellation, break, or termination costs and expenses (however described) incurred in relation to the replacement of the LTM Agreement that is the subject of the LTMA Replacement;

- (ii) costs and expenses that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred to conduct any new tender in relation to the LTMA Replacement; and
- (iii) costs and expenses that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred by GenCo to prepare the LTMA Replacement Costs Report;

with the intent that the LTMA Gain shall be net of any costs or expenses that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred by GenCo in undertaking the LTMA Replacement and prepaying, repaying, canceling, or terminating the then-current LTM Agreement.

3.10 Tender for Owner’s Engineer

GenCo shall conduct an international competitive tender (“**Tender (OE)**”) to procure the Owner’s Engineer. GenCo shall:

- (a) conduct the Tender (OE) in accordance with the material requirements of the Guidelines for Selection and Employment of Consultants of the World Bank;
- (b) maintain a Data Room to make information available to all Owner’s Engineer bidders on an equal basis;
- (c) require Owner’s Engineer bidders, through an expression of interest letter, to establish (i) the ability of the Owner’s Engineer bidder to meet reasonable performance and schedule requirements based on the bidders’ prior performance on projects that are reasonably similar in nature to the Kosovo e Re Project; (ii) the availability of resources necessary for completing the tasks the Owner’s Engineer is to undertake pursuant to this Agreement; and (iii) absence of conflict of interest criteria and competitive advantage as defined in the Guidelines for Selection and Employment of Consultants of the World Bank;
- (d) design the bid evaluation criteria and other terms and conditions of the tender documents to enable GenCo to select, among all qualified bidders that submit proposals for the Owner’s Engineer the winning proposal based on a combined quality and cost evaluation agreed between GenCo, GOK, and NKEC, and shall obtain GOK and NKEC’s written approval or non-objection prior to adopting such bid evaluation criteria; provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed and adopt such bid evaluation criteria, provided that , by not objecting to any request for qualifications or any request for proposals, as the case may be, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (OE) requirements;
- (e) cooperate with GenCo and NKEC, including:
 - (i) on a routine basis regularly consult and engage with NKEC and GOK on the design of the Tender (OE) and the development of the Tender (OE) documents; and
 - (ii) provide GOK and NKEC a schedule of all planned key meetings and regular updates, and GenCo shall permit GOK to participate in all material discussions with potential Owner’s Engineer bidders, material negotiations with the winning Owner’s Engineer bidder, or any material negotiations as to the terms and conditions of the Tender (OE) held with the potential Owner’s Engineer bidders;
- (f) deliver to NKEC and GOK as soon as is reasonably possible, and in any event at least thirty (30) days prior to the anticipated release of any request for proposals, a copy of such Tender (OE)

documents to be used by GenCo to conduct the Tender (OE), including the Tender (OE) Evaluation Criteria to be used by GenCo;

- (g) prior to issuing any request for qualifications or any request for proposals, consult with NKEC and GOK and obtain their written approval or non-objection as to the form and substance of the Tender (OE) documents to be used by GenCo to conduct the Tender (OE), including the Tender (OE) Evaluation Criteria to be used by GenCo; provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed to issue its request for qualifications or its request for proposals, provided that , by not objecting to any request for qualifications or any request for proposals, as the case may be, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (OE) requirements;
- (h) consult with NKEC and GOK and obtain their written approval or non-objection prior to providing any responses to questions submitted by Owner’s Engineer bidders; provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed and provide such response, provided that , by not objecting to any such responses, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (OE) requirements;
- (i) design the bid evaluation criteria and other terms and conditions of the Tender (OE) documents, consult with NKEC and GOK, and obtain their written approval or non-objection prior to determining among all pre-qualified Owner’s Engineer bidders, the Owner’s Engineer bidder’s bid that, unless otherwise approved by GOK and NKEC, meets the following criteria:
 - (i) relevant technical experience;
 - (ii) qualification of the proposed key experts;
 - (iii) other technical factors as agreed by NKEC, GOK, and GenCo; and
 - (iv) the total proposed price for the services,

(together, the “**Tender (OE) Evaluation Criteria**”), with the understanding that GenCo, NKEC and GOK shall be obligated to select the Owner’s Engineer bidder that, having the requisite technical experience, qualifications of key experts, and satisfying other technical factors, proposes the lowest total proposed price for the services; provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed and make such a determination, provided that , by not objecting to any such selection, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (OE) requirements.

3.11 Procurement of Specified Environmental Condition Remediation Contractor

3.11.1 Single Two-Phase International Competitive Tender (Environmental)

- (a) If GenCo has opted to procure a Specified Environmental Condition Remediation Contractor in accordance with Sections 3.9.5(g) and 15.2(a), then GenCo shall conduct an international competitive tender (the “**Tender (Environmental)**”) to procure the Specified Environmental Condition Remediation Contract.
- (b) GenCo shall conduct the Tender (Environmental) in two (2) phases through the issuance of:
 - (i) a request for qualifications (phase 1) designed to establish the ability of each bidder to meet reasonable performance and schedule requirements based on the bidder’s prior

performance on projects that are reasonably similar in nature to the Specified Environmental Condition Remediation; and

- (ii) a two-stage request for proposals (phase 2) from such bidders as were qualified through the request for qualifications (phase 1) (with the understanding that GenCo shall have the right to conduct the Tender (Plant) using “competitive dialogue” techniques to the extent consistent with the Procurement Guidelines).
- (c) The Tender (Environmental) shall be designed and conducted in accordance with the material requirements of the Procurement Guidelines.

3.11.2 Coordination; Design of the Tender (Environmental)

- (a) GenCo shall:
- (i) on a routine basis regularly consult and engage with NKEC and GOK on the preparation of the Tender (Environmental) and the development of the Tender (Environmental) documents; and
 - (ii) keep GOK and NKEC apprised of all planned key meetings, and GenCo shall permit GOK to participate in all material discussions with potential bidders, material negotiations with the winning bidder, or any material negotiations as to the terms and conditions of the Tender (Environmental) held with the potential bidders, lenders and potential lenders associated with the Tender (Environmental), and any discussions with any international financial institution in relation to the Tender (Environmental).
- (b) GenCo shall deliver to NKEC and GOK as soon as is reasonably possible, and in any event at least thirty (30) Days prior to the anticipated release of any request for qualifications or any request for proposals, a copy of such Tender (Environmental) documents to be used by GenCo to conduct the Tender (Environmental), including the Tender (Environmental) Evaluation Criteria to be used by GenCo and the form of Specified Environmental Condition Remediation Contract to be entered into by the winning bidder.
- (c) Prior to issuing any request for qualifications or any request for proposals, GenCo shall consult with NKEC and GOK and obtain their written approval or non-objection to the form and substance of the Tender (Environmental) documents to be used by GenCo to conduct the Tender (Environmental), including:
- (i) the form of the request for qualifications or request for proposals, as applicable, to be issued by GenCo;
 - (ii) the Tender (Environmental) Evaluation Criteria to be used by GenCo; and
 - (iii) the form of Specified Environmental Condition Remediation Contract to be entered into by the winning bidder, which shall be as described in Schedule 19;

provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed to issue its request for qualifications or its request for proposals, provided that , by not objecting to any request for qualifications or any request for proposals, as the case may be, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (Environmental) requirements.

- (d) GenCo shall consult with NKEC and GOK and obtain their written approval or non-objection prior to determining among all pre-qualified bidders, the bidder’s bid that, unless otherwise approved by GOK and NKEC, meets the following criteria:
- (i) relevant technical experience;

- (ii) that contains no material exceptions to the form of Specified Environmental Condition Remediation Contract, or if it contains material exceptions, then such material exceptions have been approved by GenCo, NKEC and GOK or determined by GenCo, NKEC and GOK as being acceptable for further negotiation;
- (iii) other technical factors as agreed by NKEC, GOK, and GenCo; and
- (iv) that results in the highest score, taking into account (A) the lowest cost and (B) any non price attributes (x) set forth in Schedule 12 (if any) or (y) otherwise approved by NKEC and GOK (it being acknowledged by the Parties that GOK approval shall be subject to appropriate input by the World Bank) as being consistent with the Procurement Guidelines, which non-price attributes shall be expressed in monetary terms or assessed with merit points when benefits are not quantifiable in monetary terms, but in any case such non-price attributes shall not comprise more than a percentage of the scoring methodology as set forth in Schedule 12:

(together, the “**Tender (Environmental) Evaluation Criteria**”), with the understanding that GenCo, NKEC and GOK shall be obligated to select the bidder that, having the requisite technical experience, satisfying other technical factors, and having no material exceptions that GenCo, NKEC or GOK indicate are not acceptable for further negotiation, present the highest-scored proposal (taking into account the lowest cost and any non-price attributes (if any) set forth in Schedule 12 or otherwise approved by NKEC and GOK; provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed and make such a determination, provided that , by not objecting to any selection, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (Environmental) requirements.

3.11.3 Interface with Bidders

- (a) GenCo shall maintain a Data Room to make information available to all bidders on an equal basis.
- (b) To provide bidders with the information necessary to enable bidders to submit bids, GenCo shall provide bidders with copies of the ESIA (GenCo) and the Phase II study undertaken in relation to the ESIA (GenCo), upon which each bidder shall be entitled to rely.
- (c) GenCo shall notify each bidder that the bidder may request a no-objection letter from GOK, stating that GOK does not object to such bidder on the grounds specified in Section 5.1.2(b) of the Implementation Agreement.
- (d) GenCo shall consult with NKEC and GOK and obtain their written approval or non-objection prior to providing any response to questions submitted by bidders; provided, however, that unless NKEC or GOK objects in writing within fifteen (15) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed and provide such response, provided that , by not objecting to any such responses, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (Environmental) requirements

3.11.4 Requirements for Bidders

- (a) GenCo shall require each bidder to provide a list of any exceptions the bidder wishes to take to the form of Specified Environmental Condition Remediation Contract to be entered into by the winning bidder, which may be in the form of a revised draft of the Specified Environmental Condition Remediation Contract.

- (b) GenCo shall require bidder to submit with their proposals a bid bond consistent with industry practice. Should any such bid bond become drawable, GenCo and NKEC shall each share a portion of the proceeds from such bid bond (which portions shall be based on actual transaction costs of each Party from January 1, 2016, calculated pro rata) as a shared protection for the work each Party has done on the Kosovo e Re Project prior to the selection of the bidder.
- (c) GenCo shall require each bidder to specify the amounts of any payments that GenCo will be required to make under the Specified Environmental Condition Remediation Contract (such specified amounts to then be subject to a retainage of five percent (5%) to ten percent (10%), as set forth in the Tender (Environmental), payable on the completion of the Specified Environmental Condition Remediation).
- (d) Any non-compliance by a bidder with the requirements set forth in this Section 3.11.4 shall not be considered a breach by either Party or an Event of Default with respect to either Party under this Agreement, but there shall be no obligation of GenCo or its Affiliates or NKEC, GOK or any Specified POE to accept any material variation from the terms of this Agreement or to achieve the Transfer Date to the extent there is a material variation from the terms of this Agreement.

3.11.5 Selection of Winning Bidder

- (a) Using Prudent Utility Practices and in accordance with the Procurement Guidelines, GenCo (in consultation with the Owner's Engineer) shall, in consultation with NKEC and GOK, evaluate the proposals submitted in response to the Tender (Environmental) using the Tender (Environmental) Evaluation Criteria.
- (b) At least ten (10) Days prior to the selection of the winning bidder in accordance with the Tender (Environmental) Evaluation Criteria, GenCo shall deliver to NKEC and to GOK a report detailing the results of Tender (Environmental), including:
 - (i) the reasons that each proposal was or was not deemed to meet the Tender (Environmental) technical specifications and any pass/fail criteria specified in the Tender (Environmental) documents;
 - (ii) an assessment of any exceptions taken in the bid, which shall remain subject to the approval of GenCo, NKEC and GOK in accordance with Section 3.11.2(d)(ii)
 - (iii) a copy of each bid; and
 - (iv) the calculations used to evaluate, rank, and select each such proposal.
- (c) Prior to the announcement of the selection by GenCo of the winning bidder, GenCo shall have obtained the prior written approval or non-objection of NKEC and GOK as to the winning bidder; provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed with selecting the winning bidder; provided, that, by not objecting to any selection, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (Environmental) requirements.
- (d) If a bid contains material exceptions to the form of Specified Environmental Condition Remediation Contract, then such material exceptions that have been approved by GenCo, NKEC and GOK or determined by GenCo, NKEC and GOK as being acceptable for further negotiation in accordance with Section 3.11.2(d)(ii) shall be negotiated between the parties, subject to the approval of GenCo, NKEC and GOK.
- (e) Promptly upon request, NKEC and GOK shall each deliver to the Lenders a duly executed certificate, certifying that (i) except with respect to facts which NKEC or GOK, as applicable, did not have knowledge at the time of such certificate, the Tender (Environmental) was conducted by

GenCo in accordance with the requirements set forth in this Section 3.11, and (ii) except with respect to facts which NKEC or GOK, as applicable, did not have knowledge at the time of such certificate, waiving any right of NKEC or GOK, as applicable, to pursue a claim for any non-compliance by GenCo with such obligations in respect of the Tender (Environmental) pursuant to this Section 3.11.

3.12 Procurement of All Goods and Services Other than the Owner's Engineer, EPC, LTM, Specified Environmental Condition Remediation, Connection Works, and O&M

- (a) Except in connection with the procurement of the Owner's Engineer described in Section 3.10, the Tender (Plant) for the EPC Contractor and LTM Contractor described in Section 3.9, the Tender (Environmental) for the Specified Environmental Remediation Condition Remediation Contractor described in Section 3.11, the Tender (Connection) for the GenCo Connection Works described in Section 6.3, and the procurement of the O&M Contractor described in Section 3.14, GenCo shall, when procuring goods and services that will have an impact on the amount payable by NKEC under this Agreement, use procurement methods and procedures that:
- (i) comply in all material respects with any procurement requirements explicitly set forth in this Agreement; and
 - (ii) comply with the EU Utilities Procurement Directive; provided, however, the threshold above which the specified procurement procedures apply under the EU Utilities Procurement Directive shall be modified for purposes of this Agreement to be equal to the threshold for large value contracts set forth in the Law on Public Procurement in Kosovo, 2011, as amended by the Law Amending the Law on Public Procurement in Kosovo (05/L-092),

and shall include in the Availability Payment, the Energy Payment, any NKEC Acceptance Test Energy Payment, and in other payments and charges hereunder only the costs that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred (and not otherwise Tariff Exclusions).

- (b) For the purposes of Section 3.12(a), the cost of goods and services will have an impact on the amount payable by NKEC under this Agreement if the cost of such goods and services will form the basis of, or cause an adjustment to, the amounts payable by NKEC in accordance with the terms of this Agreement.

3.13 Arrangement of Financing

- (a) GenCo shall use commercially reasonable efforts to arrange financing for the Kosovo e Re Project on the basis of a debt to equity ratio of no less than the Target Debt to Equity Ratio, or such other ratio as mutually agreed in writing by the Parties.
- (b) GenCo shall on a routine basis regularly consult and engage with NKEC and GOK on the arrangement of financing for the Kosovo e Re Project. Without limiting the generality of the foregoing, GenCo shall deliver to NKEC and GOK as soon as is reasonably possible, and in any event at least seventy-five (75) Days prior to the anticipated date of Financial Closing, a term sheet summarizing the material terms of the financing including:
- (i) the identity of the Lenders and the commitment each Lender will make;
 - (ii) the interest rates and margins charged with respect to each facility, and whether such interest rates are fixed or variable;
 - (iii) the amortization period and profile of each facility;
 - (iv) the amount of the commitment fees and similar fees (if any) that are payable in connection with each facility and each tranche thereof;

- (v) a summary of the conditions to any draw;
 - (vi) a summary of the events of default;
 - (vii) a summary of the terms of any direct agreements, consent agreements, or other agreements the Lenders will request NKEC to enter into;
 - (viii) a summary of the terms of any intercreditor agreements among the Lenders, including in relation to the process for Lender approval of Change Orders and amendments to this Agreement regarding the supply of heat pursuant to Section 3.12(a) of the Implementation Agreement;
 - (ix) the hedging policies GenCo will be required to follow;
 - (x) the target debt to equity ratio;
 - (xi) a summary of the required debt service reserve account, maintenance reserve account, working capital reserve account, and all other reserve accounts required to be maintained;
 - (xii) the amount the Lenders will require to be deposited into and maintained in any debt service reserve or similar accounts and the mechanisms under which such amounts will reduce as the outstanding principal declines;
 - (xiii) the profile of required contributions of equity from the Sponsor HoldCo and the Ultimate Sponsor and the credit support that will be required to support the Sponsor HoldCo's or the Ultimate Sponsor's obligations to contribute equity (if any); and
 - (xiv) the Working Capital Facility available.
- (c) NKEC and GenCo shall submit any comments on the terms of the financing as soon as is reasonably practicable, provided, however, that NKEC and GOK shall have thirty (30) Days during which to comment on the initial term sheet.
- (d) GenCo will use commercially reasonable efforts to cause the terms of the financing to:
- (i) provide for repayment of principal and interest such that the aggregate Actual Debt component of GenCo's ½-Year Revenue Requirement for a given ½-Year Period is never more than 125% of the average aggregate Actual Debt component of GenCo's ½-Year Revenue Requirement;
 - (ii) provide for the repayment of principal and interest such that the maturity on no individual loan is less than 30% of the duration of the maturity for the loan with the longest maturity;
 - (iii) not require contributions of equity that would result in the debt to equity ratio at the time of the contribution being less than is required by the Financing Documents or would cause, at any time (including at any time during the Construction Period), the contributions of equity to exceed the Target Equity Ratio;
 - (iv) not require more than six months of projected principal and interest payments to be deposited in or maintained in a Debt Service Reserve Account;
 - (v) provide for the GOK-Appointed Independent Engineer to serve as the Lenders' independent engineer to avoid duplicative monitoring and engineering costs;
 - (vi) [RESERVED;]
 - (vii) provide for a separate Working Capital Facility;
 - (viii) minimize amounts to be deposited in or maintained in a reserve account and any initial Working Capital Amount funded out of Actual Debt and Actual Equity; and

- (ix) provide for reimbursement in a lump sum from loan proceeds of GenCo's Development Costs and Permitted GOK Advisor Fees incurred to date at Financial Closing (consistent with the debt-to-equity ratio).
- (e) GenCo shall deliver an update of such term sheet at regular intervals and as required to keep NKEC and GOK informed as to any material changes to the terms of the financing.
- (f) GenCo will use commercially reasonable efforts to cause the terms of the financing to be consistent with the term sheets for the financing that have been delivered by GenCo to NKEC and GOK pursuant to Section 3.13(b) and thereafter approved by NKEC and GOK.
- (g) The material terms of the financing shall be subject to the approval of NKEC and GOK (including with respect to the process for Lender approval of Change Orders), such approval not to be unreasonably withheld, conditioned or delayed, provided, however, that NKEC and GOK shall have thirty (30) Days during which to comment on the initial draft financing terms and twenty (20) Days during which to comment on any updated and final draft financing terms. GenCo shall not issue any Financing Document that is not approved by NKEC and GOK, subject to such review period limitations.
- (h) GenCo shall deliver to NKEC and GOK a copy of (i) all Financing Documents executed by GenCo promptly following Financial Closing, or if executed following Financial Closing, promptly following their execution and (ii) all Construction/Maintenance Contracts executed by GenCo promptly following their execution, in each case, not more than ten (10) Business Days after copies of all such documents have been delivered to the Lenders, but in any case not longer than 45 Days following the Financial Closing.
- (i) GenCo shall not oppose any commercially reasonable efforts by NKEC or GOK to cause the terms of the financing not to require the consent of the Lenders for an amendment to this Agreement regarding the supply of heat pursuant to Section 3.13(a) of the Implementation Agreement if such amendment could not reasonably be determined to be adverse to the interests of the Lenders in any material respect or could not potentially cause a Material GenCo Effect.

3.14 O&M Contract

- (a) GenCo shall enter into the O&M Contract with the O&M Contractor on or before the Transfer Date, and such contract shall include the terms and conditions as set forth in Schedule 17.
- (b) The O&M Contract shall be consistent with customary standards for operations and maintenance contracts and will provide for payments equivalent to the payments provided for in this Agreement to GenCo.
- (c) GenCo shall have the right to recover amounts paid to the O&M Contractor in accordance with Schedule 1, and O&M Contractor staffing costs and third party costs shall be without profit or markup.
- (d) GenCo shall cause the O&M Contractor to provide to NKEC and GOK a staffing plan demonstrating the necessary technical capacity to complete the tasks assigned to it to the reasonable satisfaction of NKEC and GOK, including the following:
 - (i) identifying a plant manager for the KRPP Facility and other staff;
 - (ii) describing in detail the O&M Contractor's organizational structure and detailed staffing plans;
 - (iii) describing the number, type, and responsibilities of operating shift personnel;
 - (iv) describing the number, type, and responsibilities of the permanent on-site maintenance personnel;

- (v) describing in detail the O&M Contractor's proposed recruitment plans, including the relocation of qualified personnel from the O&M Contractor's other locations to the KRPP Facility or recruitment of such personnel;
 - (vi) describing in detail the O&M Contractor's proposed training plans for all personnel for their relevant duties;
 - (vii) describing health and safety procedures in relation to the KRPP Facility; and
 - (viii) describing in detail proposed services agreement with recognized services providers, and explaining how planned and unplanned maintenance activities will be scheduled to maximize the KRPP Facility availability.
- (e) A five-year binding budget for the O&M Contractor with equal budgeted monthly payments shall be set in accordance with the following:
- (i) a five (5) Agreement Year agreed budget (exclusive of costs that would otherwise be a Tariff Exclusion) for O&M Contractor's staffing payroll costs and third-party costs (e.g., independent contractors, materials and supply purchases from third parties, equipment purchases from third parties), anticipated to be required in the ordinary course for the operation and maintenance of the KRPP Facility by the O&M Contractor shall be agreed upon by the Parties consisting always of the nearest five (5) Agreement Years being binding, and not reflecting any increases or decreases due to anticipated inflation or deflation; provided, however, that any Dispute between the Parties in relation to such budget shall be a Technical Dispute;
 - (ii) the amount of the "**Budgeted Monthly O&M Costs**" for all of the Months of an Agreement Year shall be one-twelfth of the amount actually set forth in the binding budget for the applicable Agreement Year;
 - (iii) subject to Section 3.14(c), the Budgeted Monthly O&M Costs shall be budgeted so as to (A) include all staffing and payroll costs and third-party costs, including appropriate contingencies and (B) not cover Administrative Services.
 - (iv) in calculating each BAC Correction Factor associated with the Budgeted Monthly O&M Costs, such BAC Correction Factor shall be set so as to (A) include all staffing and payroll costs and third-party costs, including appropriate contingencies, (B) not cover Administrative Services, (C) reflect only costs that are not Tariff Exclusions, (D) provide that any cost for an Agreement Year that is below the Budgeted Monthly O&M Costs for such Agreement Year shall result in a fifty percent and fifty percent (50%/50%) sharing of savings (where fifty percent (50%) of the cost savings shall be included in the BAC Correction Factor and the other fifty percent (50%) shall not be included and so shall remain as a benefit to GenCo), and (E) shall not include any amounts for Water, Lignite, Fuel Oil, Ammonia, or Limestone;
 - (v) the first budget shall be agreed upon by the Parties prior to the Transfer Date, and each subsequent budget plan shall be agreed upon by the Parties six (6) months before the beginning of each successive five-year period, always with a rolling five-year budget, in accordance with Section 3.14(e)(i) provided, however, that if the Parties cannot agree on a subsequent budget plan prior to the start of such five-year period, the budget plan in place for the immediately preceding five-year period as adjusted in accordance with the Index Adjustment Factor shall control until a subsequent budget has been agreed or determined following resolution of a Dispute regarding the budget;
 - (vi) NKEC shall have access to all necessary information and audit rights to verify costs incurred by O&M Contractor. Any such audit shall be conducted at NKEC's sole

expense, subject to findings of material impropriety. NKEC shall treat such audit data as confidential and shall not release such audit data to Persons other than (A) the agents and designees of NKEC or (B) in course of any legal proceedings arising under this Agreement that relate to costs incurred by the O&M Contractor; and

- (vii) the O&M budget shall not include expenses for any work to be performed by any other Contractor performing work under any Construction/Maintenance Contract, other than the O&M Contract.
- (f) In connection with the process for setting the five-year binding budget under Section 3.14(e), the Variable O&M Charge shall be determined for each year, and determination of such Variable O&M Charge shall include the following:
 - (i) costs associated with chemicals that vary based on operation levels;
 - (ii) costs associated with ash disposal costs that vary based on operation levels; and
 - (iii) costs associated with other items that vary based on operation levels.
- (g) The five-year binding budget for the O&M Contractor set forth in Section 3.14(e) shall include all items set forth under “LTM Scope C” in Schedule 16 which are to be included with the O&M Contractor’s scope directly and subject to the LTM Contractor’s supervision. To the extent that any item set forth under “LTM Scope C” in Schedule 16 was initially within the LTM Contractor’s scope directly but such item is transferred to the O&M Contractor’s scope in accordance with the terms set forth in Schedule 16 prior to the conclusion of the five-year binding budget for the O&M Contractor then in effect, the five-year binding budget for the O&M Contractor shall be amended by the Parties to reflect the increase in O&M Contractor’s staffing payroll costs and third-party costs anticipated to be required for such additional item of scope by the O&M Contractor as agreed by the Parties. If the Parties cannot agree on the amendment to the budget plan within one (1) Month, the remaining years of the budget plan shall be automatically increased to reflect the quote given by the O&M Contractor for providing such services, until an amendment to the budget has been agreed or determined following resolution of a Technical Dispute regarding such amendment to the budget.

3.15 Administrative Services Agreement

- (a) GenCo shall enter into the Administrative Services Agreement with the Administrative Services Contractor on or before the Transfer Date, and such contract shall include the terms and conditions as set forth in Schedule 19.
- (b) The Administrative Services Agreement shall be consistent with customary standards for administrative services.
- (c) GenCo shall have the right to recover amounts paid to the Administrative Services Contractor in accordance with Schedule 1.
- (d) An annual binding budget for the Administrative Services Contractor with equal budgeted monthly payments shall be set in accordance with the following:
 - (i) an annual agreed budget (exclusive of costs that would otherwise be a Tariff Exclusion) for Administrative Services anticipated to be required in the ordinary course of the performance by GenCo of its obligations under the Project Agreements, shall be agreed upon by the Parties each Agreement Year; provided, however, that any Dispute between the Parties in relation to such budget shall be a Technical Dispute;
 - (ii) the amount of the “**Budgeted Monthly Administrative Services Costs**” for all of the Months of an Agreement Year shall be one-twelfth of the amount actually set forth in the binding budget for the applicable Agreement Year;

- (iii) subject to Section 3.15(d)(iv), the Budgeted Monthly Administrative Services Costs shall be budgeted so as to include all staffing and payroll costs and third-party costs, including appropriate contingencies;
- (iv) in calculating each BAC Correction Factor associated with the Budgeted Monthly Administrative Services Costs, such BAC Correction Factor shall be set so as to (A) be without profit or mark-up on any Administrative Services Contractor staffing cost or third-party cost, (B) include all staffing and payroll costs and third-party costs, including appropriate contingencies, (C) reflect only costs that are not a Tariff Exclusion, and (D) provide that any cost for an Agreement Year that is below the Budgeted Monthly Administrative Services Costs for such Agreement Year shall result in a fifty percent and fifty percent (50%/50%) sharing of savings (where fifty percent (50%) of the cost savings shall be included in the BAC Correction Factor and the other fifty percent (50%) shall not be included and so shall remain as a benefit to GenCo);
- (v) the first budget shall be agreed upon by the Parties prior to the Transfer Date and shall not exceed one million Euros (€1,000,000), and each subsequent budget plan shall be agreed upon by the Parties three (3) months before the beginning of each successive annual period in accordance with Section 3.15(d)(i) and shall not reflect an increase of greater than two percent (2%) as compared to the prior Agreement Year's budget; provided, however, that if the Parties cannot agree on a subsequent budget plan prior to the start of such annual period, the budget plan in place for the immediately preceding annual period as adjusted in accordance with the Index Adjustment Factor shall control until a subsequent budget has been agreed or determined following resolution of a Technical Dispute regarding the budget;
- (vi) NKEC shall have access to all necessary information and audit rights to verify costs incurred by Administrative Services Contractor in providing the Administrative Services. Any such audit shall be conducted at NKEC's sole expense, subject to findings of material impropriety. NKEC shall treat such audit data as confidential and shall not release such audit data to Persons other than (i) the agents and designees of NKEC or (ii) in course of any legal proceedings arising under this Agreement that relate to costs incurred by the Administrative Services Contractor; and
- (vii) the Administrative Services budget shall not include expenses for any work to be performed by any other Contractor performing work under any Construction/Maintenance Contract.

3.16 Agreement on the Project Budget

- (a) Prior to the Financial Closing, GenCo shall prepare and deliver for NKEC's and GOK's review and approval on or before the later of (i) conclusion of the Tender (Plant) and all material issues related thereto and the Tender (Environmental), if undertaken, and all material issues related thereto, and (ii) the date that is at least seventy-five (75) Days prior to the then-anticipated Financial Closing a draft of the Project Budget, which shall be consistent with the terms of this Agreement.
- (b) The following shall apply for purposes of agreeing on a final Project Budget:
 - (i) NKEC and GOK shall provide any comments in writing on the draft Project Budget within thirty (30) Days following the date the draft Project Budget is received by NKEC and GOK, and each Party shall make a representative available to promptly meet within five (5) Days following the end of such thirty (30) Day period to review each Party's comments on the draft Project Budget and on the proposed changes and any objections to the proposed changes of a Party;

- (ii) as soon as is practicable after the meeting referred to in Section 3.16(b)(i), but in any event within ten (10) Days following the end of such meeting, GenCo shall provide NKEC and GOK with a proposed final Project Budget, incorporating to the extent agreed each of the Parties' proposed changes;
- (iii) NKEC and GOK shall review the proposed final draft Project Budget within ten (10) Business Days after its receipt by NKEC and GOK.

3.17 Agreement on the Development Costs Budget

- (a) On or before the Effective Date, GenCo shall prepare and deliver for NKEC's and GOK's review and approval a draft of the Development Costs Budget, which shall be consistent with the terms of this Agreement.
- (b) The following shall apply for purposes of agreeing on a final Development Costs Budget:
 - (i) NKEC and GOK shall provide any comments in writing on the draft Development Costs Budget within sixty (60) Days following the date the draft Development Costs Budget is received by NKEC and GOK, but in no event less than one-hundred twenty (120) Days following the Execution Date, and each Party shall make a representative available to promptly meet within five (5) Days following the end of such sixty (60) Day period to review each Party's comments on the draft Development Costs Budget and on the proposed changes and any objections to the proposed changes of a Party;
 - (ii) as soon as is practicable after the meeting referred to in Section 3.17(b)(i), but in any event within ten (10) Days following the end of such meeting, GenCo shall provide NKEC and GOK with a proposed final Development Costs Budget, incorporating to the extent agreed each of the Parties' proposed changes; and
 - (iii) NKEC and GOK shall review the proposed final draft Development Costs Budget within ten (10) Business Days after its receipt by NKEC and GOK.

3.18 Amendments to the Construction/Maintenance Contracts

GenCo shall not amend in any material respect without NKEC and GOK approval any Construction/Maintenance Contract other than Change Orders approved pursuant to subclause (b) in the definition of "Approved Change Order"; provided, however, that unless NKEC or GOK objects to a request in writing to approve any amendment or Change Order within fifteen (15) Days following the receipt of such request, written approval from NKEC or GOK shall not be required for GenCo to proceed with such amendment or Change Order and shall be deemed approved by NKEC and GOK.

Article 4 Construction of the KRPP Facility

4.1 Construction of the KRPP Facility

- (a) GenCo shall provide NKEC with a copy of the notice to proceed issued under the EPC Contract within three (3) Business Days after the Construction Start Date together with a certificate stating that the Construction Start Date has been achieved.
- (b) GenCo shall use commercially reasonable efforts to enforce its rights under the EPC Contract with the intent to ensure that the design and construction of the EPC Works shall be carried out with all proper skill and care and in all material respects in accordance with this Agreement, including the Tender (Plant) Technical Specifications, the Laws of Kosovo, Applicable Standards, the GenCo Consents, the Generation License, and Prudent Utility Practices.
- (c) GenCo shall, as part of the construction process, upon its receipt of material drawings and specifications from the EPC Contractor for approval by GenCo, submit copies of such to NKEC,

including by posting copies to an electronic data room and providing NKEC with notice of such posting together with a clear and conspicuous notice that failure to object within seven (7) Business Days will lead to a waiver of objection rights, and obtain NKEC's non-objection before proceeding, provided that if NKEC has not objected to such submittal within seven (7) Business Days after receipt of such submittal or notice of posting to the Data Room together with the waiver notice, then GenCo may proceed with the construction process, as required by and in accordance with this Agreement. All such drawings and other technical details shall be approved by GenCo.

- (d) GenCo shall cause all equipment that is permanently installed by the EPC Contractor as part of the KRPP Facility to be new and unused at the time of such installation and to otherwise comply with the requirements of the Tender (Plant) or, to the extent any equipment is determined to have not been new and unused at the time of its initial installation or shall not have complied with the requirements of the Tender (Plant) at such time, to promptly replace such equipment.
- (e) Except as otherwise provided in the Project Agreements, GenCo shall not make, without NKEC's prior consent, any modification or addition to the KRPP Facility that can reasonably be predicted to have a material adverse effect on the quality or reliability of deliveries to NKEC of Net Electrical Output and Ancillary Services, GenCo's ability to make available generating capacity up to the Contract Capacity, the performance of the KRPP Facility or the ability of GenCo to perform its obligations under this Agreement.

4.2 Duties of the GOK-Appointed Independent Engineer

The GOK-Appointed Independent Engineer appointed pursuant to the Implementation Agreement will perform the duties of the GOK-Appointed Independent Engineer provided in this Agreement, including:

- (a) undertaking the Thermal Efficiency and BAT Study;
- (b) confirming the accuracy of the Construction Reports;
- (c) witnessing the Capacity Tests and any retests thereof;
- (d) issuing the Capacity Test Certificates;
- (e) inspecting the GenCo Connection Works from time to time at either Party's request;
- (f) issuing the Certificates of Readiness for Synchronization;
- (g) issuing the Certificates of Readiness for Commissioning;
- (h) witnessing the NKEC Acceptance Tests and any retests thereof;
- (i) witnessing the Heat Rate Tests and any retests thereof;
- (j) witnessing the Reliability Tests and any retests thereof;
- (k) witnessing the Annual Capacity Test and any retests thereof;
- (l) undertaking any other activities required to be undertaken by the GOK-Appointed Independent Engineer pursuant to this Agreement; and
- (m) undertaking any other activities directed by NKEC in relation to the Kosovo e Re Project, all in accordance with this Agreement.

4.3 Duties of the Independent E&S Consultant

- (a) The Independent E&S Consultant appointed pursuant to Section 3.11 of the Implementation Agreement will perform the duties of the Independent E&S Consultant provided in this Agreement, including reporting to GenCo and GOK (and, as applicable, the Lenders) the

outcomes of works and present all areas of compliance and non-compliance, advise on corrective measures to be undertaken, where applicable, and provide input regarding a timeline for their completion and report when completed.

- (b) The duties of the Independent E&S Consultant shall include:
- (i) prior to the Transfer Date and only if GenCo elects to separately procure the Specified Environmental Condition Remediation Contractor in accordance with Sections 3.9.5(g) and 15.2(a), review of the ESMS-Enviro and all ESMPs-Enviro and procedures against the Applicable Standards (EPC/O&M/Enviro/Admin), identification of any gaps or deficiencies in such plans (benchmarked against such standards), and the proposed mechanisms to address any such gaps or deficiencies;
 - (ii) before construction work commences, review of the ESMS-EPC (Plant) and ESMS-EPC (Connection) and all ESMPs-EPC (Plant) and ESMPs-EPC (Connection) and procedures against the Applicable Standards (EPC/O&M/Enviro/Admin), identification of any gaps or deficiencies in such plans (benchmarked against such standards), and the proposed mechanisms to address any such gaps or deficiencies;
 - (iii) prior to the scheduled completion of the construction, review of the ESMS-O&M and ESMS-Admin and all ESMPs-O&M and ESMPs-Admin and procedures against the Applicable Standards (EPC/O&M/Enviro/Admin), identification of any gaps or deficiencies in such plans (benchmarked against such standards), and the proposed mechanisms to address any such gaps or deficiencies;
 - (iv) review of the land acquisition, involuntary resettlement, and livelihood restoration activities planned and undertaken by the KEK Mining in connection with the Sibovc South Mine Field (as defined in the Lignite Supply Agreement) against Applicable Standards, identification of any gaps or deficiencies in such plans (benchmarked against such standards), and the proposed mechanisms to address any such gaps or deficiencies;
 - (v) during the project construction phase, the Independent E&S Consultant shall semi-annually (or more frequently (including resident on-site) if required by GOK for purposes of supervising compliance and to protect GOK's interests with respect to Environmental/Archaeological Conditions):
 - (A) inspect the Kosovo e Re Project sites to verify the activities are implemented in a manner that is consistent with the environmental and social obligations of the Parties as set forth in the Project Agreements;
 - (B) review and report on environmental and social management, monitoring, and reporting undertaken by GenCo, including implementation of the mitigation measures defined in the E&S Management Plan;
 - (C) undertake independent verification field monitoring of GenCo's compliance with its Applicable Standards as set forth in the Project Agreements;
 - (D) meet with the representatives of any affected persons in the vicinity of the Kosovo e Re Project site and/or "associated facilities" (as defined in the applicable IFC Environmental and Social Sustainability Standards, the World Bank Environmental and Social Safeguard Policies, and the MIGA Policy on Social & Environmental Sustainability) as required; and
 - (E) monitor compliance of the Sibovc South Mine Field development (as defined in the Lignite Supply Agreement) with Applicable Standards, including with respect to mitigation requirements in respect to the land acquisition and resettlement;

- (vi) following the Commercial Operations Date, and for the initial three (3) Agreement Years, the Independent E&S Consultant shall annually:
 - (A) review ESMPs-EPC (Plant), ESMPs-EPC (Connection), ESMPs-O&M, and ESMPs-Admin effectiveness, monitoring, and reporting undertaken by the EPC Contractor and GenCo Connection Works EPC Contractor, as the case may be;
 - (B) specifically review the implementation of the E&S Management Plan, including to undertake independent verification field monitoring as needed; and
 - (C) review grievances logs; and
 - (D) following the conclusion of the initial three (3) Agreement Years, verify compliance in all material respect of the Kosovo e Re Project with Applicable Standards.
- (vii) the Independent E&S Consultant shall annually assess and issue a report indicating whether:
 - (A) the environmental and social requirements set forth in the Project Agreements are met and whether GenCo has in place adequate procedures and practices to manage environmental and social risks and impacts;
 - (B) monitoring/enforcement by competent Kosovo authorities sufficiently covers the environmental and social aspects of the Kosovo e Re Project;
 - (C) the resettlement action plan and livelihoods restoration program in respect of the Sibovc South Mine Field (as defined in the Implementation Agreement) development is at such time in accordance with the Applicable Standards; and
 - (D) the Kosovo e Re Project complies in all material respects with the Applicable Standards.
- (c) If all conditions listed in Section 4.3(b)(vii) are met, there will be no need of further annual review. If any of such conditions is not met, GOK will specify a review plan for the remainder of the Term, subject to Lenders' review and approval based on the project risks and determination of which Party is responsible to assure compliance according to the agreed risk allocation in the Project Agreements.
- (d) The Independent E&S Consultant shall have no authority to relieve any of the Parties of any of their duties or to impose additional obligations other than those expressly provided in the Project Agreements.

4.4 Contract Capacity; Reduction of Capacity and Related Liquidated Damages; Subsequent Increase in Capacity

4.4.1 Specification of Contract Capacity

The Parties agree that the contract capacity of the KRPP Facility (the “**Contract Capacity**”) shall be the contract capacity of the KRPP Facility in MW (net, at Reference Conditions) as specified in Paragraph (a) of the EPC/LTM Bid Submission Form incorporated into this Agreement (but in no case greater than 470 MW, net at Reference Conditions), which represents the maximum continuous rating of the KRPP Facility.

4.4.2 Reduction of Capacity in Relation to Construction

- (a) Subject to Section 4.4.3, at any time (and from time to time, without limitation in the number of such elections) after the Execution Date but prior to the occurrence of the Commercial Operations Date of the KRPP Facility, GenCo may elect to reduce the capacity of the KRPP Facility;

provided, however, GenCo may not without the approval of NKEC reduce any capacity to less than ninety-five percent (95%) of the value specified in Section 4.4.1 for the Contract Capacity.

- (b) Any such reduction shall take effect upon the occurrence of delivery of notice of the reduction by GenCo to NKEC.

4.4.3 Liquidated Damages Associated with a Reduction of Capacity or Similar

In the event the KRPP Facility does not satisfy the full performance test guarantees under the EPC Contract, including the capacity and heat rate guarantees, but is accepted at lower performance standards and buy-down damages are paid or payable by the EPC Contractor, including the buy-down damages referenced in Section 4.4 of this Agreement, all in accordance with the EPC Contract (an “**EPC Buy-Down Event**”), then:

- (a) as between NKEC and GenCo, the buy-down damages would be to the account of GenCo and GenCo shall have no obligation to make any payment to NKEC;
- (b) to the extent the buy-down damages will be applied to prepay loans under the Financing Documents, such adjustment of the Actual Debt shall not be reflected in the Availability Payment (which shall remain unadjusted for any such payment of debt), and
- (c) the performance standards and requirements under this Agreement, including the Expected Availability Factor for the KRPP Facility and the Contract Capacity, shall not be adjusted to reflect the lower performance levels of the KRPP Facility.

4.4.4 Impact on Achieving Commercial Operations

Upon the effectiveness of a reduction in capacity pursuant to Section 4.4.2, such reduced capacity shall be applied for purposes of declaring the applicable Commercial Operations Date, as specified in Section 9.3.

4.4.5 Increasing the Capacity Following COD

- (a) During the two (2) Agreement Year period following the Commercial Operations Date, GenCo may elect to increase the capacity; provided, however, that GenCo may not in any case increase the capacity to an amount greater than one hundred percent (100%) of the Contract Capacity specified in Section 4.4.1.
- (b) Any such increase in capacity shall take effect upon the occurrence of both:
 - (i) achievement of the increase in capacity by GenCo; and
 - (ii) the Tested Capacities demonstrated during an Annual Capacity Test indicate that the Tested Capacities are equal to or exceed the corresponding proposed increased capacities.

4.5 Liquidated Damages for Delay in Achieving Commercial Operations Date; Notice of Delay

- (a) Subject to the Liquidated Damages Cap, if GenCo fails to achieve the Commercial Operations Date by the Required Commercial Operations Date (as such date may be extended in accordance with the terms and conditions of this Agreement and the other Project Agreements), then GenCo shall pay NKEC the Delay Liquidated Damages, which shall be calculated in accordance with the following formula:

$$DelayLD = DelayLDFactor \times DelayD$$

where:

DelayLD means the “**Delay Liquidated Damages**”, as calculated in accordance with this Section 4.5(a)

DelayLDFactor means a factor in respect of the KRPP Facility, in Euros per MW, which shall be calculated in accordance with the following formula (provided, however, that in the event that the formula results in the calculation of a negative number, the factor shall be deemed to be equal to zero):

$$DelayLDFactor = KCapacity \times 24 \times LD Price$$

where:

KCapacity means the Contract Capacity set forth in Section 4.4.1;

LDPrice means the agreed hourly (per-MW) price of €6.25; and

DelayD means the number of Days between the Required Commercial Operations Date and the actual Commercial Operations Date.

- (b) Within five (5) Business Days after learning any information suggesting that the Commercial Operations Date will occur later than the Scheduled Commercial Operations Date, GenCo shall notify NKEC of such delay.

4.6 Liquidated Damages Cap

- (a) The Liquidated Damages Cap shall be determined in accordance with the following formula:

$$LDCap = EPCCost \times 0.1$$

where:

LDCap means the “**Liquidated Damages Cap**”; and

EPCCost means an amount, in Euros, equal to the total contract price payable under the EPC Contract.

- (b) Notwithstanding Section 4.3 and Section 4.5, the sum of the Delay Liquidated Damages payable under this Agreement shall not exceed the Liquidated Damages Cap.

4.7 Submission of Reports and Information

4.7.1 GenCo Submission of Reports and Information

- (a) GenCo shall submit to NKEC the following documents on or before the specified dates:
- (i) prior to the Transfer Date, a certificate from the GOK-Appointed Independent Engineer addressed to GenCo and NKEC to the effect that, based on the Thermal Efficiency and BAT Study, the KRPP Facility, as set forth in the EPC Contract, satisfies in all material respects the applicable requirements set forth in this Agreement relating to thermal efficiency;
 - (ii) on or before the date that occurs forty-five (45) Days after the end of each calendar quarter occurring after the Effective Date and prior to the Final Draw Date, a statement from GenCo showing in reasonable detail the amounts paid by GenCo, together with the date of payment, for the following:
 - (A) Development Costs, Soft Costs, and other Project Costs;
 - (B) amounts actually paid by GenCo to the EPC Contractor in relation to the construction of the KRPP Facility and all Change Orders;

- (C) amounts actually paid by GenCo to the Specified Environmental Condition Remediation Contractor (if one is procured) in relation to the Specified Environmental Condition Remediation and all Change Orders; and
 - (D) amounts actually paid by GenCo to the GenCo Connection Works EPC Contractor in relation to the construction of the GenCo Connection Works and all Change Orders;
- (iii) beginning within thirty (30) Days after the Transfer Date and ending on the Commercial Operations Date:
- (A) reasonably detailed Construction Reports (including any updates to the construction schedule contained therein) delivered to NKEC not later than either, as the case may be:
 - (1) prior to the date that is twelve (12) Months prior to the Scheduled Commercial Operations Date, the last Day of March, June, September, and December,
 - (2) after the date that is twelve (12) Months prior to the Scheduled Commercial Operations Date, the last Day of each Month;
 - (B) such other reports as GenCo may prepare or have prepared from time to time by its engineers in relation to the construction of the KRPP Facility; and
 - (C) reports, when and as GenCo becomes aware, of any condition or event and/or any change in such condition or event that GenCo reasonably determines will have a material and adverse effect on the timely completion of the construction of the KRPP Facility;
- (iv) no later than ninety (90) Days after the Transfer Date:
- (A) evidence demonstrating that GenCo has obtained all GenCo Consents then required to be obtained for the development, design, construction, financing, ownership, operation, and maintenance of, and the supply and delivery of Net Electrical Output from, the KRPP Facility;
 - (B) a list identifying GenCo Consents not yet required to be obtained for the operation and maintenance of, and the supply and delivery of Net Electrical Output from, the KRPP Facility; and
 - (C) a list identifying GenCo Consents applied for by GenCo or GenCo Contractors but not yet issued or received, together with a plan for obtaining such GenCo Consents and an estimate of the time within which such GenCo Consents will be obtained;
- (v) as and when available, copies of the Lignite Supply Agreement and Water Supply Agreement and any amendments thereto promptly following the date such agreements and any such amendments thereto are executed;
- (vi) at least sixty (60) Days prior to the scheduled commencement of testing and Commissioning of the KRPP Facility, a preliminary start-up and test schedule for the KRPP Facility;
- (vii) on or before the Commercial Operations Date, a certificate from the Owner's Engineer addressed to GenCo and NKEC to the effect that, based upon its monitoring and review of construction, the construction of the KRPP Facility has been carried out in all material respects in compliance with the terms of this Agreement; and

- (viii) as soon as available, but no later than thirty (30) Days following NKEC Acceptance Tests, two copies of all results of the NKEC Acceptance Tests, including tests of major equipment included in the KRPP Facility, tests of related electricity metering equipment, and a certificate from the GOK-Appointed Independent Engineer confirming each successful NKEC Acceptance Test shall be provided to NKEC.
- (b) When delivering to NKEC the documentation required under Section 4.7.1(a), GenCo shall submit a copy thereof to the GOK-Appointed Independent Engineer to the extent the GOK-Appointed Independent Engineer does not already have such documentation.

4.7.2 GenCo Document Requests

NKEC shall provide to GenCo within fifteen (15) Business Days after receipt of a written request from GenCo, such documents and data in NKEC's possession and control that GenCo has reasonably requested in order for GenCo to undertake the GenCo Connection Works and the EPC Works.

4.7.3 Notifications

- (a) GenCo shall notify NKEC promptly from time to time whenever it determines that the then expected date for the Commissioning is unfeasible or inappropriate, and shall specify a revised expected date for the Commissioning that shall not in any event be earlier than three (3) Business Days following the date of delivery of such notice to NKEC. For the avoidance of doubt, the delivery of such notice as required under this Section 4.7.3 shall not excuse GenCo's obligation to pay any liquidated damages that may be due to NKEC under Section 4.5.
- (b) Each Party shall notify the other Party in a timely manner upon becoming aware of any changes to the information provided to the other Party pursuant to this Section 4.7.3.

4.8 NKEC Observation Visits

NKEC shall have the right, on a recurring basis and upon reasonable prior written notice to GenCo to have NKEC's officers, employees, and representatives observe the progress of the EPC Works, GenCo Connection Works, and the KRPP Facility. GenCo shall comply with all reasonable requests of NKEC for, and assist in arranging, any such observation visits. NKEC's visits shall be reasonable both in terms of the frequency of such visits and the number of persons. All persons visiting the KRPP Facility, or the Site on behalf of NKEC shall comply with GenCo's and GenCo Contractors' generally applicable safety regulations and procedures pursuant to the Prudent Utility Practices, the Laws of Kosovo, and the Applicable Standards made available to such persons and shall comply with the instructions and directions of GenCo and GenCo Contractors, and shall not cause any interference with or disruption to the activities of GenCo or GenCo Contractors on the Site. Such safety regulations and procedures may change from time to time. Notwithstanding the foregoing, NKEC shall have the right to propose reasonable adjustment to the safety regulations and procedures above, and GenCo shall reasonably consider such proposed adjustments.

4.9 Flooding at the Site

GenCo shall:

- (a) take, or use commercially reasonable efforts to cause to be taken, commercially reasonable actions within the boundaries of the Site to protect the Site from flooding; and
- (b) provide for a suitable storm water management system at the Site;

in each case in accordance with Prudent Utility Practices, the Environmental Standards, and the Laws of Kosovo.

Article 5
Station Power

5.1 Electrical Power for Station Use

- (a) To the extent that GenCo cannot provide for its own electricity needs, GenCo shall be responsible for arranging for the purchase of electricity for station use (such as when the KRPP Facility is not able to provide electricity for station use) from a licensed supplier that serves the area in which the KRPP Facility is located.
- (b) Unless otherwise prohibited by law, and without limiting GenCo's rights under Section 5.1(a), NKEC shall be obligated to require under any Back-to-Back Power Purchase Agreement between NKEC and KESCO that KESCO provide electricity for station use to GenCo in accordance with the standard terms and conditions of service pursuant to which KESCO would supply customers.

Article 6
Connection Facilities

6.1 GenCo Connection Assets

- (a) GenCo shall use commercially reasonable efforts to cause the GenCo Connection Works EPC Contractor to carry out or cause to be carried out the GenCo Connection Works with all proper skill and care and in all material respects in accordance with:
 - (i) the Connection Agreement;
 - (ii) the Grid Code;
 - (iii) the Laws of Kosovo and the applicable GenCo Consents and NKEC Consents;
 - (iv) the Generation License; and
 - (v) Prudent Utility Practices and Prudent Electrical Practices.
- (b) GenCo shall give NKEC and KOSTT not less than thirty (30) Days' prior notice of the date from which the GenCo Connection Works EPC Contractor will commence the GenCo Connection Works.
- (c) The GenCo Connection Works EPC Contract shall require the GenCo Connection Works EPC Contractor to complete the GenCo Connection Works in a timely fashion so as to enable GenCo to complete Commissioning by the Scheduled Commercial Operations Date applicable thereto.
- (d) The Parties acknowledge that the GenCo Connection Works, including the protective devices contemplated in Section 6.2, and GenCo's costs incurred under the Connection Agreement prior to the Final Draw Date are to be funded as Project Costs through NKEC's payment of Availability Payments, and any refund or other payments that are paid or payable to GenCo in relation to the GenCo Connection Assets, KOSTT New Connection Assets, or Infrastructure Reinforcement Assets for any third party's use of such assets shall be payable from GenCo to NKEC within thirty (30) Days after GenCo's receipt of such refund or payment.

6.2 Protective Devices

- (a) The GenCo Connection Works EPC Contract shall require that as part of the GenCo Connection Works, the GenCo Connection Works EPC Contractor shall install and maintain protective relays in accordance with Article 2 of Schedule 4, the Connection Agreement, and the Grid Code.
- (b) To the extent KOSTT requires GenCo to modify or expand the requirements for protective devices or make other changes to the GenCo Connection Assets pursuant to the Grid Code or the Connection Agreement, NKEC shall be notified in advance of such work commencing, and shall have the right to observe, all such work.

- (c) Following commencement of such GenCo Connection Assets modification or expansion work, GenCo shall invoice NKEC for the costs therefor on a Monthly basis in arrears, together with supporting documentation with respect thereto, for payment by NKEC in accordance with Article 17. All such costs may be pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, shall be otherwise reasonably and prudently incurred (and not otherwise be Tariff Exclusions).

6.3 Procurement of GenCo Connection Works EPC Contract

6.3.1 *Single Two-Phase International Competitive Tender (Connection)*

- (a) GenCo shall, consistent with its obligations under the Connection Agreement, conduct an international competitive tender (the “**Tender (Connection)**”) to procure the GenCo Connection Works EPC Contract.
- (b) GenCo shall conduct the Tender (Connection) in two (2) phases through the issuance of:
 - (i) a request for qualifications (phase 1) designed to establish the ability of each bidder to meet reasonable performance and schedule requirements based on the bidder’s prior performance on projects that are reasonably similar in nature to the GenCo Connection Works; and
 - (ii) a two-stage request for proposals (phase 2) from such bidders as were qualified through the request for qualifications (phase 1) (with the understanding that GenCo shall have the right to conduct the Tender (Connection) using “competitive dialogue” techniques to the extent consistent with the Procurement Guidelines).
- (c) The Tender (Connection) shall be designed and conducted in accordance with the material requirements of the Procurement Guidelines.

6.3.2 *Coordination; Design of the Tender (Connection)*

- (a) GenCo shall:
 - (i) on a routine basis regularly consult and engage with NKEC and GOK on the preparation of the Tender (Connection) and the development of the Tender (Connection) documents; and
 - (ii) keep GOK and NKEC apprised of all planned key meetings, and GenCo shall permit GOK to participate in all material discussions with potential bidders, material negotiations with the winning bidder, or any material negotiations as to the terms and conditions of the Tender (Connection) held with the potential bidders, lenders and potential lenders associated with the Tender (Connection), and any discussions with any international financial institution in relation to the Tender (Connection).
- (b) GenCo shall deliver to NKEC and GOK as soon as is reasonably possible, and in any event at least thirty (30) Days prior to the anticipated release of any request for qualifications or any request for proposals, a copy of such Tender (Connection) documents to be used by GenCo to conduct the Tender (Connection), including the Tender (Connection) Evaluation Criteria to be used by GenCo and the form of GenCo Connection Works EPC Contract to be entered into by the winning bidder.
- (c) Prior to issuing any request for qualifications or any request for proposals, GenCo shall consult with NKEC and GOK and obtain their written approval or non-objection to the form and substance of the Tender (Connection) documents to be used by GenCo to conduct the Tender (Connection), including:

- (i) the form of the request for qualifications or request for proposals, as applicable, to be issued by GenCo;
- (ii) the Tender (Connection) Evaluation Criteria to be used by GenCo; and
- (iii) the form of GenCo Connection Works EPC Contract to be entered into by the winning bidder, which shall be as described in Schedule 18;

provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed to issue its request for qualifications or its request for proposals, provided that , by not objecting to any request for qualifications or any request for proposals, as the case may be, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (Connection) requirements.

- (d) GenCo shall consult with NKEC and GOK and obtain their written approval or non-objection prior to determining among all pre-qualified bidders, the bidder's bid:
 - (i) that, unless otherwise approved by GOK and NKEC, meets all of the Tender (Connection) technical specifications and pass/fail criteria specified in the connection study performed under Section 13.1 of the Connection Agreement;
 - (ii) that contains no material exceptions to the form of GenCo Connection Works EPC Contract, or if it contains material exceptions, then such material exceptions have been approved by GenCo, NKEC and GOK or determined by GenCo, NKEC and GOK as being acceptable for further negotiation; and
 - (iii) that results in the highest score, taking into account (A) the lowest cost and (B) any non-price attributes (x) set forth in Schedule 12 (if any) or (y) otherwise approved by NKEC and GOK (it being acknowledged by the Parties that GOK approval shall be subject to appropriate input by the World Bank) as being consistent with the Procurement Guidelines, which non-price attributes shall be expressed in monetary terms or assessed with merit points when benefits are not quantifiable in monetary terms, but in any case such non-price attributes shall not comprise more than a percentage of the scoring methodology as set forth in Schedule 12,

(together, the “**Tender (Connection) Evaluation Criteria**”), with the understanding that GenCo, NKEC and GOK shall be obligated to select the bidder that, having passed the pass/fail criteria and having no material exceptions that GenCo, NKEC or GOK indicate are not acceptable for further negotiation, present the highest-scored proposal (taking into account the lowest cost and any non-price attributes (if any) set forth on Schedule 12 or otherwise approved by NKEC and GOK; provided, however, that unless NKEC or GOK objects in writing within fifteen (15) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed and make such a determination, provided that , by not objecting to a selection, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (Connection) requirements

6.3.3 Interface with Bidders

- (a) GenCo shall maintain a Data Room to make information available to all bidders on an equal basis.
- (b) To provide bidders with the information necessary to enable bidders to submit bids, GenCo shall provide bidders with copies of any investigations recommended to be performed by the GOK-Appointed Independent Engineer and agreed to by GenCo, each of which shall be conducted by the GOK-Appointed Independent Engineer and on which each bidder shall be entitled to rely.

- (c) GenCo shall notify each bidder that the bidder may request a no-objection letter from GOK, stating that GOK does not object to such bidder on the grounds specified in Section 5.1.2(b) of the Implementation Agreement.
- (d) GenCo shall consult with NKEC and GOK and obtain their written approval or non-objection prior to providing any response to questions submitted by bidders; provided, however, that unless NKEC or GOK objects in writing within fifteen (15) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed and provide such response, provided that , by not objecting to any such responses, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of requirements the Tender (Connection) requirements.

6.3.4 Requirements for Bidders

- (a) GenCo shall require each bidder to provide a list of any exceptions the bidder wishes to take to the form of GenCo Connection Works EPC Contract to be entered into by the winning bidder, which may be in the form of a revised draft of the GenCo Connection Works EPC Contract.
- (b) GenCo shall require bidder to submit with their proposals a bid bond consistent with industry practice. Should any such bid bond become drawable, GenCo and NKEC shall each share a portion of the proceeds from such bid bond (which portions shall be based on actual transaction costs of each Party from January 1, 2015, calculated pro rata) as a shared protection for the work each Party has done on the Kosovo e Re Project prior to the selection of the bidder.
- (c) GenCo shall require each bidder to specify the amounts of any payments that GenCo will be required to make under the GenCo Connection Works EPC Contract (such specified amounts to then be subject to a retainage of five percent (5%) to ten percent (10%), as set forth in the Tender (Connection), payable on the completion of the GenCo Connection Works, unless the GenCo Connection Works EPC Contractor provides a letter of credit in accordance with Schedule 18).
- (d) GenCo shall require bidders to submit proposed technical specifications for the GenCo Connection Assets that meet the design requirements specified in the connection study performed under Section 13.1 of the Connection Agreement.
- (e) GenCo shall require bidders to break out as a separate item the total costs related to the Infrastructure Reinforcement Assets.
- (f) GenCo shall require bidders to construct the GenCo Connection Assets from the high voltage side of the generator step-up transformer.
- (g) Any non-compliance by a bidder with the requirements set forth in this Section 6.3.4 shall not be considered a breach by either Party or an Event of Default with respect to either Party under this Agreement, but there shall be no obligation of GenCo or its Affiliates or NKEC, GOK or any Specified POE to accept any material variation from the terms of this Agreement or to achieve the Transfer Date to the extent there is a material variation from the terms of this Agreement.

6.3.5 Selection of Winning Bidder

- (a) Using Prudent Utility Practices and in accordance with the Procurement Guidelines, GenCo (in consultation with the Owner's Engineer) shall, in consultation with NKEC and GOK, evaluate the proposals submitted in response to the Tender (Connection) using the Tender (Connection) Evaluation Criteria.
- (b) At least ten (10) Days prior to the selection of the winning bidder in accordance with the Tender (Connection) Evaluation Criteria, GenCo shall deliver to NKEC and to GOK a report detailing the results of Tender (Connection), including:

- (i) the reasons that each proposal was or was not deemed to meet the Tender (Connection) technical specifications and pass/fail criteria specified in the connection study performed under Section 13.1 of the Connection Agreement;
 - (ii) an assessment of any exceptions taken in the bid, which shall remain subject to the approval of GenCo, NKEC and GOK in accordance with Section 6.3.2(d)(ii)
 - (iii) a copy of each bid; and
 - (iv) the calculations used to evaluate, rank, and select each such proposal.
- (c) Prior to the announcement of the selection by GenCo of the winning bidder, GenCo shall have obtained the prior written approval or non-objection of NKEC and GOK as to the winning bidder; provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days, written approval or non-objection from NKEC or GOK shall not be required for GenCo to proceed with selecting the winning bidder; provided, that, by not objecting to any selection, neither NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the Tender (Connection) requirements.
- (d) If a bid contains material exceptions to the form of GenCo Connection Works EPC Contract, then such material exceptions that have been approved by GenCo, NKEC and GOK or determined by GenCo, NKEC and GOK as being acceptable for further negotiation in accordance with Section 6.3.2(d)(ii) shall be negotiated between the parties, subject to the approval of GenCo, NKEC and GOK.
- (e) Promptly upon request, NKEC and GOK shall each deliver to the Lenders a duly executed certificate, certifying that (i) except with respect to facts which NKEC or GOK, as applicable, did not have knowledge at the time of such certificate, the Tender (Connection) was conducted by GenCo in accordance with the requirements set forth in this Section 6.3, and (ii) except with respect to facts which NKEC or GOK, as applicable, did not have knowledge at the time of such certificate, waiving any right of NKEC or GOK, as applicable, to pursue a claim for any non-compliance by GenCo with such obligations in respect of the Tender (Connection) pursuant to this Section 6.3.

Article 7 Metering; Communications

7.1 Initial Installation

- (a) The Metering System and the Check Metering System shall each be installed in accordance with the Laws of Kosovo, the Grid Code, the Connection Agreement, and the Metering Code.
- (b) Upon the installation of the Metering System and the Check Metering System, GenCo shall use commercially reasonable efforts to obtain and provide to NKEC electronic copies of the instruction and operation manuals for the Metering System and the Check Metering System, including for any component part of the Metering System and the Check Metering System.

7.2 Metering Standards and Obligations

- (a) The Metering System and the Check Metering System shall be operated, maintained, and tested in accordance with the Grid Code, Metering Code, Connection Agreement, Prudent Utility Practices, Prudent Electrical Practices, and the Laws of Kosovo.
- (b) For settlement purposes, the Metering System reading for each Operating Hour (as opposed to other periods of time) shall be applicable.
- (c) In addition to any testing undertaken pursuant to Section 7.2(a), GenCo shall also use commercially reasonable efforts to cause KOSTT to undertake the testing of the Metering System

and Check Metering System at any other time reasonably requested by NKEC, but in no event more frequently than quarterly.

- (d) GenCo shall use commercially reasonable efforts to give to NKEC no less than twenty-four (24) hours advance notice prior to any test of the Metering System or the Check Metering System. Subject to GenCo's safety regulations and procedures, NKEC may have a representative present during such testing, as well as during any inspection of the Metering System or Check Metering System, or any adjustment thereof.
- (e) GenCo shall obtain and retain records of the tests of the Metering System and Check Metering System, including any engineer's report relating thereto, for five (5) Years following the date of the test.

7.3 Data Recording Systems

GenCo shall, at its own cost and expense (it being acknowledged that GenCo shall recover such costs pursuant to Schedule 1), procure and install electronic data recording systems capable of recording the Net Electrical Output measured by the Metering System and the Check Metering System on a continuous basis and of storing such recordings for not less than ninety (90) Days.

7.4 Reading Meters

- (a) Subject to the provisions of Section 7.4(d) and verification of the data recording system pursuant to Section 7.4(b), the Parties agree that the information contained in or obtained from such electronic data recording systems shall be used to determine the Net Electrical Output of the KRPP Facility.
- (b) The information contained in the electronic data recording system shall be verified by checking that the sum of the hourly readings in the electronic data recording system over a specified period are consistent with the local totalized readings for the Metering System (or, if applicable, the Check Metering System) over the same period (determined by subtracting the local totalized reading at the beginning of the period from the local totalized reading at the end of the period). In connection with the verification of the information contained in the electronic data recording system the following procedures shall apply:
 - (i) the local totalized readings of the Metering System and the Check Metering System shall be read on the Commercial Operations Date and thereafter Monthly on the last Business Day of each Month or such other Day as may be mutually agreed upon by the Parties;
 - (ii) GenCo shall take such reading during normal business hours unless otherwise mutually agreed by the Parties;
 - (iii) GenCo shall give NKEC at least forty-eight (48) hours' notice of the time GenCo intends to take such reading and, subject to GenCo's safety regulations and procedures, NKEC shall have the right to witness any such reading;
 - (iv) if a NKEC representative is present at such reading, then such reading shall be jointly taken and recorded;
 - (v) if a NKEC representative is not present at such reading, then GenCo representative shall take and record such reading and make a photographic record thereof;
 - (vi) GenCo shall maintain a log of all such meter readings; and
 - (vii) the recorded measurements for each hour during the relevant period and the local totalized recorded measurements shall be delivered by GenCo to NKEC within two (2) Business Days after the readings are taken.

- (c) The Metering System shall be used to measure the Net Electrical Output and other output; provided, however, that during any period when the Metering System is out of service as a result of maintenance, repairs or testing, then the best available information, which may include the Check Metering System, shall be used to measure the Net Electrical Output and other outputs.
- (d) If, in any test carried out on the Metering System, the Metering System is found to be inaccurate by more than the amount as is permitted in the Metering Code, or is otherwise unavailable or functioning improperly, then the correct amount of Net Electrical Output delivered to NKEC for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:
 - (i) the readings of the Check Metering System shall be used to calculate the correct amount of Net Electrical Output, unless a test of such Check Metering System reveals that the Check Metering System is inaccurate by more than the amount permitted in the Metering Code or is otherwise functioning improperly;
 - (ii) if the Check Metering System is found to be inaccurate by more than the amount permitted in the Metering Code or is otherwise unavailable or functioning improperly, then GenCo and NKEC shall jointly prepare an estimate of the correct reading on the basis of all available information and such guidelines as may have been agreed to between GenCo and NKEC; and
 - (iii) if NKEC and GenCo fail to agree upon an estimate for the correct reading, GenCo will estimate the reading and any Dispute shall be referred by either Party for resolution in accordance with Article 26,

and the difference between the previous payments by NKEC for the period of inaccuracy and the recalculated amount shall be offset against or added to the next payment to GenCo under this Agreement, as appropriate, with interest at the Delayed Payment Rate. If the period of inaccuracy cannot be accurately determined, it shall be deemed to have begun on the date which is midway between the date the meter was found to be inaccurate and the date of the last meter reading accepted by the Parties as accurate. In no event, however, shall any such adjustment be made for any period prior to the date on which the Metering System was last tested and found to be accurate within the amount permitted in the Metering Code and not otherwise functioning improperly.

7.5 Communications

- (a) Not later than the Commercial Operations Date and in any event before any Net Electrical Output is delivered from the KRPP Facility, GenCo shall at its own cost and expense (it being acknowledged that GenCo shall recover such costs pursuant to Schedule 1) procure and shall have installed and have operational the following equipment:
 - (i) telecommunications and tele-protection equipment at the KRPP Facility and compatible with the requirements under the Grid Code and the Connection Agreement;
 - (ii) a communications unit in the control room of the KRPP Facility compatible with the KOSTT communications system to permit voice communications between the KRPP Facility and KOSTT; and
 - (iii) tele-metering and data interface satisfying NKEC's reasonable requirements.
- (b) The selection of items to be provided by GenCo in accordance with this Section 7.5 shall be subject to the prior written approval or non-objection of NKEC; provided, however, that unless NKEC or GOK objects in writing within twenty (20) Days after receipt of the information regarding such selection, written approval or non-objection from NKEC shall not be required for GenCo to proceed with such selection; provided, that, by not objecting to any selection, neither

NKEC nor GOK shall be construed as having relieved GenCo of its obligations under this Agreement in respect of the requirements of this Section 7.5.

- (c) The communications and related equipment installed pursuant to this Section 7.5 shall be operated, maintained, and tested in accordance with the Grid Code, Metering Code, Prudent Utility Practices, Prudent Electrical Practices, and the Laws of Kosovo.

Article 8 Operating Procedures

8.1 Operating Procedures

The Parties shall develop Operating Procedures in accordance with Section 8.2 in relation to the following matters:

- (a) *System restoration* – clarification of emergency plans for recovery from a local or widespread electrical blackout;
- (b) *Communication of estimated Net Electrical Output requirements*—acceptable means of communications of estimated Net Electrical Output requirements;
- (c) *Communication of Day-Ahead Reserves Instructions and Day-Ahead Revised Reserves Instructions*—acceptable means of communications to GenCo each Day-Ahead Scheduling Instruction and Day-Ahead Revised Scheduling Instruction and for GenCo to communicate confirmation of each Day-Ahead Scheduling Instruction and Day-Ahead Revised Scheduling Instruction;
- (d) *Site Condition Forecast*—A methodology for forecasting the Ambient Site Conditions anticipated to apply for each hour of a Day, including as provided in Section 12.4.3;
- (e) *Site Conditions* – A methodology to measure, record, and make available to both Parties in real time and in recorded logs in a reliable manner the Ambient Site Conditions and all other weather-related information reasonably related to the implementation of this Agreement;
- (f) *Other*—such other matters as may be necessary or desirable to facilitate operation, communications, safety, or other matters of mutual concern.

8.2 Establishment of the Operating Procedures

8.2.1 Objectives of the Operating Procedures

The Operating Procedures shall:

- (a) take proper account of the design of the KRPP Facility, the Metering Systems, and the KOSTT Grid;
- (b) be consistent with Prudent Electrical Practices, Prudent Utility Practices, and the Contracted Operating Characteristics; and
- (c) be written in English, accompanied by a true and correct translation in Albanian; provided, however, the English version shall prevail over any translations.

8.2.2 Developing and Finalizing the Operating Procedures

The procedure for developing and finalizing the Operating Procedures shall be as follows:

- (a) At least twenty-one (21) months prior to the anticipated Commercial Operations Date, GenCo shall deliver to NKEC in writing proposed draft Operating Procedures;
- (b) NKEC shall provide any comments in writing on the draft Operating Procedures within fifteen (15) Days following the date the draft Operating Procedures are delivered by GenCo to NKEC,

and each Party shall make a representative available to meet within five (5) Days following the end of such fifteen (15) Day period to review each Party's comments on the draft Operating Procedures and on the proposed changes and any objections to the proposed changes of a Party;

- (c) as soon as is practicable after the meeting referred to in Section 8.2.2(a), but in any event within ten (10) Days following the end of such meeting, GenCo shall provide NKEC with proposed final draft Operating Procedures, incorporating to the extent agreed each of the Parties' proposed changes;
- (d) NKEC shall provide final comments on the final draft Operating Procedures within five (5) Business Days after its receipt by NKEC and, within five (5) Business Days after a request from GenCo, NKEC shall make its representatives available in Pristina, Kosovo, to meet and review its comments and proposed changes with GenCo; and
- (e) GenCo shall revise the draft Operating Procedures to incorporate such undisputed additions or modifications requested by NKEC and shall provide a final draft to NKEC as soon as practicable, and in any event within five (5) Days following receipt of NKEC's comments and proposed changes to the draft Operating Procedures. Any Dispute between the Parties as to whether any matter should be included in or excluded from or modified in the way it is then treated in the draft Operating Procedures shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 26. In no event shall the Parties require, or be required following any Dispute resolution, to undertake an amendment to the Operating Procedures that is inconsistent with the Laws of Kosovo, Prudent Utility Practices, the terms of the Project Agreements, or the terms of the Financing Documents.
- (f) The Parties shall consult with KOSTT as appropriate for purposes of developing and finalizing the Operating Procedures.

8.2.3 Changes to Operating Procedures

- (a) Following the finalization of the Operating Procedures pursuant to Section 8.2.2, either Party may propose changes to the Operating Procedures from time to time as changes in events and circumstances may require. The Parties shall meet and discuss such proposed changes in good faith and incorporate such changes as are agreed by the Parties.
- (b) Any Dispute between the Parties as to whether any matter should be included in or removed from or modified in the way it is then treated in the Operating Procedures shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 26. Notwithstanding anything to the contrary set forth herein, in no event shall the Parties be required following any Dispute resolution, to undertake an amendment to the Operating Procedures that is inconsistent with the Laws of Kosovo, Prudent Utility Practices, the terms of the Project Agreements, or the terms of the Financing Documents.

Article 9

Commissioning; Commercial Operations Dates; Availability Ratings; Other Testing

9.1 Pre-COD Testing Program Schedule

9.1.1 Testing Program Schedule

- (a) GenCo shall provide NKEC with relevant information regarding its program for testing the KRPP Facility and the schedule therefor.
- (b) The testing procedures for testing the KRPP Facility set forth in Schedule 4 as of the Execution Date shall be included in the Tender (Plant) documents and such schedule shall be subject to amendment by the Parties as further set forth in this Section 9.1.1(b). Not later than the Transfer Date, the Parties shall each review Schedule 4 to consider any appropriate revisions to the NKEC

Acceptance Tests that are necessary to reflect the final EPC Contract and/or the characteristics of the KRPP Facility proposed by the winning EPC/LTM Bidder Consortium in accordance with the Tender (Plant) Evaluation Criteria and the Contracted Operating Characteristics agreed by the Parties and shall amend Schedule 4 accordingly in writing.

- (c) Not less than three (3) Months prior to the commencement of such test program, GenCo will deliver to NKEC in writing the final program for testing the KRPP Facility, including the expected duration of GenCo's testing program and a tentative schedule for conducting all tests required by Section 9.2 and Section 9.3.

9.1.2 GenCo Changes in Testing Program Schedule

- (a) GenCo shall promptly notify NKEC in writing of any changes in its final schedule for the testing program and shall use reasonable efforts to provide such notice not less than seven (7) Days but in no event less than three (3) Days, prior to the commencement of the tests required by Section 9.2. Such final schedule shall not materially increase or advance the timing of NKEC's obligations under this Agreement without the prior written consent of NKEC.
- (b) If GenCo adjusts the schedule for any test required by Section 9.2 or Section 9.3 after GenCo has provided NKEC with the final testing program schedule, then GenCo shall promptly notify NKEC of such schedule adjustment and use reasonable efforts to provide such notice not less than forty-eight (48) hours but in no event less than twelve (12) hours, prior to the commencement of any such test.
- (c) On each Day beginning with the Day prior to which testing commences, GenCo shall provide NKEC with a schedule of the tests to be conducted on the following Day or Days (if such test will continue for more than one (1) Day).

9.1.3 NKEC Schedule Accommodation

- (a) If NKEC is unable to accommodate the schedule for such test or tests as provided by GenCo in the final schedule for the program of tests pursuant to Section 9.1.1 (as updated under Section 9.1.2), NKEC will give GenCo notice within forty-eight (48) hours of its receipt of the final schedule for testing of its requirements regarding deferral or delay of any NKEC Acceptance Tests and the Parties will mutually agree on a date for any deferral test or program of tests. NKEC shall be deemed to not be able to accommodate testing by reason of:
 - (i) GenCo's inability to obtain energy for start-ups after using commercially reasonable efforts to obtain such energy as required by Section 5.1,
 - (ii) if the GenCo Connection Assets, the KOSTT New Connection Assets, or the Infrastructure Reinforcement Assets have not been fully constructed and tested due to a KOSTT Event of Default (as defined in the Connection Agreement) under the Connection Agreement,
 - (iii) a failure to perform by NKEC under this Agreement or failure to perform by GOK or a Specified POE under any other Project Agreement; a NKEC Event of Default; a GOK Event of Default (as defined in the Implementation Agreement) under the Implementation Agreement; a Water Supplier Event of Default (as defined in the Water Supply Agreement) under the Water Supply Agreement; a KEK Mining Event of Default (as defined under the Lignite Supply Agreement) under the Lignite Supply Agreement; a KEK Mining Event of Default (as defined in the Ash and Gypsum Disposal Agreement) under the Ash and Gypsum Disposal Agreement; or a KOSTT event of default under the Connection Agreement that prevents the undertaking of the NKEC Acceptance Tests.
- (b) If Section 9.1.3(a) applies, then the Required Commercial Operations Date shall be extended Day-for-Day until the date on which the schedule for such test or tests as provided by GenCo in

the final schedule for the program of tests pursuant to Section 9.1.1 (as updated under Section 9.1.2) can be accommodated; provided, however, that no extension to the applicable Required Commercial Operations Date shall occur to the extent that a delay in such tests would nevertheless have occurred regardless of NKEC's inability to accommodate the schedule for such tests. NKEC shall be responsible for paying any incremental costs and expenses incurred by GenCo as a result of such delay, including pursuant to Change Orders.

9.1.4 Payments by NKEC for Material Delay in NKEC Acceptance Testing; Deemed Commissioning Payments

- (a) If:
- (i) each of:
 - (A) the GOK-Appointed Independent Engineer has issued the Certificate of Readiness for Synchronization as provided in Section 9.2 (or the GOK-Appointed Independent Engineer unreasonably defers or delays issuing the Certificate of Readiness for Synchronization);
 - (B) pursuant to Section 9.1.3 NKEC or any Specified POE defers or delays any NKEC Acceptance Tests beyond fifteen (15) Days from the date on which the tests were finally scheduled in accordance with this Section 9.1 or the GOK-Appointed Independent Engineer's actions unreasonably defer or delay any NKEC Acceptance Tests from the date on which the tests were finally scheduled in accordance with this Section 9.1; and
 - (C) such delay or deferral causes the Scheduled Commercial Operations Date to be delayed or deferred, as certified by the GOK-Appointed Independent Engineer (except that such certification shall not be required if such delay or deferral is caused by the actions or inactions of the GOK-Appointed Independent Engineer); or
 - (ii) an event of default by KOSTT under the terms of the Connection Agreement causes the delay of any NKEC Acceptance Tests;

then the first Agreement Year shall be deemed to have commenced and NKEC shall pay to GenCo Monthly (and prorated for any portion of a Month) commencing on the date on which the Certificate of Readiness for Synchronization indicates that the KRPP Facility was ready to be synchronized, Availability Payments calculated pursuant to Article 16, where $AvCap_i$ as it appears in Section 2.1 of Schedule 1 shall be deemed to be equal the Contract Capacity of the KRPP Facility. Payments due under this Section 9.1.4(a) shall continue until the earlier of:

- (A) the end of a period equal to the period of delay or deferral of any NKEC Acceptance Test or NKEC Acceptance Tests; and
- (B) the completion of the first attempted NKEC Acceptance Tests (whether successfully completed or not);

provided, however, that NKEC shall have no obligation to make the payments provided in this Section 9.1 to the extent that a delay in the NKEC Acceptance Tests would nevertheless have occurred regardless of the delay in the testing program.

- (b) If payments by NKEC under this Section 9.1 shall have commenced (or the obligation for such payments shall have accrued), the KRPP Facility shall be tested at the first available opportunity thereafter.
- (c) In the event that NKEC makes any payments to GenCo pursuant to Section 9.1.4(a) and the Tested Capacity of the KRPP Facility, as determined when the NKEC Acceptance Test is

performed, is determined to be less than the Contract Capacity, then any payments received by GenCo attributable to the difference between the applicable Contract Capacity and the applicable Tested Capacity shall be an offset to the next Monthly invoice delivered by GenCo hereunder.

- (d) Except as provided in this Section 9.1 and Article 25, GenCo shall be entitled to no other compensation or claim for damages under this Agreement as a result of deferral of the NKEC Acceptance Tests by NKEC, the GOK-Appointed Independent Engineer, to KOSTT.

9.2 Tests Prior to Synchronization of the KRPP Facility

- (a) Prior to first synchronization of the KRPP Facility with the KOSTT Grid, the GOK-Appointed Independent Engineer shall deliver to GenCo and NKEC a Certificate of Readiness for Synchronization.
- (b) Prior to the delivery of the Certificate of Readiness for Synchronization for the KRPP Facility and the first synchronization, GenCo shall conduct each of the pre-synchronization tests described in Article 2 of Schedule 4 in the presence of the GOK-Appointed Independent Engineer. Before issuing the Certificate of Readiness for Synchronization, the GOK-Appointed Independent Engineer shall witness the conduct of the pre-synchronization tests described in Article 2 of Schedule 4.

9.3 NKEC Acceptance Tests; Achievement of Commercial Operations Date

9.3.1 Test Procedures

- (a) After first synchronizing the KRPP Facility, GenCo shall conduct initial operational testing of the KRPP Facility. Once GenCo is satisfied that the KRPP Facility is capable of continued reliable operation, GenCo shall request the GOK-Appointed Independent Engineer to issue the Certificate of Readiness for Commissioning for the KRPP Facility.
- (b) Upon the issuance by the GOK-Appointed Independent Engineer of the Certificate of Readiness for Commissioning, GenCo shall so notify NKEC and carry out the tests specified in Article 3 of Schedule 4 (the “**NKEC Acceptance Tests**”), which if the KRPP Facility satisfies the minimum performance criteria therefor, will result in the KRPP Facility being Commissioned and in the establishment of the Commercial Operations Date for the KRPP Facility in accordance with Section 9.3.3.
- (c) Such tests will be undertaken in accordance with the procedures set forth in Schedule 4, and such additional testing procedures as may be negotiated by the Parties upon the request of either Party.
- (d) Minimum performance criteria for the NKEC Acceptance Tests are included in Schedule 4.
- (e) Each NKEC Acceptance Test shall account for any necessary corrections for over-loading of the KRPP Facility and auxiliary load correction.

9.3.2 Additional NKEC Acceptance Tests

- (a) GenCo shall give NKEC not less than three (3) Days’ notice of any NKEC Acceptance Test it desires to attempt following the initial NKEC Acceptance Test.
- (b) When the KRPP Facility has satisfied the NKEC Acceptance Tests to establish the Commercial Operations Date, GenCo shall have the right to designate such tests as the NKEC Acceptance Tests for purposes of declaration of the occurrence of the Commercial Operations Date.

9.3.3 Occurrence of the Commercial Operations Dates

- (a) At the successful completion of the NKEC Acceptance Tests, the initial Tested Capacity (adjusted to Reference Conditions) shall be certified by the GOK-Appointed Independent Engineer in a certificate (a “**Capacity Test Certificate**”) delivered to GenCo and NKEC;

provided, however, the GOK-Appointed Independent Engineer shall not issue such certification if GenCo objects to such issuance prior to or within 24 hours following the GOK-Appointed Independent Engineer's issuance of such certification.

- (b) The Commercial Operations Date shall occur and Availability Payments shall commence as of the first hour of the first Day after the following conditions have been satisfied by GenCo or waived by NKEC:
- (i) the Day the KRPP Facility is Commissioned when declared by GenCo and subsequently certified in writing by the GOK-Appointed Independent Engineer in a Capacity Test Certificate;
 - (ii) GenCo has paid to NKEC any then-outstanding and undisputed Delay Liquidated Damages that GenCo is required to pay to NKEC pursuant to this Agreement;
 - (iii) GenCo has obtained all insurance required under Article 21;
 - (iv) GenCo has provided to KOSTT an amended version of Appendix B of the Connection Agreement including all required measured values of the KRPP Facility, as required under Section 5.4 of the Connection Agreement;
 - (v) the Technical Correction Factor Methodology has been completed pursuant to Section 8.1 of Schedule 1; and
 - (vi) GenCo has submitted to NKEC a certificate of an officer of GenCo familiar with the KRPP Facility after due inquiry stating that the Generation License and all other necessary then-required GenCo Consents have been obtained and are in full force and effect and GenCo is not in default in relation to any of such GenCo Consents, GenCo is able to comply with the terms and conditions of this Agreement in all material respects (including in relation to the necessary fuel supply and Water supply arrangements), and GenCo is not in default under any of the Project Agreements such that its ability to perform its obligations under this Agreement is or is reasonably likely to be materially impaired.
- (c) Within five (5) Business Days after a request from GenCo, NKEC shall provide GenCo with written confirmation that the Commercial Operations Date has occurred.

9.4 Tested Capacity After Commercial Operations Date

9.4.1 Determining Tested Capacity in an Annual Capacity Test

During each Demonstration Period, GenCo shall conduct a test to determine the Tested Capacities (an “Annual Capacity Test”) in accordance with the procedures set forth in Article 4 of Schedule 4.

9.4.2 Declaration of the Annual Capacity Test

- (a) GenCo may at any time after running for at least seventy-two (72) consecutive hours at maximum continuous rating during a Demonstration Period declare that a six (6) hour period starting at least three (3) hours thereafter to be the Annual Capacity Test period, provided that NKEC has scheduled in excess of ninety-five percent (95%) of the Tested Capacity for that seventy-two (72) hour period or more in its notification of requirements to be given to GenCo pursuant to Section 12.3(a).
- (b) The Parties shall schedule the KRPP Facility (and request Real-Time Electrical Dispatch from KOSTT) such that, upon GenCo declaring an Annual Capacity Test period, the Real-Time Electrical Dispatch level for the Annual Capacity Test period shall be at the maximum capability of the KRPP Facility without exceeding the technical limits specified in Schedule 2, and the KRPP Facility shall not be controlled by AGC.

- (c) Each Annual Capacity Test shall be administered so as to be net of auxiliary loads.

9.4.3 Annual Capacity Test Requests

- (a) In the event that GenCo has not declared an Annual Capacity Test period within forty-two (42) Days after the start of a Demonstration Period, then if:
 - (i) NKEC has not scheduled the required level and duration of generation pursuant to Section 9.4.1 during the forty-two (42) Day period, such that GenCo was able to declare an Annual Capacity Test period, then GenCo may request an Annual Capacity Test; or
 - (ii) NKEC did schedule the required level and duration of generation pursuant to Section 9.4.1 during the forty-two (42) Day period, such that GenCo was able to declare an Annual Capacity Test but then elected not to declare an Annual Capacity Test, then NKEC may request an Annual Capacity Test.
- (b) If either Party requests a test pursuant to Section 9.4.3(a), then such test shall be performed in accordance with Section 9.4.2 within seven (7) Days following such request, provided that such request is made at least fourteen (14) Days prior to the end of the Demonstration Period. GenCo shall give NKEC not less than forty-eight (48) hours' notice of its intention to perform the test, and NKEC shall have the right to have a representative present during such testing.

9.4.4 Rejecting Annual Capacity Test Results

- (a) Either Party may, within twenty-four (24) hours of completion of any Annual Capacity Test, reject the Annual Capacity Test and may conduct a retest of the Annual Capacity Test; provided, however, that a Party may not require more than two (2) Annual Capacity Test retests in a Demonstration Period (or other conduct of an Annual Capacity Test).
- (b) GenCo shall give NKEC at least twenty-four (24) hours' notice of the retest of the Annual Capacity Test and the retest of the Annual Capacity Test shall be conducted within six (6) Days after the completion of the rejected of the Annual Capacity Test.

9.4.5 Certification from the GOK-Appointed Independent Engineer

At the successful completion of the Annual Capacity Test of the KRPP Facility, the Tested Capacity (adjusted to Reference Conditions) shall be certified by the GOK-Appointed Independent Engineer in a certificate delivered to GenCo and NKEC.

9.4.6 Retesting Between Demonstration Periods

Either Party shall be entitled to request one test of the Tested Capacities between any two (2) consecutive Demonstration Periods. Either Party shall be entitled to one retest of any such test provided that it rejects the test within twenty-four (24) hours of completing the test. The test and, as appropriate, the retest shall be conducted in accordance with Section 9.4.2, within six (6) Days after its request or, as the case may be, the rejection and GenCo shall give NKEC not less than forty-eight (48) hours' notice of its intention to perform the test. The results of such test or retest, as the case may be, shall be used to establish the Tested Capacities until the next required test of the Tested Capacities.

9.5 Testing of Heat Rate After Commercial Operations Date

- (a) During each Demonstration Period, GenCo shall undertake a test to determine the Heat Rate of the KRPP Facility (the "**Heat Rate Test**") in accordance with the procedures set forth in Section 4.2 of Schedule 4.
- (b) The Heat Rate Test shall be administered during the same six (6) hour period in which the Annual Capacity Test is administered (including, if applicable, any retesting of the Tested Capacities following rejection of Annual Capacity Test results and retesting pursuant to Section 9.4.4 and, if

applicable, any retesting of the Tested Capacities between Demonstration Periods pursuant to Section 9.4.6).

9.6 Testing of Declared Operating Characteristics After Commercial Operations Date

At any time following the Commercial Operations Date, if GenCo fails during operations to comply with a Day-Ahead Scheduling Instruction, Day-Ahead Revised Scheduling Instruction, or Real-Time Electrical Dispatch Instruction such that the KRPP Facility fails to achieve a Hot Start-Up, Warm Start-Up, Cold Start-Up, Ramp Rate, Minimum Generation level, minimum run time, or other Contracted Operating Characteristic as specified in Schedule 2 and such failure is not excused as a result of a Force Majeure Event, then NKEC shall have the right:

- (a) to require GenCo to provide within a reasonable period of time based on the circumstances a written explanation of the reasons for its failure and any steps taken or being taken to mitigate subsequent noncompliance; and
- (b) to the extent NKEC is not reasonably satisfied with such explanation, to call for a test of such Contracted Operating Characteristic at any time within six (6) Months after such failure to comply with the above-referenced Real-Time Electrical Dispatch Instruction. Following such a request, GenCo shall promptly (but in any case within ten (10) Business Days) undertake a test to the standards applicable thereto in a Reliability Test performed in accordance with Schedule 4.

9.6.2 Island Mode Testing

- (a) GenCo shall perform and successfully complete Island Mode testing (i) during the Commissioning; (ii) if at any time during the Term the KRPP Facility fails to operate in Island Mode in accordance with the requirements of this Agreement, within 45 Days after such failure; and (iii) in accordance with Schedule 4.
- (b) GenCo shall submit a certification to GOK and NKEC indicating whether the KRPP Facility has successfully completed the Island Mode testing, if such testing is required under this Agreement, in accordance with Prudent Utility Practices.
- (c) GenCo shall ensure that all appropriate personnel are trained in operations required for maintenance of the Island Mode.

9.6.3 Full Speed No Load Mode Testing

- (a) GenCo shall perform and successfully complete Full Speed No Load Mode testing (i) during the Commissioning, (ii) if at any time during the Term the KRPP Facility fails to operate in Full Speed No Load Mode in accordance with the requirements of this Agreement, within 45 Days after such failure, and (iii) in accordance with Schedule 4.
- (b) GenCo shall submit a certification to GOK and NKEC indicating whether the KRPP Facility has successfully completed the Full Speed No Load Mode testing, if such testing is required under this Agreement, in accordance with Prudent Utility Practices.
- (c) GenCo shall ensure that all appropriate personnel are trained in operations required for maintenance of the Full Speed No Load Mode.

9.7 Testing Required Under Grid Code

To the extent any other testing of the KRPP Facility is required under the Grid Code or the Connection Agreement in relation to safety or reliability or other matters related to KOSTT Grid operations and not imposed in a discriminatory fashion, GenCo shall perform such tests as and when required (it being acknowledged that GenCo shall recover the costs of such testing pursuant to Schedule 1).

9.8 Notice of and Compliance with Testing Procedures

- (a) NKEC shall use commercially reasonable efforts to comply promptly with all reasonable requests by GenCo for assistance in carrying out testing and Commissioning.
- (b) GenCo shall give NKEC not less than twenty-four (24) hours prior written notice of any testing or Commissioning in accordance with this Article 9 and shall be entitled to be present and observe any such testing and Commissioning to verify that the testing or Commissioning is performed in accordance with the requirements of this Agreement.
- (c) NKEC may Dispute the results of any tests or Commissioning not carried out in accordance with this Article 9 and Schedule 4 within five (5) Business Days from the date of receipt of such results or such other timeframe as may be specified hereunder.

9.9 Copies of Test Results

- (a) GenCo shall provide NKEC with copies of the test results of all tests performed pursuant to this Article 9 and after every general overhaul of the KRPP Facility.
- (b) NKEC shall not use or disclose such results other than in connection with the administration and enforcement of this Agreement.

9.10 Scheduling and Accommodation of Additional Tests

If GenCo is required to undertake additional tests of the KRPP Facility that are not required under this Article 9 and which require that electric energy is delivered to the KOSTT Grid, NKEC shall reasonably accommodate such tests as soon as reasonably practicable following a request therefor from GenCo.

9.11 Obligation to Provide Equipment

GenCo shall at its own cost and expense (it being acknowledged that GenCo shall recover such costs pursuant to Schedule 1) provide all necessary instruments, software and equipment required to measure and record the necessary data required for testing purposes under this Agreement.

9.12 Testing Disputes

Any Dispute between GenCo and NKEC arising under this Article 9 shall be resolved in accordance with the provisions of Article 26; provided, however, that, in the case of a Dispute as to the successful completion of the NKEC Acceptance Tests, as certified by the GOK-Appointed Independent Engineer, such Dispute shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 26.

Article 10

Obligations to Buy and Sell Energy and Capacity; NKEC's Exclusive Rights to Energy and Capacity; NKEC's Exclusive Rights to Emissions Credits

10.1 Obligations to Buy and Sell

10.1.1 GenCo Obligations

Subject to the terms of this Agreement and the Declared Operating Characteristics, from and after the Commercial Operations Date, GenCo shall:

- (a) make the Contract Capacity available to NKEC;
- (b) deliver and sell to NKEC at the Connection Point the Dispatched Net Electrical Output (NKEC + KOSTT); and
- (c) provide the Ancillary Services,

provided, however, that GenCo may, subject to the terms of any Consents, upon the occurrence and during the continuation of a NKEC Event of Default, and following the delivery of a Special GOK Notice of Default to GOK and the expiration of the cure periods set forth in Section 25.3, sell, on a day-ahead basis or in real time, all or any portion of any of the foregoing to such third party purchasers as it may determine, in its sole discretion. To the extent GenCo obtains revenues from the sales of capacity, electrical output, or ancillary services to third parties, any revenues (net of reasonable transaction costs incurred by GenCo) earned by GenCo pursuant to such sales shall be applied by GenCo first to reduce the amount of any Availability Payments, Energy Payments, or Additional Payments that become payable by NKEC during the continuation of the applicable NKEC Event of Default and second, to the extent there are additional revenues after reducing the amount payable by NKEC in accordance with the foregoing, such revenues shall be applied by GenCo to reduce any other amounts payable by NKEC to GenCo during the continuation of the applicable NKEC Event of Default.

10.1.2 NKEC Obligations

Subject to and in accordance with the terms of this Agreement and the Declared Operating Characteristics, NKEC shall:

- (a) from and after the Commercial Operations Date, pay for Declared Available Capacity, in accordance with Article 16 and Schedule 1;
- (b) during each Agreement Year, take delivery of and pay for the Dispatched & Delivered Net Electrical Output (NKEC) in accordance with Article 16 and Schedule 1;
- (c) reimburse GenCo for the take or pay payments to KEK Mining in relation to the quantity of Lignite contracted under the Lignite Supply Agreement in accordance with Section 16.2; and
- (d) prior to the Commercial Operations Date, take delivery of and pay for NKEC Acceptance Test Energy in accordance with Article 16 and Schedule 1.

10.2 NKEC's Exclusive Right to Energy and Capacity

- (a) Subject to Section 10.1, except to the extent that electric energy is required for the operation of any part of the KRPP Facility, GenCo shall not, without the prior written approval of NKEC:
 - (i) sell or deliver electric energy produced at the KRPP Facility to any Person other than NKEC; or
 - (ii) confer upon any Person other than NKEC any right in or to the Declared Available Capacity.
- (b) NKEC shall be free to resell electrical capacity, Net Electrical Output, and Ancillary Services as may be permitted under the Laws of Kosovo (and without limiting the effect of the terms of this Agreement). The Parties acknowledge that the KRPP Facility shall be scheduled in accordance with Article 12, but that NKEC shall be free within those parameters to schedule the KRPP Facility so as to coordinate with NKEC's resale of electrical capacity, Net Electrical Output, and Ancillary Services.
- (c) For the avoidance of doubt, the Parties acknowledge and agree that NKEC shall remain obligated to perform its obligations under this Agreement, and any grant of rights to KESCO or any Other Supplier under any Back-to-Back Power Purchase Agreement shall not affect the rights or obligations of GenCo or NKEC under this Agreement. Any failure of KESCO or any Other Supplier to perform its obligations under any Back-to-Back Power Purchase Agreement shall not excuse NKEC from its obligation to perform under this Agreement.

10.3 NKEC's Exclusive Right to Emission Reduction Rights

GenCo acknowledges that NKEC is entitled to any Emission Reduction Rights arising in relation to the operation of the KRPP Facility, including any Emission Reduction Rights arising in relation to electricity or steam that is produced by the KRPP Facility and purchased or used by end users other than NKEC pursuant to Section 10.1.1, except to the extent of any Emission Reduction Rights that are needed by GenCo to comply with the conditions of any applicable Consents in connection with emissions associated with the Kosovo e Re Project. GenCo shall, upon the reasonable request of NKEC, use commercially reasonable efforts to do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances that are required, and otherwise reasonably cooperate with NKEC to give effect to this Section 10.3, including to sell any Emission Reduction Rights in relation to the KRPP Facility as directed by NKEC and for the benefit of NKEC (it being acknowledged that GenCo shall recover any costs incurred pursuant to Schedule 1).

Article 11

Interface With KOSTT; Transmission and Shortfall Payments Under the Market Rules; Scheduling Agency Terms; Market Restructuring

11.1 Obligations of the Parties for Transmission Costs and Underdelivery Charges; GenCo Obligations

11.1.1 Transmission Related Charges; Shortfall Payments Due Under the Market Rules

- (a) The Parties acknowledge that delivery of electrical capacity, Net Electrical Output, and Ancillary Services under this Agreement is made at the Connection Point. All scheduling of transmission service required by NKEC to deliver such electrical capacity, Net Electrical Output, and Ancillary Services shall be the responsibility of NKEC, and GenCo shall have no obligation under this Agreement to undertake such activities. NKEC shall be responsible for paying all charges, including the Transmission Use of System Charge, System Operation Charge and Market Operation Charge (as defined in the Connection Agreement), imposed by KOSTT for the use of the KOSTT Grid in connection with any transmission required by NKEC. NKEC shall make such payments directly to KOSTT. In the event that NKEC fails to make such payments in a timely manner, GenCo shall have the right to make such payments and GenCo shall invoice NKEC for the costs therefor, together with supporting documentation with respect thereto, for payment by NKEC in accordance with Article 17. Any refunds of such charges for which NKEC has reimbursed GenCo, subsequently received by GenCo shall be paid to NKEC within thirty (30) Days after receipt by GenCo.
- (b) NKEC shall be responsible for paying:
 - (i) all charges imposed by KOSTT on either Party under the Grid Code, the Market Rules, the Metering Code or otherwise in connection with the failure to provide electrical capacity, Net Electrical Output, and Ancillary Services (including charges imposed by KOSTT in relation to balancing energy as a result of GenCo's failure to comply with dispatch instructions and charges imposed by KOSTT in relation to GenCo's overgeneration above dispatch instructions); and
 - (ii) any other charge imposed on a party scheduling electrical capacity, Net Electrical Output, or Ancillary Services under the Grid Code, the Market Rules, or the Metering Code.

In the event that GenCo pays for such charges, GenCo shall invoice NKEC for the costs therefor, together with supporting documentation with respect thereto, for payment by NKEC in accordance with Article 17. NKEC shall receive (and to the extent GenCo receives then it shall pay to NKEC within thirty (30) Days after receipt thereof) any payments due from KOSTT under

the Grid Code, the Market Rules, the Metering Code, or any other agreement related to making such capacity available or delivering such Net Electrical Output or Ancillary Services.

11.1.2 GenCo Responsible for All Other Connection Agreement Obligations

- (a) Notwithstanding anything to the contrary contained herein, GenCo shall be responsible for performing all of its obligations under the Connection Agreement, including any obligation to make any payment thereunder to KOSTT (it being acknowledged that GenCo shall recover any such payments pursuant to Schedule 1).

11.2 NKEC to Serve as Scheduling Agent for Scheduling Energy

- (a) GenCo shall, pursuant to the Scheduling Agency Terms, appoint NKEC, or, at NKEC's election, KESCO, as the agent of GenCo for the purpose of scheduling with KOSTT the electrical capacity, Net Electrical Output, and Ancillary Services of the KRPP Facility. The appointment of NKEC (or KESCO) as the agent of GenCo shall be limited to serving as GenCo's scheduling agent.
- (b) NKEC shall indemnify and defend GenCo from any and all Losses incurred or required to be paid, directly or indirectly, by, or sought to be imposed upon, GenCo arising in connection with NKEC's (or KESCO's, as the case may be) failure to properly schedule the KRPP Facility in accordance with this Agreement including the Scheduling Agency Terms or to otherwise fulfill its obligations under this Agreement including the Scheduling Agency Terms.

11.3 Market Restructuring

The Parties acknowledge and agree that GOK intends to restructure the electricity market in Kosovo. In the event that the new market structure requires that a system operator, market operator, or other licensed participant in the new market structure schedule the capacity to be made available, or the Net Electrical Output or Ancillary Services to be generated by the KRPP Facility, then:

- (a) NKEC shall have the right to appoint a licensed participant to act as an agent for purpose of exercising its rights to schedule and dispatch the generation of Net Electrical Output;
- (b) GenCo shall, during the effectiveness of such appointment, recognize and comply with scheduling and dispatch instructions issued by such licensed participant;
- (c) NKEC will continue to pay GenCo all Availability Payments, Energy Payments, payments due under this Article 11 and Additional Payments due pursuant to this Agreement, as calculated in accordance with Schedule 1, based on the scheduling and dispatch instructions issued by such licensed participant;
- (d) scheduling and dispatch will be performed pursuant to the Grid Code provisions that then deal with scheduling and dispatch instead of pursuant to the applicable provisions of this Agreement; and
- (e) GenCo and NKEC shall, subject to the approval of Lenders, negotiate in good faith any modifications to this Agreement and any other Project Agreements and any new or additional agreements, documents, or other instruments that may be required to be entered into in order to effectuate the foregoing, but without materially impairing GenCo's rights and economic benefits under this Agreement and any other Project Agreements; provided, however, that any such modifications to this Agreement or other Project Agreements for such purpose shall be subject to Lender approval to the extent required by the Financing Documents.

Article 12
Control and Operation of KRPP Facility

12.1 Operation and Maintenance of the KRPP Facility

- (a) GenCo shall operate and maintain or cause the operation and maintenance of the KRPP Facility to be in accordance with the terms of this Agreement, the Operating Procedures developed in accordance with Section 8.2, the Laws of Kosovo, Metering Code, GenCo Consents, Prudent Utility Practices, and Prudent Electrical Practices; provided, however, that, notwithstanding any other provision of this Agreement or the other Project Agreements to the contrary, GenCo shall not have any liability hereunder for failing to comply with the terms of this Agreement, the Operating Procedures developed in accordance with Section 8.2, the Laws of Kosovo, GenCo Consents, Prudent Utility Practices, and Prudent Electrical Practices, in each case, if such failure is attributable to the Grid Constraints.
- (b) GenCo shall maintain the KRPP Facility in a condition such that it is capable of operation within the Contracted Operating Characteristics and shall promptly (but in any case within three (3) Business Days) inform NKEC and KOSTT of any inability to operate in accordance with such Contracted Operating Characteristics.
- (c) GenCo shall operate the KRPP Facility within the range of Contracted Operating Characteristics (including voltage levels) specified in Section 1.1 of Schedule 2.

12.2 Obligation to Maintain Minimum Lignite Supplies and Certain Other Stocks

- (a) From the Commercial Operations Date and throughout the Term, GenCo shall maintain, or cause KEK Mining to maintain, on or near the Plant Site (KRPP) stocks of lignite sufficient to enable the KRPP Facility to be operated continuously at full output for a minimum period of fifteen (15) Days under normal operating conditions.
- (b) From the Commercial Operations Date and throughout the Term, GenCo shall use commercially reasonable efforts to cause KEK Mining to maintain an in-pit inventory of lignite that is sufficient to enable the KRPP Facility to be operated continuously at full output for a minimum period of three (3) Months under normal operating and Real-Time Electrical Dispatch conditions.
- (c) To the extent that GenCo enforces its rights under Section 3.7 (*Coal Yard Reserves and In-Pit Inventory*) of the Lignite Supply Agreement, GenCo shall be deemed to have fulfilled its obligations under Sections 12.2(a) and 12.2(b).
- (d) From the Commercial Operations Date and throughout the Term, GenCo shall use commercially reasonable efforts to maintain on the Plant Site (KRPP) an inventory of Water that is sufficient to enable the KRPP Facility to be operated continuously at full output for a minimum period of one (1) Day under normal operating and Real-Time Electrical Dispatch conditions; provided, however, in the event that GenCo fails to do so it shall have no claims and no relief in relation to the one (1) Day period in connection with any failure of the Water Supplier to deliver Water or any Raw Water Force Majeure Event.

12.3 Estimated Energy Requirements

- (a) Not later than three hundred (300) Days prior to the Scheduled Commercial Operations Date (as may be updated from time to time) and not later than three hundred (300) Days prior to the end of each Agreement Year thereafter, NKEC shall notify GenCo of its requirements, estimated in good faith, for Net Electrical Output from the KRPP Facility on a Monthly basis (or any part-Months, as the case may be) for the following Agreement Year.
- (b) Not later than sixty (60) Days prior to the Scheduled Commercial Operations Date and not later than sixty (60) Days prior to the beginning of each ½-Year Period thereafter, NKEC shall notify

GenCo of its requirements, estimated in good faith, for Net Electrical Output from the KRPP Facility on a Monthly basis (or any part-Months, as the case may be) for the following six (6) Months.

- (c) Not later than fifteen (15) Days prior to the Scheduled Commercial Operations Date and not later than fifteen (15) Days prior to the beginning of each Month thereafter, NKEC shall further notify GenCo of its requirements, estimated in good faith, for Net Electrical Output from the KRPP Facility on a Daily basis for the following Month, or, if the Scheduled Commercial Operations Date occurs within fifteen (15) Days after the end of a Month, its requirements for the remainder of the Month and for the following Month, as the case may be.
- (d) Not later than three (3) Business Days prior to the Scheduled Commercial Operations Date and not later than three (3) Business Days prior to the beginning of each Week thereafter, NKEC shall notify GenCo of its requirements, estimated in good faith, for Net Electrical Output from the KRPP Facility on an hourly basis for the following Week, or, if the Scheduled Commercial Operations Date occurs within three (3) Business Days after the end of a Week, its requirements for the remainder of the Week and the following Week, as the case may be.
- (e) NKEC shall, as soon as is practicable after becoming aware of any material changes to its requirements for Net Electrical Output specified in any such notice, notify GenCo of such change.
- (f) Any notice issued by NKEC under this Section 12.3 shall not be binding and no such notice shall subsequently prevent NKEC from altering its requirements for Net Electrical Output from time to time.

12.4 Declared Available Capacity

12.4.1 Forecasts

- (a) GenCo shall provide to NKEC and KOSTT as and when required by the Grid Code Monthly (in relation to the twelve (12) Months ahead), Weekly (in relation to the eight (8) Weeks ahead), and Daily (in relation to the seven (7) Days ahead) forecasts of generation availability, constraints, and other relevant plant conditions.
- (b) Any notice issued by GenCo to NKEC under this Section 12.4.1 shall not be binding, and no such notice shall subsequently prevent GenCo from altering its availability from time to time.

12.4.2 GenCo Declarations Day-Ahead; Notification Deadlines

- (a) Not later than 9:00 hours on the Day prior to each Operating Day (a “**Declaration Deadline**”) following the Commercial Operations Date, GenCo shall notify NKEC (with a copy to KOSTT) of the Declared Available Capacity for each hour of such Operating Day, subject to the maximum amount specified in Section 12.4.4. If GenCo fails to give such notice on or before the Declaration Deadline, the Declared Available Capacities for each hour of such Operating Day shall be deemed to be equal to the Declared Available Capacity for each hour declared by GenCo for the immediately previous Operating Day.
- (b) The Parties acknowledge that the times set forth in Section 12.4.2(a) are intended to be approximately four (4) hours prior to the submission of a schedule to KOSTT. To the extent the timeframe for submission of such schedule to KOSTT is revised pursuant to the practices in Kosovo, the timeframes shall be adjusted accordingly.
- (c) After the Declaration Deadline, GenCo may not revise the Declared Available Capacity for any hour of the applicable Operating Day, but shall immediately notify NKEC of any change in the available generating capacity of the KRPP Facility so that NKEC may notify KOSTT in the event a revision to the schedule for the KRPP Facility is authorized in accordance with the Grid Code.

NKEC shall, in accordance with Section 11.1, be responsible for providing to KOSTT (with a copy to GenCo) notice of the proposed revision.

12.4.3 GenCo Notification Requirements

- (a) When making notifications of Declared Available Capacities, GenCo shall not, subject to Prudent Utility Practices, fail to make available (solely for economic or strategic purposes) the generating capacity of the KRPP Facility; provided, however, the Parties agree that the unavailability of the KRPP Facility as a result of a Scheduled Outage, a Forced Outage or Partial Forced Outage, a Maintenance Outage, or a Force Majeure Event shall not be a failure to make available generating capacity.
- (b) The notification by GenCo of any Declared Available Capacity shall be made at the forecasted Ambient Site Conditions for the applicable hour. The Parties shall agree upon a forecast method as part of the Operating Procedures in accordance with Section 8.2.
- (c) GenCo shall keep NKEC informed of the Ambient Site Conditions as appropriate for purposes of administering this Agreement.
- (d) When making notifications of Declared Available Capacities, GenCo shall use commercially reasonable efforts to notify NKEC of any Start-Up anticipated to be necessary for GenCo to comply with a Day-Ahead Scheduling Instruction or Day-Ahead Revised Scheduling Instruction, and GenCo shall use commercially reasonable efforts to notify NKEC thereafter of any changes to such anticipated Start-Up requirements.

12.4.4 Maximum Declared Available Capacity

- (a) The Declared Available Capacity shall not at any time exceed the lesser of:
 - (i) the corresponding Tested Capacity (adjusted to the forecasted Ambient Conditions); and
 - (ii) the corresponding Contract Capacity (adjusted to the forecasted Ambient Conditions),in each case in effect at the relevant time.

12.5 Day-Ahead Scheduling Instruction; Revisions

12.5.1 Day-Ahead Scheduling Instruction and Day-Ahead Revised Scheduling Instruction Notifications

- (a) Not later than 17:00 hours on the Day prior to each Operating Day, subject to Section 12.5.1(b), NKEC shall notify GenCo of NKEC's requirements for Net Electrical Output and Ancillary Services from the KRPP Facility on an hourly basis for such Operating Day (a "**Day-Ahead Scheduling Instruction**").
- (b) Subject to Section 12.5.2, NKEC may notify GenCo (with a copy to KOSTT) of any upward or downward revision to any Day-Ahead Scheduling Instruction (a "**Day-Ahead Revised Scheduling Instruction**") from time to time. Absent a Day-Ahead Revised Scheduling Instruction delivered in accordance with the foregoing, the Day-Ahead Scheduling Instruction shall apply.

12.5.2 Day-Ahead Scheduling Instruction and Day-Ahead Revised Scheduling Instruction Requirements

GenCo shall comply with Day-Ahead Scheduling Instructions and Day-Ahead Revised Scheduling Instructions prevailing at the start of the relevant hour, provided that such Day-Ahead Scheduling Instructions and Day-Ahead Revised Scheduling Instructions:

- (a) have been issued in accordance with Section 12.5.1 after NKEC has obtained any necessary approval from KOSTT;

- (b) are consistent with the Declared Operating Characteristics;
- (c) are provided in accordance with Section 12.5.1 or otherwise with reasonable notice;
- (d) are capable of being complied with given Grid Constraints; and
- (e) do not require GenCo to operate the KRPP Facility at a level exceeding the Declared Available Capacity prevailing for that hour.

12.6 Real-Time Electrical Dispatch

KOSTT may, manually or through automated generation control, dispatch (including with regard to any of the Declared Operating Characteristics) the KRPP Facility in real time to the extent required by the Grid Code and to the extent required to provide voltage support or any other Ancillary Service pursuant to any agreement between NKEC and KOSTT authorizing the use of the KRPP Facility for the provision of such Ancillary Services, in each case by notifying GenCo (with a copy to NKEC) of any revised requirements for Net Electrical Output and Ancillary Services from the KRPP Facility and NKEC may dispatch the KRPP Facility in any way permitted by the Grid Code and not inconsistent with the instructions of KOSTT (each such notification being referred to as a “**Real-Time Electrical Dispatch Instruction**”), and GenCo shall comply with such Real-Time Electrical Dispatch Instructions; provided, however, that GenCo shall not be required to comply with Real-Time Electrical Dispatch Instructions to the extent:

- (a) the Real-Time Electrical Dispatch Instructions require GenCo to operate the KRPP Facility at a level exceeding the Declared Available Capacity prevailing for that hour;
- (b) the Real-Time Electrical Dispatch Instructions are in violation of the Grid Code;
- (c) the Real-Time Electrical Dispatch Instructions cannot reasonably be complied with given Grid Constraints; or
- (d) the Real-Time Electrical Dispatch Instructions are inconsistent with the Declared Operating Characteristics.

12.7 Recording of Communications

Each Party hereby authorizes the other Party to record any communications relating to:

- (a) Declared Available Capacity,
- (b) any Day-Ahead Scheduling Instructions and any Day-Ahead Revised Scheduling Instructions, and
- (c) any Real-Time Electrical Dispatch Instructions,

and agrees to supply, at the request of the other Party, a copy or transcript of any such recording.

12.8 Emergency Set-Up and Curtailment Plans

- (a) GenCo shall develop Network Emergency procedures for the KRPP Facility, including recovery from a local or widespread electrical blackout and voltage reduction to effect load curtailment, and shall, to the extent consistent with the Declared Operating Characteristics, comply with such Network Emergency procedures.
- (b) To the extent not fully addressed in the Contracted Operating Characteristics, GenCo shall make technical references available to NKEC concerning required times for Start-Ups and Minimum Generation ability.

12.9 Supply of Power in Case of Network Emergency

- (a) Subject to Section 12.9(c) and without limiting the obligation of NKEC to make payments therefor in accordance with Section 12.9(b), in the event of a Network Emergency, GenCo shall use commercially reasonable efforts, consistent with Declared Operating Characteristics, to deliver Net Electrical Output and Ancillary Services in accordance with instructions issued by KOSTT to GenCo to prevent or remedy a Network Emergency.
- (b) For the purposes of calculating the Availability Payments, Energy Payments and Additional Payments payable pursuant to this Agreement, Net Electrical Output and Ancillary Services delivered pursuant to instructions issued by KOSTT pursuant to Section 12.9(a) shall be treated as Net Electrical Output and Ancillary Services that were scheduled by NKEC under a Day-Ahead Scheduling Instruction in accordance with the terms of this Agreement, but only up to the amount of the Contract Capacity (with respect to Availability Payments) and the amount of the Dispatched Net Electrical Output (NKEC + KOSTT) (with respect to Energy Payments), and based on the Additional Payments associated with the dispatch.
- (c) Nothing in this Section 12.9 shall require GenCo to operate the KRPP Facility in any manner that is inconsistent with the Declared Operating Characteristics, Grid Code or Prudent Utility Practices.

12.10 Notification of Non-Conforming Water

Promptly but in any case within sixty (60) minutes (or as soon as reasonably practicable in the event of an emergency) upon becoming aware of any Non-Conforming Water or any determination that any water previously delivered by Water Supplier was Non-Conforming Water, GenCo shall notify NKEC and GOK of such by telephone, followed by written notice.

12.11 Employment of Qualified Personnel

From and after the first date that any electric energy is delivered from the KRPP Facility to the Connection Point, GenCo shall ensure that its and/or the GenCo Contractors' personnel are on duty at the KRPP Facility at all times, and that such personnel are adequately qualified and trained, and who have experience as necessary and appropriate to undertake the duties for which they are engaged at the KRPP Facility.

12.12 Maintenance of Operating Records

- (a) Each Party shall keep complete and accurate records and all other data reasonably required for the proper administration of this Agreement. GenCo shall maintain an accurate and up-to-date operating log, in a format mutually agreed upon by the Parties, at the Plant Site (KRPP) with records and data of:
 - (i) Net Electrical Output generated by the KRPP Facility, and fuel consumed in respect of each hour by the KRPP Facility;
 - (ii) Reactive Power;
 - (iii) changes in operating status, Scheduled Outages, Maintenance Outages, and Start-Ups;
 - (iv) Ambient Conditions;
 - (v) Declared Available Capacity for each Operating Hour;
 - (vi) Day-Ahead Scheduling Instructions and Day-Ahead Revised Scheduling Instructions for each Operating Hour;
 - (vii) all Real-Time Electrical Dispatch Instructions; and
 - (viii) other matters agreed upon by the Parties.

- (b) All such records and data shall be maintained for a minimum of sixty (60) Months after the creation of such record or data and for any additional length of time required by any Public Authority with jurisdiction over either Party and neither Party shall dispose of or destroy any such records or data after such sixty (60) Month period unless the Party desiring to dispose of or destroy any such records or data has first given thirty (30) Days prior written notice to the other Party, generally describing the records or data to be destroyed or disposed of, and the Party receiving such notice has not objected thereto in writing within ten (10) Days.
- (c) Either Party shall have the right, upon ten (10) Days prior written notice to the other Party, to examine the records and data kept by the other Party pursuant to Section 12.12(a) at any time during normal office hours during the period such records and data are required hereunder to be maintained.

12.13 Cessation of Operation of the KRPP Facility

12.13.1 Transfer of Operations

The Parties acknowledge that GOK has the right to operate the KRPP Facility under certain circumstances as described in Section 5.2 (*Cessation of Operation of the KRPP Facility*) of the Implementation Agreement. To the extent that GOK exercises such rights, GenCo shall have no obligations hereunder in relation to operations of the KRPP Facility and NKEC shall have no payment obligations to GenCo in relation to such operations.

12.14 Free of Encumbrances

GenCo shall at all times keep the KRPP Facility free and clear of all Encumbrances other than Permitted Encumbrances or Encumbrances created by any security interest or similar interests granted to the Lenders in connection with the Initial Financing and any Refinancing permitted under the Project Agreements and in connection with any financing related to a Restoration or Environmental Remediation (and specifically excluding, without limitation, any Shareholder Loans).

12.15 NKEC's Inspection Rights During Commercial Operation

- (a) Following the Commercial Operations Date, representatives of NKEC and the GOK-Appointed Independent Engineer shall, at all reasonable times, including weekends and nights, have access to the KRPP Facility to review operating logs and to perform all inspections, maintenance, service, and operational reviews as may be reasonably appropriate to facilitate the performance of this Agreement.
- (b) While at the KRPP Facility, NKEC shall cause such representatives to observe such safety precautions as may be required by GenCo and shall cause such representatives to conduct themselves in a manner that will not interfere with the operation of the KRPP Facility.
- (c) Any visits to the KRPP Facility by NKEC or its representatives shall not be construed as an endorsement by NKEC of the operation, maintenance, modification, and repair procedures employed by GenCo at the KRPP Facility.

Article 13 Facility Outages

13.1 Scheduled Outage Periods

13.1.1 Taking of Scheduled Outages

GenCo may undertake Scheduled Outages only according to a schedule that has been proposed by GenCo and accepted by NKEC according to the procedures in this Section 13.1 and approved by KOSTT in accordance with the Grid Code.

13.1.2 GenCo Proposed Scheduled Outage

GenCo's proposals for Scheduled Outage periods shall be made as follows:

- (a) As soon as practicable but in any event within twenty-four (24) hours after the Commercial Operations Date, GenCo shall notify NKEC of its proposed schedule for Scheduled Outage periods for the period from such Commercial Operations Date until the next occurring August 1st. Thereafter, by the next occurring August 1st and by each such anniversary thereof, GenCo shall notify NKEC of its proposed schedule of Scheduled Outage periods for the following Year.
- (b) Unless otherwise agreed, Scheduled Outage periods shall not be scheduled to exceed the number of Days in any Agreement Year specified in the Long-Term Maintenance Plan or more than the following:
 - (i) twenty-four (24) Days in any Agreement Year for which there is no maintenance performed other than annual maintenance;
 - (ii) forty-five (45) Days in any Agreement Year for which there is non-annual maintenance scheduled, but there is no Major Overhaul; or
 - (iii) sixty-nine (69) Days if a Major Overhaul is required.
- (c) GenCo may propose Scheduled Outage periods only during the Maintenance Months, and in no event shall GenCo propose or undertake any Scheduled Outage during the Non-Maintenance Months unless so requested by NKEC. In addition, GenCo shall not schedule a Major Overhaul except as provided in the Long-Term Maintenance Plan.
- (d) The Parties acknowledge that the date of August 1st when used in this Section 13.1.2 is intended to be approximately one (1) month prior to the submission of a schedule of Scheduled Outages to KOSTT for the subsequent Year under the Grid Code. To the extent the timeframe for submission of such schedule to KOSTT is revised pursuant to the practices in Kosovo, the timeframes shall be adjusted accordingly.

13.1.3 NKEC Response to Proposed Scheduled Outage

- (a) Within ten (10) Business Days after receipt by NKEC from GenCo of its proposed Scheduled Outage periods pursuant to Section 13.1.2, NKEC shall notify GenCo whether or not it agrees to the proposed Scheduled Outage periods.
- (b) Within five (5) Business Days thereafter, the Parties shall meet to discuss any disagreements as to the Scheduled Outage periods.
- (c) Within five (5) Business Days after such meeting, and with due consideration of GenCo's requirements for Scheduled Outages, including requirements of the Long-Term Maintenance Plan, NKEC shall notify GenCo of the periods during Maintenance Months when GenCo may undertake those Scheduled Outages, such periods to be of the same duration as, and as close as reasonably practicable to the periods proposed by GenCo and to be consistent with Prudent Utility Practices.

13.1.4 GenCo Coordination with KOSTT

- (a) In accordance with the Grid Code, GenCo shall be responsible for proposing to KOSTT the proposed Scheduled Outages for the KRPP Facility approved in accordance with Section 13.1.3, including to provide KOSTT the following:
 - (i) by the fourteenth (14th) Day of each Month, monthly forecasts of the availability of the KRPP Facility, including as impacted by any proposed Scheduled Outages, for the following three (3) Years on a weekly basis;

- (ii) by Friday of each Week, weekly forecasts of the availability of the KRPP Facility, including as impacted by any proposed Scheduled Outages, for the following eight (8) Weeks on a daily basis; and
- (iii) two (2) Days in advance of such period, daily forecasts of the availability of the KRPP Facility, including as impacted by any proposed Scheduled Outages, for the following seven (7)-Day period.

NKEC shall not be responsible for communications thereof with KOSTT.

- (b) GenCo shall notify NKEC of any communications from KOSTT with regard to the scheduling of Scheduled Outages, and NKEC shall participate in any discussions with KOSTT with regard to the scheduling of Scheduled Outages.
- (c) The final schedule of Scheduled Outages will be determined in accordance with the Grid Code.
- (d) GenCo shall provide to NKEC copies of the notices provided under Section 13.1.4(a).

13.1.5 NKEC Request for Rescheduling of Scheduled Outage

- (a) Provided that NKEC shall not request that a Scheduled Outage period be rescheduled in a manner or at a time inconsistent with Prudent Utility Practices or manufacturer's recommendations, NKEC may upon thirty (30) Days' advance notice to GenCo request GenCo to reschedule a Scheduled Outage period previously scheduled under Section 13.1.2(a) and/or 13.1.2(b). GenCo shall use commercially reasonable efforts to comply with such request and shall notify NKEC within fifteen (15) Days after receipt of NKEC's request whether GenCo is able to comply with such request.
- (b) If GenCo is unable to comply with such request, it shall give its reasons therefor and shall, where reasonably practicable, propose the period or periods, if any, to which the Scheduled Outage may be rescheduled, together with an estimate of the costs it expects it would reasonably incur as a result of such rescheduling. In such event, the Parties shall discuss in good faith an alternative period in which the Scheduled Outage may be undertaken. If the Parties have not reached agreement within ten (10) Business Days after GenCo's notice under Section 13.1.5(a), NKEC shall not later than ten (10) Business Days thereafter notify GenCo of the period or periods during which the Scheduled Outage shall occur, being either:
 - (i) the period or periods originally scheduled under Section 13.1.2 and/or this Section 13.1.5; or
 - (ii) such alternative period as may have been proposed by GenCo in its reply to NKEC's request for an alternative period.
- (c) Any changes to the schedule of Scheduled Outages shall be subject to the approval of KOSTT to the extent required under the Grid Code. GenCo shall be responsible for promptly requesting KOSTT's approval of any changes to the Scheduled Outages, and NKEC shall participate in any discussions with KOSTT with regard to the scheduling of Scheduled Outages.
- (d) Any costs incurred by GenCo as a result of the rescheduling of a Scheduled Outage shall be included as Permitted Ongoing Miscellaneous Operational Charges and recovered through Schedule 1 to the extent the additional costs cannot be reasonably avoided in accordance with the terms of the LTM Agreement, and GenCo has, upon request from NKEC, reasonably notified NKEC of the anticipated costs to be incurred in connection with the proposed rescheduling of the Scheduled Outage. GenCo shall use commercially reasonable efforts to mitigate any costs associated with rescheduling a Scheduled Outage.

13.1.6 KOSTT Request for Rescheduling of Scheduled Outage

In the event KOSTT requests a change to the schedule of Scheduled Outages, GenCo shall within two (2) Business Days notify NKEC, and NKEC shall participate in any discussions with KOSTT with regard to the scheduling of Scheduled Outages.

13.1.7 Carrying Out of Scheduled Outages

GenCo shall, subject to the Grid Code, and Prudent Utility Practices, use reasonable endeavors to carry out Scheduled Outages during the times provided for in accordance with this Section 13.1.7.

13.2 Notification of Maintenance Months

NKEC shall give notice to GenCo by no later than six (6) Months prior to the start of the first Maintenance Month in an Agreement Year, of the Maintenance Months and the Non-Maintenance Months applicable in such Agreement Year; provided, however, where NKEC does not designate the Maintenance Months or the Non-Maintenance Months as the case may be, the then most recent designation shall remain in effect.

13.3 Maintenance Outages

13.3.1 Scheduling of Maintenance Outages

GenCo shall advise NKEC of the need for any Maintenance Outages, together with the proposed commencement date and estimated duration of the work to be undertaken. NKEC shall advise GenCo of the periods during which such Maintenance Outage may be undertaken, such periods to be reasonable in light of NKEC's requirements for Net Electrical Output and Ancillary Services and the necessity for the Maintenance Outage.

13.3.2 NKEC Coordination with KOSTT

- (a) In accordance with the Grid Code, GenCo shall be responsible for proposing to KOSTT the proposed Maintenance Outages for the KRPP Facility approved in accordance with Section 13.3.1.
- (b) GenCo shall notify NKEC of any communications from KOSTT with regard to the scheduling of Maintenance Outages, and NKEC may participate in any discussions with KOSTT with regard to the scheduling of Maintenance Outages.
- (c) The final schedule of Maintenance Outages shall be determined in accordance with the Grid Code.

13.3.3 Carrying Out of Maintenance Outages

GenCo shall, subject to the Grid Code, and Prudent Utility Practices, use reasonable endeavors to carry out Maintenance Outages during the times provided for in accordance with this Section 13.3.3.

13.4 Notification of Forced Outages

- (a) GenCo shall advise NKEC of any Forced Outage or Partial Forced Outage and shall, as such information becomes available and is updated from time to time, keep NKEC informed as to the estimated duration of the work to be undertaken and the estimated conclusion of the Forced Outage or Partial Forced Outage.
- (b) GenCo shall be responsible for providing notice to KOSTT of any Forced Outages or Partial Forced Outages, as required under the Grid Code.

Article 14
Environmental Protection, Health, and Safety

14.1 Environmental Protection, Health and Safety.

- (a) With respect to the Site and any other aspect of the Kosovo e Re Project under its control, GenCo shall take necessary and adequate steps in accordance with Prudent Utility Practices to:
 - (i) comply in all material respects with the Applicable Standards; and
 - (ii) prevent the occurrence of Environmental Conditions within its reasonable control.
- (b) If GenCo causes an Environmental Condition, GenCo shall, at its cost, promptly take all remedial action as required by the Environmental Standards to the extent relating to such Environmental/Archaeological Condition; provided, however, that this Section 14.1 shall not diminish in any manner whatsoever GenCo's rights to indemnification under any of the Project Agreements (including its rights to recover costs pursuant to Section 15.3.8 or Schedule 1) with respect to any Environmental Conditions existing at the Site or otherwise relating to the Kosovo e Re Project on or prior to the Transfer Date.
- (c) GenCo shall promptly notify the relevant Public Authority of such material environmental accident or emergency or material accident related to the health and safety of workers (and use commercially reasonable efforts to notify the relevant Public Authority verbally not more than four (4) hours after becoming aware of such material accident or emergency), and shall as soon as reasonably practicable (but in no event more than four (4) Business Days after becoming aware of a material accident or emergency) provide a written report of the cause and outcomes of the event and the measures undertaken to date, and the planned actions, to remediate such material accident or emergency, and shall report periodically, but in no event less frequently than Monthly until completion of any required remediation following such material environmental accident or emergency, on remediation programs and emergency response plans for Environmental/Archaeological Conditions related to the KRPP Facility.
- (d) GenCo shall implement the E&S Management Plan.
- (e) GenCo shall, in connection with its obligations set forth in Section 3.7(e):
 - (i) at the times required consistent with Prudent Utility Practice, conduct a groundwater analysis in a manner reasonably acceptable to NKEC and GOK and consistent with Prudent Utility Practices, which shall include analysis of at least the following:
 - (A) BTEX;
 - (B) PAHs;
 - (C) phenols; and
 - (D) metals with particular reference to heavy metals (Pb, Cd, Zn, Cu, Cr, Ni, As, Hg); and
 - (ii) deliver all groundwater analyses to GOK and NKEC within ten (10) Days following the issuance of the final drafts of such analyses.

14.2 ESMPs

GenCo shall:

- (a) require the EPC Contractor to comply with the ESMPs-EPC (Plant) pursuant to Schedule 15;
- (b) require the O&M Contractor to comply with the ESMPs-O&M pursuant to Schedule 17;

- (c) if GenCo elects to separately procure the Specified Environmental Condition Remediation Contractor in accordance with Sections 3.9.5(g) and 15.2(a), require the Specified Environmental Condition Remediation Contractor to comply with the ESMPs-Enviro pursuant to Schedule 19;
- (d) require the Administrative Services Contractor to comply with the ESMPs-Admin pursuant to Schedule 19;
- (e) required the GenCo Connection Works Contractor to comply with the ESMPs-EPC (Connection) pursuant to Schedule 18; and
- (f) require any other Contractor engaged by GenCo in connection with construction in relation to the Kosovo e Re Project to comply with environmental and social management plans substantially similar to those described in Schedule 15.

14.3 Presumptions as to Environmental/Archaeological Conditions

- (a) The Parties acknowledge and agree that any Environmental/Archaeological Condition discovered at the Site prior to the date eighteen (18) Months after the Commercial Operations Date shall be presumed to relate to conditions existing at or before the Transfer Date, and not to relate to GenCo's activities thereon, absent evidence that such Environmental/Archaeological Condition was caused by GenCo or any Person under GenCo's control.
- (b) Notwithstanding anything to the contrary in Section 14.3(a), the Parties acknowledge and agree that, following the Commercial Operations Date, any Environmental Condition at the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, or any other landfill maintained by GenCo, if any, that is discovered and relates directly to the wastes being disposed of by GenCo thereon, shall be presumed to relate to GenCo's activities thereon, and not to relate to conditions existing at or before the Transfer Date.
- (c) Notwithstanding any other provision to the contrary in any of the Project Agreements, (i) under no circumstance shall GenCo or any Person under GenCo's control be presumed at any time to have caused any Archaeological Conditions at the Site (including the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, or any other landfill maintained by GenCo), and (ii) any such Archaeological Conditions shall be deemed to be a Pass-Through Environmental/Archeological Condition regardless of the date on which any such condition is discovered.

Article 15 Environmental Remediation

15.1 Environmental Remediation to Abate Environmental/Archaeological Conditions

- (a) As soon as practicable after the Transfer Date, without limiting the effect of GOK's indemnification obligation under Section 8.2 (*Indemnification for Environmental Standards*) of the Implementation Agreement, GenCo shall cause the Site to come into compliance with and at all times thereafter comply with the Environmental Standards applicable to the Site, including by fully remediating all Specified Environmental/Archaeological Conditions and Pass-Through Environmental/Archaeological Conditions (i) in accordance with the results of a site-specific risk assessment performed using site-specific data adequate to evaluate risk and develop appropriate remedial plans and recognizing the industrial use of the Site and (ii) employing institutional controls where appropriate; provided, however, that additional remedial measures shall be performed if required by the Environmental Standards.
- (b) The obligation of GenCo under Section 15.1(a) (but without limiting any obligations GenCo may have under the Laws of Kosovo or the Financing Documents) is applicable only to the extent that:

- (i) in relation to a Specified Environmental/Archaeological Condition, the costs related thereto are reimbursed to GenCo as a Project Cost under Schedule 1 to this Agreement; or
- (ii) in relation to a Pass-Through Environmental/Archaeological Condition,
 - (A) the contract with the firm procured to undertake the Environmental Remediation for such Pass-Through Environmental/Archaeological Condition has been approved by GenCo, NKEC and GOK in accordance with Section 15.3.6(b)
 - (B) the costs related thereto are reimbursed to GenCo pursuant to Section 15.3.8;
 - (C) the remediation to be performed by GenCo in accordance with Section 15.1(a) has been determined to be technically feasible and commercially reasonable by the Remediation Expert in accordance with Section 15.3 below; and
 - (D) the Pass-Through Environmental/Archaeological Condition does not relate to groundwater contamination existing on the Site but originating at a location upstream or otherwise not on the Site.
- (c) For the avoidance of doubt, to the extent that GenCo incurs any costs in connection with the remediation of groundwater contamination existing on the Site but originating from an offsite location (and not otherwise caused by GenCo or any Person under GenCo's control), whether prior to or after the Transfer Date, such costs shall be treated as Environmental Remediation costs resulting from a Pass-Through Environmental/Archaeological Condition, and GenCo shall be entitled to recover such costs pursuant to Section 15.3.8 of this Agreement.

15.2 Environmental Remediation to Abate a Specified Environmental/Archaeological Condition

- (a) GenCo shall, at its option, either (i) include in the Tender (Plant) as part of the scope of work for the EPC Contractor (Plant) the obligation that the EPC Contractor shall remediate the Specified Environmental/Archaeological Conditions and include such work in the EPC Contract or (ii) tender for such remediation to be conducted by the Specified Environmental Condition Remediation Contractor procured separately through the Tender (Environmental) set forth in Section 3.11.
- (b) It is the intent of the Parties that the costs of such remediation will be included as a Project Cost paid out of Actual Debt and Actual Equity and reimbursed to GenCo under Schedule 1 to this Agreement.

15.3 Environmental Remediation to Abate a Pass-Through Environmental/Archaeological Condition

15.3.1 Preparation of Preliminary Environmental Remediation Estimate

- (a) In the event that a Pass-Through Environmental/Archaeological Condition requires GenCo (in accordance with its obligations under this Agreement or the Environmental Standards) to undertake the control, remediation, or removal of Hazardous Materials or other actions to remediate a Pass-Through Environmental/Archaeological Condition (each such undertaking referred to herein as an "**Environmental Remediation**"), GenCo shall, at GenCo's cost (subject to recovery pursuant to Section 15.3.8), engage an independent engineering consultancy firm acceptable to NKEC from the list of firms set forth on Schedule 22 hereto (and, to extent the Parties cannot agree, then an expert appointed by the ICC International Centre for Expertise in accordance with the ICC Rules for Expertise) (the "**Remediation Expert**"). If GenCo is unable to appoint or the Parties are unable to agree upon a firm from the list on Schedule 22, the Parties shall request the ICC Centre for Expertise to appoint an independent engineering consultancy firm for ad hoc proceedings in accordance with the Rules for the Appointment of Experts and

Neutrals of the International Chamber of Commerce, with the request that the ICC Centre for Expertise shall appoint within five (5) Business Days or as soon as practicable thereafter, and such Person so appointed shall be the Remediation Expert. The Remediation Expert shall develop and deliver to NKEC a preliminary written estimate (the “**Preliminary Environmental Remediation Estimate**”) of:

- (i) the projected Environmental Remediation Costs (the “**Environmental Remediation Cost Estimate**”); and
 - (ii) a description of the required work to complete the Environmental Remediation and a preliminary schedule (such schedule and each such schedule contained in the Full Environmental Remediation Report, an “**Environmental Remediation Schedule**”), which Environmental Remediation Schedule shall include the period of time reasonably estimated to complete the Environmental Remediation (which period shall be referred to herein as the “**Environmental Remediation Period**”), for the activities required to complete Environmental Remediation, including a reasonable period for NKEC to arrange the funding under the circumstances.
- (b) GenCo shall use commercially reasonable efforts to ensure that the Remediation Expert’s Preliminary Environmental Remediation Estimate is as comprehensive and as complete as possible under the circumstances.

15.3.2 Determination as to Preparation of Full Environmental Remediation Report

NKEC and GenCo shall meet within fifteen (15) Days after the delivery of the Preliminary Environmental Remediation Estimate to discuss the conclusions set forth therein. If NKEC authorizes GenCo to proceed on the basis of the Preliminary Environmental Remediation Estimate, then GenCo shall proceed with the Environmental Remediation in accordance with Section 15.3.6. Otherwise, GenCo shall proceed with the preparation of a Full Environmental Remediation Report at GenCo’s cost (subject to recovery pursuant to Section 15.3.8) and the provisions of Section 15.3.3 through 15.3.5 shall apply.

15.3.3 Preparation of Full Environmental Remediation Report

- (a) When required under Section 15.3.2, GenCo shall engage the Remediation Expert to commence the preparation of an appraisal report (a “**Full Environmental Remediation Report**”) within fifteen (15) Days after the date it was determined that a Full Environmental Remediation Report would be necessary, and deliver a copy of such Full Environmental Remediation Report to NKEC as soon as practicable, but in any event not later than ninety (90) Days thereafter. The Full Environmental Remediation Report shall reflect the reasonable comments of the Parties and address in good faith and in such detail as is practicable under the circumstances the following matters (to the extent applicable):
- (i) a description of the Pass-Through Environmental/Archaeological Condition;
 - (ii) an estimation of the time it will take to remediate the Pass-Through Environmental/Archaeological Condition;
 - (iii) an Environmental Remediation Schedule;
 - (iv) a statement and explanation regarding whether Environmental Remediation is technically feasible;
 - (v) the cost necessary to undertake the Environmental Remediation based on the remediation approach intended to reasonably remediate the Site in a cost-effective and least-cost manner taking the industrial use of the Site into account;

- (vi) the insurance proceeds, if any, that may be recovered, the date or dates on which such proceeds may be received, and the particular purposes for which such proceeds are required to be applied;
 - (vii) the projected impact on amounts payable under this Agreement.
- (b) GenCo shall provide reasonable supporting data for the information included in the Full Environmental Remediation Report and shall provide copies of all certificates and reports of GenCo's financial and technical advisers, as appropriate or as reasonably requested by NKEC, in support of the applicable matters referred to in this Section 15.3.3.

15.3.4 Consultation Regarding Full Environmental Remediation Report; Disputes

- (a) Within fifteen (15) Days after the delivery of a Full Environmental Remediation Report to a Party, the Parties shall meet to discuss the Full Environmental Remediation Report and any action(s) to be taken. In connection with the review by NKEC of a Full Environmental Remediation Report prepared by the Remediation Expert on behalf of GenCo, GenCo shall provide promptly to NKEC such additional information pertaining to the Full Environmental Remediation Report and the matters described therein as NKEC may reasonably request.
- (b) Disputes in relation to any matter set forth in the Full Environmental Remediation Report shall qualify as Technical Disputes for purposes of Dispute resolution proceedings under Article 26.

15.3.5 Determination Following Full Environmental Remediation Report

- (a) Subject to Section 15.3.5(c), NKEC reserves the right to determine whether to proceed with Environmental Remediation, subject to its obligation to pay for such Environmental Remediation or terminate this Agreement following the delivery of a Full Environmental Remediation Report.
- (b) Subject to Section 15.3.5(c), NKEC shall, within thirty (30) Days after the issuance of the Full Environmental Remediation Report, provide GenCo with a written notice of its election to either:
- (i) terminate this Agreement pursuant to Section 15.3.5(a), or
 - (ii) authorize GenCo to proceed with Environmental Remediation;
- provided, however, no notice to terminate shall be effective unless consented to in writing by GOK.
- (c) NKEC shall make the determination described in Sections 15.3.5(a) and 15.3.5(b) acting reasonably and in good faith. NKEC shall have the right to terminate this Agreement and fail to authorize GenCo to proceed with Environmental Remediation only if it reasonably determines that the Environmental Remediation Costs will exceed the Threshold Amount.
- (d) NKEC shall exercise any right to terminate this Agreement under Section 15.3.5(a) by delivering a notice of termination to GenCo in accordance with this Agreement. Termination of this Agreement shall be effective at 5:00 p.m. on the thirtieth (30th) Day following the date of delivery of such notice.
- (e) If NKEC terminates this Agreement under Section 15.3.5(a), then the provisions of Section 20.5 (*Termination Following Election in Respect of Environmental Remediation*) of the Implementation Agreement shall be applied to determine whether compensation is to be paid to GenCo and the amount of such compensation.

15.3.6 Implementation of Environmental Remediation

The following provisions shall apply to an Environmental Remediation resulting from a Pass-Through Environmental/Archaeological Condition:

- (a) NKEC shall (working together with GOK) be responsible to secure funding for (or shall call upon any environmental insurance it may have in relation to) the cost of an Environmental Remediation and shall do so within three (3) Months of the occurrence of the event. If NKEC is unable to obtain adequate funding for the Environmental Remediation within ninety (90) Days, the failure to secure funding shall be treated as an election by NKEC to terminate this Agreement pursuant to Section 15.3.5(a)
- (b) if funding for the Environmental Remediation has been secured, then GenCo shall proceed as soon as practicable, without limiting the effect of indemnification under Section 8.2 (*Indemnification for Environmental Standards*) of the Implementation Agreement, with the Environmental Remediation in accordance with the following:
 - (i) GenCo shall conduct a competitive tender in accordance with Section 3.11 to procure a firm among the firms listed on Schedule 22 hereto or as the Parties may otherwise agree to undertake the Environmental Remediation;
 - (ii) GenCo shall consult with NKEC and GOK and obtain their written approval or non-objection regarding the design of such tender;
 - (iii) GenCo shall consult with NKEC and GOK and obtain their written approval prior to selecting the winning bidder and executing a contract with such bidder for the Environmental Remediation; and
 - (iv) the Environmental Remediation shall be conducted in accordance with the Environmental Remediation Schedule and based on the remediation approach intended to reasonably remediate the Site on a cost-effective and least-cost basis taking the industrial use of this Site into account;
- (c) GenCo shall be reimbursed for its Environmental Remediation Costs as they are incurred pursuant to Section 15.3.8;
- (d) GenCo shall provide NKEC with a summary of all costs actually incurred in implementing the Environmental Remediation, together with copies of all invoices for such work; and
- (e) GenCo shall be solely responsible for the execution, administration, management and enforcement of the contract with the firm procured to undertake the Environmental Remediation for a Pass-Through Environmental/Archaeological Condition in accordance with this Section 15.3.6. GenCo shall be liable for, and GOK and each Specified POE shall be released from liability or responsibility in relation to, additional costs to the extent resulting from its failure to manage and enforce the contract in accordance with Prudent Utility Practices.

15.3.7 Termination Due to Ongoing Pass-Through Environmental/Archaeological Condition or Increased Cost

- (a) Notwithstanding anything herein to the contrary, in the event of:
 - (i) the existence of a Pass-Through Environmental/Archaeological Condition after the Commercial Operations Date that has a material adverse effect on GenCo's ability to operate the KRPP Facility and such Pass-Through Environmental/Archaeological Condition continues to have such effect for a period exceeding two hundred seventy (270) Days; or
 - (ii) a series of such related Pass-Through Environmental/Archaeological Conditions that continue in the aggregate to have such an effect for a period that exceeds two hundred seventy (270) Days during any Agreement Year,

GenCo and NKEC shall each have the option to terminate this Agreement immediately, but only to the extent such event(s) are ongoing.

- (b) If an Environmental Remediation has not been or is reasonably expected not to be completed within the Environmental Remediation Cost Estimate, then GenCo shall develop a revised cost estimate as soon as possible and provide an explanation of the revised cost to NKEC. If the revised Environmental Remediation Cost Estimate is (i) more than one hundred thirty percent (130%) of the Environmental Remediation Cost Estimate and (ii) the increase in the revised Environmental Remediation Cost Estimate is in excess of ten million Euros (€10,000,000), then NKEC may elect to terminate this Agreement immediately, but only to the extent the Pass-Through Environmental/Archaeological Condition requiring the Environmental Remediation is ongoing.
- (c) If NKEC terminates this Agreement under Section 15.3.5, Section 15.3.6, or this Section 15.3.7, or if GenCo terminates this Agreement under this Section 15.3.7, then the provisions of Section 20.5 (*Termination Following Election in Respect of Environmental Remediation*) of the Implementation Agreement shall be applied to determine whether compensation is to be paid to GenCo and the amount of such compensation.

15.3.8 Right to Cost Recovery

In the case of an Environmental Remediation resulting from a Pass-Through Environmental/Archaeological Condition, GenCo shall invoice NKEC for all Environmental Remediation Costs, including with respect to the preparation of the Preliminary Environmental Remediation Estimate and the Full Environmental Remediation Report, on a Monthly basis in arrears, for payment by NKEC in accordance with Article 17.

Article 16 Compensation Due to GenCo

16.1 Availability, Net Electrical Output, and Additional Payments

- (a) From and after the Commercial Operations Date, NKEC shall pay to GenCo, Monthly in arrears, all the amounts payable by NKEC under this Agreement, including any separately invoiced amounts, the Availability Payment, the Energy Payment, and the Additional Payments determined and adjusted in accordance with Schedule 1.
- (b) Neither the Availability Payment, the Energy Payment, nor the Additional Payments include the amount of value added tax that will be payable by GenCo in connection with this Agreement, and NKEC shall reimburse GenCo for the amount of such value added tax actually paid by GenCo in connection with this Agreement. GenCo shall invoice NKEC for the costs therefor, together with supporting documentation with respect thereto, for payment by NKEC in accordance with Article 17.

16.2 Take or Pay Quantities

NKEC shall reimburse GenCo for any GenCo take or pay payments to KEK Mining in relation to the quantity of Lignite contracted under the Lignite Supply Agreement; provided, however, that NKEC shall not be responsible for payments of any such payments to KEK Mining in relation to the quantity of Lignite not taken to the extent such amounts are payable as a result of GenCo's failure to achieve the Expected Availability Factors applicable in such Agreement Year at the Contract Capacity (other than as a result of Grid Constraints or a Specified POE Action or Inaction) or otherwise due to events or circumstances resulting from a GenCo Action or Inaction.

16.3 Energy Payments for NKEC Acceptance Test Energy

- (a) NKEC shall pay GenCo a payment for NKEC Acceptance Test Energy (the "**NKEC Acceptance Test Energy Payment**") calculated in accordance with Article 6 of Schedule 1. The NKEC Acceptance Test Energy Payment shall be calculated once following the Commercial Operations Date and paid in accordance with the procedures described in Section 17.2.

- (b) NKEC shall have no separate obligation to pay for any electric energy produced by the KRPP Facility (whether or not delivered to the Connection Point) during testing conducted prior to the Commercial Operations Date to the extent such testing is not a NKEC Acceptance Test provided for in Article 9 as such costs will be deemed Project Costs for purposes of recovery under Schedule 1.

16.4 Energy Payment for Net Electrical Output During Post COD Capacity Testing

After the Commercial Operations Date, the Availability Payment, the Energy Payment, and the Additional Payments for any Month during which an Annual Capacity Test was conducted shall be calculated as if the Net Electrical Output generated during such Annual Capacity Test were the Declared Available Capacity (up to the amount of the Contract Capacity), the Net Electrical Output generated during such Annual Capacity Test were the Dispatched & Delivered Net Electrical Output (NKEC + KOSTT) associated with such period, and any Start-Ups or operations in Hot Standby Mode required for the tests have been Dispatched.

16.5 Energy Payment During Pendency of Buy-Out

After the termination of this Agreement and until the Buy-Out Date, NKEC shall continue to pay the Energy Payment for any Month during which Net Electrical Output is generated, but no payments shall be due under any other provision of this Article 16.

16.6 Refinancing of the KRPP Facility

16.6.1 GenCo Proposed Refinancings

- (a) GenCo may determine from time to time if a Refinancing would be likely to result in a material Refinancing Gain.
- (b) If GenCo wishes to enter into a Refinancing, GenCo shall, prior to entering into that Refinancing, deliver a Refinancing Costs Report to NKEC. GenCo shall bear all costs and expenses of the preparation of such Refinancing Costs Report.

16.6.2 NKEC Proposed Refinancings

- (a) Where NKEC reasonably determines that a material Refinancing Gain may exist (including to the extent that the GOK has identified more attractive financing terms or is able to provide financing on commercially attractive terms), NKEC may request that GenCo determine if a Refinancing would be likely to result in a material Refinancing Gain. GenCo shall consider in good faith such request from time to time.
- (b) Upon receipt of notice under Section 16.6.2(a), GenCo shall deliver a Refinancing Costs Report to NKEC as soon as reasonably practicable, and NKEC shall reimburse GenCo for costs incurred by GenCo in the preparation of the Refinancing Costs Report. All such costs may be pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, shall be otherwise reasonably and prudently incurred (and not otherwise Tariff Exclusions).

16.6.3 Sharing of Refinancing Gains

- (a) If a Refinancing would result in a material Refinancing Gain that justifies undertaking a Refinancing in accordance with Prudent Utility Practices, GenCo shall in good faith pursue such Refinancing and NKEC shall share in fifty-percent (50%) of such Refinancing Gain through reductions to the Base Availability Credits that are then applicable over the remainder of the Term from the date of the Refinancing.
- (b) The Base Availability Credits that are then applicable shall be reduced to reflect NKEC's fifty-percent (50%) share of the Refinancing Gain. Such reductions shall be calculated by determining

the difference in the Base Availability Credits that are then applicable that would be payable under:

- (i) the Initial Financing or any existing Refinancing; and
- (ii) the Refinancing.

16.6.4 Methodologies

In this Section 16.6, the following methodologies shall be used:

- (a) each Refinancing Costs Report shall be:
 - (i) prepared in accordance with the International Financial Reporting Standards, consistently applied; and
 - (ii) accompanied by a certificate of GenCo's auditors that the calculation is correct and that the International Financial Reporting Standards have been properly applied; and
- (b) the Refinancing Gain shall be calculated after taking into account any costs and expenses that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred by GenCo (and not otherwise Tariff Exclusions) in relation to the Refinancing including:
 - (i) any prepayment, cancellation, break or termination costs and expenses (however described) incurred pursuant to the Financing Documents entered into in relation to the financing that is the subject of the Refinancing (the "**Existing Financing**");
 - (ii) costs and expenses that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred by GenCo to prepare the Refinancing Costs Report if it results in a Refinancing or is requested by NKEC;
 - (iii) costs and expenses that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred pursuant to the Financing Documents entered into in relation to the Refinancing (including arrangement, underwriting, agency and co-ordination fees, and costs and expenses (however described)); and
 - (iv) any professional and management costs and expenses that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred in respect of the Refinancing or the prepayment, repayment, cancellation or termination of the Existing Financing,

with the intent that the Refinancing Gain shall be net of any costs or expenses that are pre-approved as Pre-Approved Costs or, to the extent not Pre-Approved Costs, otherwise reasonably and prudently incurred by GenCo in entering into, and incurring financial indebtedness pursuant to, the Refinancing and prepaying, repaying, canceling or terminating the Existing Financing.

Article 17 Billing and Payment

17.1 Billing

17.1.1 GenCo Invoices

At any time on or after the first (1st) Business Day of each Month, GenCo shall submit to NKEC an invoice stated in Euros for any amounts due from NKEC to GenCo pursuant to this Agreement. Such invoice shall include (without limitation) the following information (to the extent applicable):

- (a) the Availability Payment due in respect of the previous Month (or part-Month);

- (b) the Energy Payment due in respect of the previous Month (or part-Month);
- (c) any Additional Payments due in respect of the previous Month;
- (d) any interest payable hereunder on an amount not paid with respect to a prior invoice by the Due Date, showing the calculation of such claimed interest in reasonable detail;
- (e) any amounts contemplated as being separately invoiced under this Agreement;
- (f) the payments for take or pay payments to KEK Mining in relation to the quantity of Lignite contracted under the Lignite Supply Agreement due in respect of the previous Month (or part-Month); and
- (g) in the event that the Availability Factor exceeds the Expected Availability Factor in any ½-Year Period, any bonuses associated with exceeded the Expected Availability Factor as specified in Section 2.3.1 of Schedule 1,

together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.

Invoices shall be calculated to the nearest Eurocent (€0.01) amount.

17.1.2 NKEC Invoices

At any time on or after the first (1st) Business Day of each Month, NKEC shall submit an invoice to GenCo stated in Euros for any amounts due from GenCo to NKEC pursuant to this Agreement. Such invoice shall include (without limitation) the following information:

- (a) the amount of any Delay Liquidated Damages due to NKEC under this Agreement for a previous Month (or part-Month); and
- (b) any interest payable hereunder on an amount not paid with respect to a prior invoice by the Due Date, showing the calculation of such claimed interest in reasonable detail,
- (c) in the event that the Availability Factor is less than the Expected Availability Factor in any ½-Year Period, any penalties associated with failure to meet the Expected Availability Factor as specified in Section 2.3.2 of Schedule 1; and
- (d) any amounts contemplated as being separately invoiced under this Agreement;

together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.

Invoices shall be calculated to the nearest Eurocent (€0.01) amount.

17.2 Payment

- (a) Subject to Section 17.3:
 - (i) NKEC shall pay GenCo the amount shown on an invoice delivered in accordance with Section 17.1.1, less deductions for any disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the Day the invoice is received by NKEC (or, in the event such Day is not a Business Day, the next Business Day thereafter); and
 - (ii) GenCo shall pay NKEC the amount shown on an invoice delivered in accordance with Section 17.1.2, less deductions for any disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the Day the invoice is received by GenCo (or, in the event such Day is not a Business Day, the next Business Day thereafter),

(in each case, the “**Due Date**”).

- (b) Any invoice delivered pursuant to this Article 17 shall be paid in Euros.
- (c) Unless otherwise specified in this Agreement, and without limiting the rights to expatriation set forth in the Project Agreements and under the Laws of Kosovo, payments due under this Agreement shall be payable by electronic funds transfer to the account in Kosovo (which can be at a Kosovo branch of a foreign bank) indicated by the Party to receive payment.
- (d) Each Party shall have the right to set off any amounts due and payable by it to the other Party under this Agreement against any and all amounts then due and payable to it by the other Party under this Agreement or any other Project Agreement. Such rights of set-off shall relate only to amounts that are then due and payable to and by a Party and are undisputed or have been determined to be payable in accordance with Article 26.
- (e) Late payments by either Party of amounts due and payable under this Agreement shall bear interest at a rate per annum equal to the Delayed Payment Rate.
- (f) NKEC’s obligation to pay any amount under this Agreement shall remain in full force and effect, and shall not be affected by the provisions of the Government Guarantee, except to the extent that NKEC’s obligation to GenCo has been discharged in accordance with the Government Guarantee.
- (g) Payments received by either Party shall be applied against outstanding invoices on the “first in, first out” principle, so that the invoices not then subject to dispute that have been outstanding the longest (in whole or in part) shall be paid first.
- (h) Each Party shall have access to all necessary information and audit rights to verify amounts claimed by the other Party. Any such audit shall be conducted at the sole expense of the Party exercising such rights subject to findings of material impropriety.

17.3 Payment Disputes

17.3.1 Invoice Dispute Notice

At any time within three hundred sixty (360) Days after receipt of an invoice, a Party may serve notice (an “**Invoice Dispute Notice**”) on the other Party that the amount of such invoice (or part thereof) is in dispute. Each Invoice Dispute Notice shall specify the invoice concerned and the amount in dispute, giving reasons as complete and as detailed as reasonably possible. A Party shall be entitled to submit any Dispute relating to an invoice to Dispute resolution in accordance with Article 26, so long as it has delivered an Invoice Dispute Notice to the other Party in accordance with this Section 17.3.1. Any Dispute relating to an invoice shall qualify as a Payment Dispute for purposes of Dispute resolution proceedings under Article 26.

17.3.2 Resolution Procedures

Upon resolution of the Dispute in accordance with Article 26 and without prejudice to the right of either Party to refer a Dispute to arbitration, any amounts disputed and not paid but determined to be owed by a Party or any amounts paid and determined not to be owed shall be paid or repaid to the other Party, as the case may be, within seven (7) Business Days after such resolution or determination, together with interest thereon from but excluding the date initially owed or paid until and including the date paid or repaid, as the case may be, at the Delayed Payment Rate.

17.4 Supporting Data

- (a) GenCo shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of any amount invoiced by GenCo under this Agreement. All such records and data shall be maintained for a period of not less than sixty (60) Months

following the last date on which such data and information was relevant for claims by GenCo for payment by NKEC.

- (b) NKEC shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of any amount invoiced by NKEC under this Agreement. All such records and data shall be maintained for a period of not less than sixty (60) Months following the last date on which such data and information was relevant for claims by NKEC for payment by GenCo.

Article 18

Reserve Funds for Maintenance

18.1 Reserve Fund for Major Maintenance

18.1.1 Establishment of Major Maintenance Reserve Fund

- (a) On or before the Commercial Operations Date, GenCo shall, subject to Section 18.1.1(b), establish and maintain for the remainder of the Term a separate reserve fund for the payment of expenses described in Section 18.1.4 (the “**Major Maintenance Reserve Fund**”) with a depository institution and under depository agreements reasonably satisfactory to NKEC.
- (b) Each of:
 - (i) any separate accounts established at the request of the Lenders pursuant to the Financing Documents for the purpose of paying maintenance and associated operating expenses that in all material respects satisfy the provisions of this Article 18; or
 - (ii) any accounts in the amount of the Major Maintenance Reserve Amount intended to fund the long term maintenance agreement that provides annual maintenance and Major Overhauls for agreed substantially equal Monthly installments, which agreement, together with the identity and creditworthiness of the counterparty, is reasonably acceptable to NKEC,

shall (so long as such accounts or such agreement are in place) satisfy GenCo’s obligation to maintain a Major Maintenance Reserve Fund hereunder and the following Sections 18.1.2 through 18.1.7 shall not apply for so long as such obligation is so satisfied.

18.1.2 Major Maintenance Reserve Fund Deposits

- (a) GenCo shall fund the Major Maintenance Reserve Fund prior to issuance of any dividends to shareholders.
- (b) Within three (3) Days after the receipt by GenCo of any payment from NKEC in respect of an Availability Payment, GenCo shall deposit one forty-eighth (1/48) of the Major Maintenance Reserve Amount into the Major Maintenance Reserve Fund until a reserve equal to twenty-four (24) such deposits has been established.
- (c) After the second Agreement Year and at any time thereafter, the Major Maintenance Reserve Fund may be re-established at such other level that the Parties agree is appropriate for a facility of this size and type, considering Prudent Utility Practices, the design, technology and operating history of the KRPP Facility, the amount of anticipated withdrawals from the Major Maintenance Reserve Fund over the next three (3) Agreement Years (it being the intention of the Parties that the balance in the Major Maintenance Reserve Fund be sufficient to pay for all Major Maintenance Expenses GenCo reasonably anticipates it will incur over a rolling period of six (6) Months at least six (6) Months prior to the start of each such period), and other pertinent information.

- (d) NKEC shall have the right at any time to reasonable documentation for purposes of verifying the funding of the Major Maintenance Reserve Fund is in accord with this Article 18.

18.1.3 Treatment of Interest in Major Maintenance Reserve Fund

Any investment income resulting from the depository arrangements of the Major Maintenance Reserve Fund shall remain in the Major Maintenance Reserve Fund; provided, however, that so long as no GenCo Event of Default exists, any monies in excess of the minimum investment required under Section 18.1.2 may be paid to GenCo upon its request.

18.1.4 Major Maintenance Reserve Fund Withdrawals

Monies in the Major Maintenance Reserve Fund may be drawn on and used by GenCo to pay Major Maintenance Expenses.

18.1.5 Major Maintenance Reserve Fund Replenishment

If after the withdrawal of any funds from the Major Maintenance Reserve Fund for the payment of Major Maintenance Expenses as described in Section 18.1.4, the amount in the Major Maintenance Reserve Fund is less than the amount required pursuant to Section 18.1.2, GenCo shall replenish the Major Maintenance Reserve Fund by depositing funds therein in accordance with Section 18.1.2.

18.1.6 Major Maintenance Reserve Fund Management and Records

GenCo shall keep accurate records with respect to the Major Maintenance Reserve Fund and all disbursements therefrom and shall, upon NKEC's reasonable request, supply a complete accounting or independent audit thereof to NKEC.

18.1.7 Funds Payable to GenCo

On the termination of this Agreement, all amounts in the Major Maintenance Reserve Fund shall be payable in accordance with Schedule 3 of the Implementation Agreement.

**Article 19
Limitation of Liability**

19.1 Limitation of Liability

- (a) Except as expressly provided to the contrary in this Agreement, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages. Payments owed by a Party to a third Party shall be considered direct damages and shall not be excluded by the foregoing provisions of this Section 19.1, except in relation to contracts (other than the O&M Contract and Administrative Services Agreement and any LTM Agreement approved by NKEC under Article 3) between GenCo as one party and any Affiliates of Ultimate Sponsor as GenCo's counterparty (which shall be excluded by the foregoing provisions of this Section 19.1(a)).
- (b) Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement or a Project Agreement to which it is a party; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by this Agreement and this provision is not intended to limit or deny GenCo the right to (i) claim and recover any and all lost revenues explicitly provided for under Article 20 of the Implementation Agreement or under any Project Agreement that permits such recovery, or (ii) indemnification and/or cost recovery in relation to Environmental/Archaeological Conditions as provided under any Project Agreement.

Article 20 Indemnification

20.1 Indemnification

20.1.1 NKEC's Indemnification

Except as specifically provided below or elsewhere in this Agreement or the Project Agreements, NKEC shall indemnify and defend GenCo and any GenCo Party from, at all times after the Effective Date, any and all Losses incurred or required to be paid, directly or indirectly, by, or sought to be imposed upon, GenCo or any GenCo Party:

- (a) for personal injury or death to persons or damage to property arising out of any negligence or willful misconduct by NKEC or any NKEC Party in connection with this Agreement;
- (b) in relation to any claim or action by a third party resulting from, arising out of, or related to NKEC's violation of any Law of Kosovo; or
- (c) in relation to any claim or action by a third party resulting from, arising out of, or related to NKEC's breach or default of any of its covenants or representations and warranties under this Agreement, including, without limitation, NKEC's (or KESCO's, as the case may be) failure to comply with the restrictions on NKEC's (or KESCO's, as the case may be) authority as GenCo's agent set forth in Section 2.3 of Schedule 9.

20.1.2 GenCo's Indemnification

Except as specifically provided below or elsewhere in this Agreement or the Project Agreements, GenCo shall indemnify and defend NKEC and any NKEC Party from, at all times after the Effective Date, any and all Losses incurred or required to be paid, directly or indirectly, by, or sought to be imposed upon, NKEC or any NKEC Party:

- (a) for personal injury or death to persons or damage to property arising out of any negligence or willful misconduct by GenCo or any GenCo Party in connection with this Agreement;
- (b) in relation to any claim or action by a third party resulting from, arising out of, or related to GenCo's violation of any Law of Kosovo; or
- (c) in relation to any claim or action by a third party resulting from, arising out of, or related to GenCo's breach or default of any of its covenants or representations and warranties under this Agreement.

20.1.3 Joint Liability

In the event injury or damage results from the joint or concurrent negligence or willful misconduct of the Parties, each Party shall be liable under this Article 20 in proportion to its relative degree of fault.

20.2 Limitation on Indemnification

Notwithstanding any other provision of this Agreement, in no event shall NKEC or GenCo or any NKEC Party or any GenCo Party be indemnified to the extent that any Losses were caused by their own negligence or willful misconduct or their breach of the terms of this Agreement or any Project Agreement, and in no event shall NKEC or GenCo or any NKEC Party or any GenCo Party be indemnified for any Loss to the extent that such Party has already received insurance proceeds or proceeds from a third party therefor or received or been entitled to payments from GOK or a Specified POE under another Project Agreement therefor.

The indemnity obligations of any Party hereunder shall be reduced in the amount of, and with respect to, any insurance recoveries or other third-party recoveries by an indemnified Party for Losses indemnified hereunder. Should a Party make payments pursuant to its indemnification obligations hereunder with

respect to amounts for which an insurer or other third party may be legally responsible, such Party shall be deemed, to the extent necessary, the indemnified Party's equitable subrogee with respect to, and/or contractual or legal assignee of, the right to pursue recovery of such amounts from such insurer or third party, to the extent of such rights.

For the avoidance of doubt, the terms of this Agreement shall not be construed to reduce, impair, negate, modify, or replace the terms of any applicable insurance policy that also provides coverage for indemnified Losses. Notwithstanding the foregoing, the applicability of any insurance policy or an insurer's failure to perform its obligations with respect to indemnified Loss shall not excuse, delay, or reduce the indemnity obligations of the indemnifying Party in any respect or excuse nonperformance of such Party's indemnification obligations; however, in determining the respective obligations as between the indemnifying Party and any insurer, subsequent to a Party's payments pursuant to its indemnity obligation hereunder, and in connection with any dispute between such indemnifying Party and such insurer as to the insurer's obligation to reimburse the indemnifying Party or otherwise provide coverage for indemnified Loss, any applicable insurance (with the exception of any applicable deductibles or retentions) shall be deemed primary to the indemnity obligations set forth herein, and the indemnity obligations set forth herein shall be deemed specifically excess to any such applicable insurance, but only to the extent of any amounts actually paid to the insured under such insurance, and with the further understanding that the indemnifying Party will in all events be responsible for indemnified Loss, to the extent of its indemnification obligations herein, within any applicable deductibles or retentions set forth in any such applicable insurance.

20.3 Assertion of Claims to Exceed Minimum Indemnification Amount

Each Party shall be solely liable, and shall not be entitled to assert any claim for indemnification against the other Party under this Article 20, for any Loss that would otherwise be the subject of indemnification under this Agreement, until, as applicable, (i) all Losses of the GenCo Parties or any Losses of the Sponsor HoldCo or the Sponsor HoldCo Parties and the Ultimate Sponsor or the Ultimate Sponsor Parties, in the aggregate, under all of the Project Agreements exceed the Indemnity Basket applicable thereto or (ii) all Losses of GOK or the GOK Parties and NKEC or the NKEC Parties and KEK Generation or the KEK Generation Parties and KEK Mining or KEK Mining Parties and the Water Supplier or the Water Supplier Parties and any Specified POEs or its related parties, in the aggregate, under all of the Project Agreements exceed the Indemnity Basket applicable thereto.

20.4 Indemnification for Fines and Penalties

Except as set forth in Section 8.2 of the Implementation Agreement in respect to GOK's duty to indemnify GenCo in respect of non-compliance arising from any Environmental/Archaeological Conditions, any fines or other penalties incurred by NKEC or GenCo or any NKEC Party or any GenCo Party for non-compliance with the applicable Laws of Kosovo, unless they result directly from an act or omission of the other Party (in which case, they shall be reimbursed by the other Party), shall not be reimbursed by the other Party but shall be the sole responsibility of the non-complying Party.

20.5 Defense of Claims

20.5.1 Notice of Claims

- (a) A Party shall promptly notify the other Party, in writing, of any Loss or proceeding in respect of which such notifying Party is or may be entitled to indemnification pursuant to this Article 20 (an "**Indemnification Notice**").
- (b) The delay or failure of such indemnified Party to provide an Indemnification Notice required pursuant to this Section 20.5 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.

- (c) The Party to whom the Indemnification Notice is sent shall acknowledge that Indemnification Notice, in writing, within seven (7) Business Days after receipt of the Indemnification Notice (the "**Indemnification Acknowledgement**").

20.5.2 Defense of Claims

- (a) Following receipt of an Indemnification Notice, and provided the Indemnification Acknowledgement confirms its obligation to indemnify an indemnified Party to the extent required pursuant to this Article 20, the indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit, or proceeding at its expense with counsel of its selection, subject to the prior approval of the indemnified Party, with such approval not to be unreasonably withheld, conditioned, delayed or denied. Should the indemnifying Party elect to assume and control the defense of such claim, action, suit, or proceeding, it shall notify the indemnified Party of that election in the Indemnification Acknowledgement.
- (b) Unless and until the indemnifying Party acknowledges its obligation to indemnify the indemnified Party to the extent required pursuant to this Article 20 in the Indemnification Acknowledgement, and assumes control of the defense of a claim, suit, action, or proceeding, the indemnified Party shall have the right, but not the obligation, to 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 documented, reasonable, and prudent costs and expenses thereof shall be subject to the indemnification obligations of, and promptly reimbursed by, the indemnifying Party hereunder.
- (c) Neither the indemnifying Party nor the indemnified Party shall be entitled to settle any such claim, action, suit, or proceeding without the prior consent of the other (such consent not to be unreasonably withheld, conditioned, delayed, or denied); provided, however, that after agreeing in writing to indemnify the indemnified Party, if the indemnifying Party obtains both a full and complete resolution of matters involving the indemnified Party (including, without limitation, a full release of the indemnified Party from all further liability or responsibility with respect to any asserted claims) and any necessary court approvals of a settlement, the indemnifying Party may settle any claim without the consent of the indemnified Party.
- (d) Should the indemnifying Party elect to assume and control the defense of a claim, action, suit, or proceeding, the indemnified Party shall provide the indemnifying Party with such information as the indemnifying Party may reasonably require relating to the claim, action, suit, or proceeding and shall (to the extent relevant) keep the indemnifying Party fully informed of any material development in the conduct of the claim, action, suit, or proceeding.

20.5.3 Expense of Defense Counsel

- (a) Following receipt of the Indemnification Acknowledgement and the assumption of the defense by the indemnifying Party, the indemnified Party shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the sole expense of such indemnified Party, when and as incurred, unless:
 - (i) the employment of counsel by such indemnified Party has been authorized in writing by the indemnifying Party and the indemnifying Party has agreed to pay for the fees and expenses of such counsel;

- (ii) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party that there may be a conflict of interest between the indemnifying Party and the indemnified Party in the conduct of the defense of such action;
 - (iii) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defense of such action and shall have been so notified by the indemnified Party; or
 - (iv) the indemnified Party shall have reasonably concluded and specifically notified the indemnifying Party that there may be specific defenses available to it that are different from or additional to those available to the indemnifying Party or that such claim, action, suit or proceeding involves or could have a material adverse effect upon the indemnified Party beyond the scope of this Agreement.
- (b) If Section 20.5.3(a)(i), 20.5.3(a)(ii), 20.5.3(a)(iii), or 20.5.3(a)(iv) shall be applicable, then the indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on its own behalf and the reasonable, documented fees and disbursements of independent counsel retained by the indemnified Party shall constitute indemnified and reimbursable legal or other expenses hereunder.

Article 21 Insurance

21.1 Maintenance of Insurance Policies

21.1.1 Insurance Requirements

- (a) At its sole cost and expense, GenCo shall obtain and maintain or cause to be obtained and maintained policies of insurance:
 - (i) no less than the policies set forth in Section 1.1 of Schedule 5 (and satisfying the general conditions set forth in Section 1.2 of Schedule 5); or
 - (ii) if greater, that should be maintained pursuant to Prudent Utility Practices.
- (b) The insurance to be obtained and maintained by GenCo under this Section 21.1.1 shall be obtained from insurers from whom GenCo is permitted under the Laws of Kosovo to purchase policies.
- (c) To the extent available, each insurance policy shall be issued by an insurer (or reinsurer, to the extent reinsurance is obtained) of sound financial status. Insurers (or any reinsurer) with whom GenCo has policies of insurance shall be deemed to be “of sound financial status” if such insurers (or any reinsurers) have either an S&P “Claims-Paying Ability Rating” of at least A- or an A.M. Best “Financial Strength Rating” rating of at least A/VIII. If such rating systems are discontinued, such insurers shall have a substantially similar rating, and if the Parties are unable to agree upon an acceptable substitute rating such failure to agree shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 26.

21.1.2 Exceptions to Insurance Requirements

It is understood that GenCo shall not be in breach of its obligations under Section 21.1.1 to the extent that and for so long as:

- (a) either:
 - (i) any particular insurance (or any required endorsement) is unavailable to GenCo under commercially reasonable terms for reasons other than any negligence or default by GenCo, provided that GenCo has delivered notice thereof to NKEC (with a copy to GOK) accompanied by a written report prepared by one (1) independent insurance

consultant or one (1) insurance broker acting in an independent manner, in either case of recognized international standing certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market and explaining in detail the basis for such conclusions; or

- (ii) any particular insurance (or any required endorsement) is unavailable to it from insurers from whom GenCo is permitted under the Laws of Kosovo to purchase policies in accordance with Section 21.1.1(b), provided that GenCo has delivered notice thereof to NKEC (with a copy to GOK) accompanied by a written report prepared by one (1) independent insurance consultant or or one (1) insurance broker acting in an independent manner, in either case of recognized international standing certifying that such insurance is not available from insurers from whom GenCo is permitted under the Laws of Kosovo to purchase policies; and
- (b) GenCo uses commercially reasonable efforts to obtain, at its sole cost and expense, other insurance that provides, to the maximum extent reasonably achievable, comparable protection against the risk to be insured and GenCo delivers a notice to NKEC of the terms of that insurance, accompanied by a written report prepared by one (1) independent insurance consultant of recognized international standing certifying that such insurance provides, to the maximum extent reasonably achievable, comparable protection against the risk to be insured by GenCo.

21.2 Event of Loss

21.2.1 Notice of Damage or Loss

If any substantial or significant part of the KRPP Facility shall suffer a loss or an event occurs that prevents GenCo from performing under this Agreement due to physical damage to a substantial portion of the KRPP Facility, GenCo shall promptly, and in any case within five (5) Days after it has knowledge of such event, so notify NKEC.

21.2.2 Event of Loss

If an insured event occurs that prevents GenCo from performing under this Agreement due to physical damage to a substantial portion of the KRPP Facility, insurance proceeds shall (subject to the terms of the Implementation Agreement providing that such proceeds shall be transferred to GOK in connection with a buy-out of the KRPP Facility) be used to repair or restore the applicable equipment, material and facilities to its condition prior to the event, unless otherwise agreed by the Parties or unless otherwise required by the Financing Documents.

21.3 Certificates and other Evidence of Insurance

21.3.1 Obligation to Provide

- (a) As of the Transfer Date, and at each policy renewal thereafter (but, in any event, at least annually), GenCo shall cause its insurers or agents to provide NKEC (with a copy to GOK) with certificates of insurance evidencing the policies and endorsements taken out pursuant to Section 21.1, including the name and address of the insurer, type, basic coverage, and name of insured and “additional insureds” and any other reasonable evidence of insurance necessary to comply with the obligations of this Agreement.
- (b) Within fifteen (15) Business Days after GenCo’s receipt thereof, GenCo shall provide a copy of all insurance policies taken out pursuant to Section 21.1. GenCo shall use commercially reasonable efforts to obtain such policies promptly following the Transfer Date.
- (c) GenCo shall provide, as and when updated, copies of all insurance policies taken out pursuant to Section 21.1.

21.3.2 Failure to Provide Evidence of Insurance

- (a) If GenCo fails to provide evidence of insurance as required under Section 21.3.1, NKEC may, unless promptly cured by GenCo following notice from NKEC, itself take out such insurance and pay such premiums as may be necessary to maintain it in force.
- (b) NKEC may recover from GenCo any amount paid by NKEC to obtain insurance as provided under Section 21.3.2(a).
- (c) Failure by NKEC to obtain the insurance coverage permitted under Section 21.3.2(a) shall not relieve GenCo of its insurance obligations under this Article 21 or otherwise limit GenCo's obligations or liabilities under this Agreement.

21.4 Insurance Reports

GenCo shall provide NKEC (with a copy to GOK) with copies of any technical underwriters' reports or other technical reports received by GenCo from any insurer.

21.5 Impact of Political Force Majeure Event

Following a Political Force Majeure Event or a Change in Law, to the extent that insurance required by this Agreement is not available to GenCo at commercially reasonable rates due to the occurrence of the Political Force Majeure Event or Change in Law, then such costs shall be recoverable by GenCo from NKEC and appropriate revisions shall be made to the calculation of the Availability Payment set forth in Article 2 of Schedule 1. The additional compensation provided for under this Section 21.5 shall cease as soon as GenCo's insurance rates are no longer affected by the Political Force Majeure Event or Change in Law.

21.6 No Limitation on Liability

GenCo's maintenance of or failure to maintain the insurance coverage required by this Article 21 shall not in any way relieve or limit GenCo's obligations and liabilities under any provision of this Agreement.

Article 22 Representations and Warranties

22.1 Representations and Warranties of GenCo

GenCo hereby represents and warrants to NKEC that as of the Execution Date:

- (a) GenCo is duly organized, validly existing, and in good standing under the laws of Luxembourg; provided, however, that in the reaffirmations provided by GenCo pursuant to Section 3.4, GenCo shall represent and warrant to NKEC that GenCo is duly organized, validly existing, and in good standing under the Laws of Kosovo;
- (b) the execution, delivery, and performance of this Agreement by GenCo have been duly authorized by all requisite corporate action, and GenCo has full corporate power and authority to execute, deliver, and perform all of its obligations under this Agreement;
- (c) this Agreement constitutes the legal, valid, and binding obligation of GenCo, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium, or other similar applicable laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;
- (d) the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on GenCo or any valid order of any court, or any regulatory agency or other body having authority to which GenCo is subject; and

- (e) none of the execution, delivery, or performance by GenCo of this Agreement, the compliance with the terms and provisions hereof, and the carrying out of the transactions contemplated hereby, conflicts or will conflict with or result in a breach or violation of its Charter Documents or any of the terms, conditions, or provisions of any Law of Kosovo or any applicable permit, or any order, writ, injunction, judgment, or decree of any Public Authority against GenCo.

22.2 Representations and Warranties of NKEC

NKEC hereby represents and warrants to GenCo that as of the Execution Date:

- (a) this Agreement constitutes the legal, valid, and binding obligation of NKEC, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium, or other similar applicable law relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;
- (b) the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on NKEC or any valid order of any court, or any regulatory agency or other body having authority to which NKEC is subject;
- (c) there is no action, suit, proceeding, or investigation pending or, to NKEC's knowledge, threatened:
 - (i) for the dissolution of NKEC; or
 - (ii) otherwise against NKEC,that, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement;
- (d) none of the execution, delivery, or performance by NKEC of this Agreement, the compliance with the terms and provisions hereof, and the carrying out of the transactions contemplated hereby, conflicts or will conflict with or result in a breach or violation of its Charter Documents (if applicable) or any of the terms, conditions, or provisions of any Law of Kosovo or any applicable permit, or any order, writ, injunction, judgment, or decree of any Public Authority against NKEC; and
- (e) NKEC is not in default under any agreement or instrument of any nature whatsoever to which it is a Party or by which it is bound, in any manner that would have a material adverse effect on its ability to perform its obligations hereunder, the validity or enforceability of this Agreement.

Provided, however, that in the reaffirmations provided by NKEC pursuant to Section 3.4, NKEC shall additionally represent and warrant to GenCo that:

- (f) NKEC is duly organized, validly existing, and in good standing under the Laws of Kosovo; and
- (g) the execution, delivery, and performance of this Agreement by NKEC has been duly authorized by all requisite corporate action, and NKEC has full corporate power and authority to execute, deliver, and perform all of its obligations under this Agreement.

Article 23 Taxes; Changes in Tax

23.1 Taxes Applicable to GenCo

- (a) Subject to Section 23.4, all present and future central, municipal, or other lawful Taxes applicable to GenCo, the KRPP Facility, and GenCo's other assets shall be paid by GenCo as and when required under the Laws of Kosovo.

- (b) Nothing herein shall limit or restrict the provisions of Schedule 1, which allow GenCo to recover Taxes paid by it.

23.2 Taxes Applicable to NKEC

All present and future central, municipal, or other lawful Taxes applicable to NKEC arising from or in connection with its rights and obligations under this Agreement shall be paid by NKEC as and when required under the Laws of Kosovo.

23.3 Applicable Tax Credits and Concessions

GenCo shall use commercially reasonable efforts to pursue and receive the benefits of the VAT and import duties tax credits and concessions as described in Schedule 1 of the Implementation Agreement and all other tax credits and concessions Kosovo e Re Project and/or GenCo may qualify for, including the potential tax credits and exemptions set forth in Schedule 21. All received benefits from tax credits and concessions shall be included in Schedule 1.

23.4 Changes in Tax

23.4.1 Change in Tax Occurrence

- (a) If a Change in Tax occurs or if either Party reasonably believes that a Change in Tax has occurred that in either case:
- (i) applies to the KRPP Facility or the sales of Declared Available Capacity or Net Electrical Output or any other payments due under this Agreement; and
 - (ii) causes GenCo or the Sponsor HoldCo (in relation to their interest in GenCo and to the extent Sponsor HoldCo is not covered by Change in Tax provisions of any other Project Agreement) to, in respect of the Kosovo e Re Project, incur any material increase in their overall Tax obligations or realize any material savings in their overall Tax obligations,
- then either Party may give the other Party notice of such Change in Tax (such notice, a “**Change in Tax Notice**”) with reasonable details of any of the circumstances related to such claimed Change in Tax.
- (b) GenCo shall give NKEC notice within thirty (30) Days after becoming aware of a Change in Tax resulting in any material Tax savings by GenCo or the Sponsor HoldCo.

23.4.2 Consequences of a Change in Tax

- (a) Upon the occurrence of a Change in Tax that is the subject of a Change in Tax Notice, one or more adjustments to the applicable Energy Payment, Availability Payment, or other payment made under this Agreement shall be made to increase or to reduce (as the case may be) the payments made by NKEC to GenCo under this Agreement so that GenCo and/or the Sponsor HoldCo (as the case may be) are in the same overall financial and economic position as they were in with respect to this Agreement prior to the occurrence of the applicable Change in Tax, and notwithstanding the foregoing to the extent a Change in Tax also qualifies as a Change in Law, then to the extent such Change in Tax can be mitigated in accordance with this Section 23.4.2 then the other provisions of this Agreement related to Change in Law shall not apply.
- (b) The Parties shall meet within thirty (30) Days after the issuance of any Change in Tax Notice to discuss and endeavor to agree on the adjustments contemplated by Section 23.4.2(a). In the event the Parties have not agreed to such adjustments within ninety (90) Days after the issuance of any Change in Tax Notice, then the Dispute shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 26.

Article 24 Force Majeure

24.1 Force Majeure

24.1.1 Definition of Force Majeure

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, on or after the Execution Date, prevents or delays the performance by such Party (for the purposes of this Article 24, an “affected Party”) of its obligations under or pursuant to this Agreement (including a Party’s ability to deliver or receive energy from the KRPP Facility); provided, however, that such prevention or delay 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.

24.1.2 Events Expressly Qualifying as Force Majeure Events

Without limitation to Section 24.1.1, “**Force Majeure Events**” shall expressly include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements set forth in Section 24.1.1:

- (a) with respect to GenCo or a GenCo Party under this Agreement or any of the Project Agreements, or any Construction/Maintenance Contract, the following events or circumstances that occur inside or directly involve Kosovo (each a “**Political Force Majeure Event**”):
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict, or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage;
 - (ii) any Lapse of Consent;
 - (iii) except if GenCo exercises rights it has in respect of Section 19.2(e) of the Implementation Agreement, any action by any Public Authority that causes a permanent or temporary dispossession resulting from confiscation, commandeering or requisitioning of all or a material part of the Site, GenCo’s assets or the Kosovo e Re Project;
 - (iv) radioactive contamination or ionizing radiation;
 - (v) any Pass-Through Environmental/Archaeological Condition;
 - (vi) GOK, NKEC or any Specified POE is, or becomes a, Restricted Party;
 - (vii) any Political Force Majeure Event under another Project Agreement; or
 - (viii) any strike, work-to-rule, go-slow, or analogous labor action that is politically motivated.
- (b) with respect to GenCo or a GenCo Party under this Agreement or any of the Project Agreements or any Construction/Maintenance Contract, any Change in Law; and
- (c) with respect to GenCo or a GenCo Party under this Agreement or any of the Project Agreements or any Construction/Maintenance Contract: (i) the Water available from the Water Supplier under the Water Supply Agreement is insufficient in quantity or outside (A) the Specified Raw Water Quality Standards for a period longer than the measurement period specified for each Specified Raw Water Quality Standard or (B) the Rejection Point Raw Water Quality Standards for a period longer than that specified in Schedule 24 for each Rejection Point Raw Water Quality Standard, and in each case, GenCo has utilized all available Water from the On-Site Water Storage Facility and has to the extent reasonably available exercised commercially reasonable efforts to obtain suitable water from other alternative sources (a “**Raw Water Force Majeure Event**”); and (ii) a Change In Raw Water Quality;

- (d) other events beyond the reasonable control of the affected Party or, in the case of GenCo, an affected GenCo Party (each an “**Other Force Majeure Event**”), including, but not limited to:
 - (i) lightning, fire, earthquake, tsunamis, flood, drought, storm, cyclone, typhoon, or tornado;
 - (ii) any Specified POE Force Majeure Event;
 - (iii) any strike, work-to-rule, go-slow, or analogous labor action that is not politically motivated;
 - (iv) fire, explosion, or chemical contamination not related to a Pass-Through Environmental/Archaeological Condition; or
 - (v) epidemic or plague.

24.1.3 Events Expressly Not Qualifying as Force Majeure Events

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:

- (a) normal wear and tear in materials and equipment;
- (b) breakdowns in equipment;
- (c) lack of funds due to any commercial, economic or financial reason including a Party’s inability to make a profit or achieve a satisfactory rate of return;
- (d) changes in market conditions that affect the:
 - (i) cost of lignite; or
 - (ii) demand or price for any of NKEC’s or GenCo’s products;
- (e) except as provided in Section 24.1.2(d)(ii), delay in performance of the obligations of any Contractor or supplier (including late delivery of equipment) that results in the failure of the affected Party to meet its obligations under this Agreement;
- (f) the results or consequences of any breach by a Party of the Laws of Kosovo, the terms of any Consent, or of any of the Project Agreements;
- (g) the results or consequences of any willful or negligent act or omission by a Party, or any failure by a Party to follow Prudent Utility Practices; or
- (h) with respect to NKEC only, a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event or Change in Raw Water Quality.

24.2 Notification Obligations

- (a) 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:
 - (i) give the other Party notice of the Force Majeure Event as soon as practicable, but in any event not later than the later of five (5) Business Days after the affected Party becomes aware of the occurrence of the Force Majeure Event or if the Force Majeure Event prevents a Party from providing notice to the other Party twenty-four (24) hours after the resumption of any means of providing notice between GenCo and NKEC; and
 - (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent that can reasonably be 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 is given by the affected Party.

- (b) 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 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.
- (c) The affected Party shall provide notice to the other Party:
 - (i) with respect to an ongoing Force Majeure Event, of the cessation of the Force Majeure Event; and
 - (ii) 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 (i) and (ii) above.
- (d) Failure by the affected Party to give written notice of a Force Majeure Event to the other Party within the five (5) Business Day period or twenty-four (24) hour period required under Section 24.2(a) 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 pursuant to Section 24.4 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 five (5) Business Day period or twenty-four (24) hour period required by Section 24.2(a), the affected Party shall be excused for such failure or delay pursuant to Section 24.4 from the time of commencement of the relevant Force Majeure Event.

24.3 Duty to Mitigate

The affected Party shall use all reasonable efforts (and shall ensure that its Contractors 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 (or such Contractor), which sums are reasonable in light of the likely efficacy of the mitigation measures.

24.4 Failures or Delays Caused by Force Majeure

Following a Force Majeure Event:

- (a) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment or provide security) under or pursuant to this Agreement during the existence of a Force Majeure Event, including with respect to calculation of the Availability Factor, Expected Availability Factor and Minimum Availability Factor, but only to the extent that the affected Party has complied with its obligations under Section 24.3; and
- (b) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended day-for-day by the number of days during which the affected Party was prevented from performing as a result of the Force Majeure Event, but only to the extent that the affected Party has complied with its obligations under Section 24.3,

provided, however, that no relief, including the extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 24.4 to the extent that such failure or delay would nevertheless have been experienced by the affected Party had the Force Majeure Event not occurred.

24.5 Payment During Force Majeure Event

24.5.1 Payment for Capacity and Energy Actually Delivered

- (a) During the pendency of any Force Majeure Event occurring after the Commercial Operations Date, NKEC shall pay to GenCo
 - (i) Energy Payments for Net Electrical Output actually delivered during the pendency of such Force Majeure Event, plus
 - (ii) Availability Payments for the Declared Available Capacity that GenCo is able to provide during the pendency of the Force Majeure Event,all as calculated in accordance with Schedule 1.
- (b) Upon the occurrence of and at any time during the pendency of a Force Majeure Event occurring after the Commercial Operations Date, either Party may request that a test be performed to determine the then-available Tested Capacities in accordance with the provisions of Section 9.1; provided, however, that no more than two (2) tests may be requested by a Party within any thirty (30) Day period during the pendency of the Force Majeure Event.

24.5.2 Payment for Reduced Capacity During a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or Change in Raw Water Quality or a Pass-Through Environmental/Archaeological Condition that Requires Environmental Remediation

- (a) If there occurs a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or Change in Raw Water Quality or a Pass-Through Environmental/Archaeological Condition that requires Environmental Remediation that reasonably prevents or delays the construction of the KRPP Facility or that reasonably causes a reduction in the Declared Available Capacity that GenCo will be able to provide, GenCo shall invoice and NKEC shall pay, pursuant to Article 17, for each Month (prorated for portion thereof) of the Deemed Compensation Period, an amount equal to:
 - (i) if a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event or Change in Raw Water Quality or a Pass-Through Environmental/Archaeological Condition that requires Environmental Remediation occurs after the Transfer Date but prior to the Commercial Operations Date, (A) all interest payable or accruing on the then-outstanding principal amount of the debt related to the KRPP Facility, plus (B) all fees, penalties and expenses (including Change Orders) payable by GenCo to GenCo Contractors pursuant to the terms of any of the Construction/Maintenance Contracts or any other agreement approved by NKEC and GOK, in each case, during the period affected by the Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event or Change in Raw Water Quality (but only to the extent that such charges (x) are not duplicative of payments to be made by NKEC to GenCo pursuant to any other provision of this Agreement or (y) are paid or payable to GenCo by a Specified POE under any other Project Agreement); or
 - (ii) if a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or a Change in Raw Water Quality or a Pass-Through Environmental/Archaeological Condition that requires Environmental Remediation occurs on or after the Commercial Operations Date, an amount calculated based on 100% of the Hourly Availability Payment that would be payable in an hour based on the average Declared Available Capacity during the three-month period (or if the event occurs prior to the date that is three months following the Commercial Operations Date, then a reasonable estimate of what would be the available capacity of the KRPP Facility in such period) preceding the Force Majeure Event, plus (B) all fees, penalties and expenses (including Change Orders)

payable by GenCo to GenCo Contractors pursuant to the terms of any of the Construction/Maintenance Contracts or any other agreement approved by NKEC and GOK, in each case, during the period affected by the Political Force Majeure Event or Change in Law, Raw Water Force Majeure Event, or Change in Raw Water Quality (but only to the extent that such charges (x) are not duplicative of payments to be made by NKEC to GenCo pursuant to any other provision of this Agreement or (y) are paid or payable to GenCo by a Specified POE under any other Project Agreement).

For the purposes of interpreting the term “reasonably” as used above with respect to a Raw Water Force Majeure Event or a Change in Raw Water Quality, the Parties shall take into consideration the expected costs to each of the Parties, including (1) the expected loss of availability of the KRPP Facility caused by a reduction in the Declared Available Capacity, (2) the expected Financial Impacts from reducing the Declared Available Capacity or delaying the construction of the KRPP Facility and (3) the cost of using alternative sources of water (such as potable water) to avoid such reduction in the Declared Available Capacity or delay in the construction of the KRPP Facility. Notwithstanding the foregoing, it shall be deemed to be reasonable for the Declared Available Capacity to be reduced to 0 MW in the event that there is a Raw Water Force Majeure Event or Change in Raw Water Quality caused by the Water being made available from the Water Supplier under the Water Supply Agreement being outside the Rejection Point Raw Water Quality Standards for a period longer than that specified in Schedule 24 for each Rejection Point Raw Water Quality Standard and GenCo has utilized all available Water from the On-Site Water Storage Facility.

- (b) The term “**Deemed Compensation Period**” shall mean the period beginning with the onset of a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event or Change in Raw Water Quality (unless a timely notice was not given under Section 24.2 in which case from the time such notice was given) or a Pass-Through Environmental/Archaeological Condition that requires Environmental Remediation and ending on the earliest of:
 - (i) the date GenCo is able to resume performance of its obligations under this Agreement and operate the KRPP Facility in accordance with Prudent Utility Practices;
 - (ii) the last Day of the Restoration Period or the completion of the Environmental Remediation, as applicable to the extent it prevents or delays construction; or
 - (iii) the Day of termination of this Agreement under Section 24.10 or Article 25 or any other provision.
- (c) For the avoidance of doubt, GenCo shall be liable for, and GOK and each Specified POE shall be released from liability or responsibility in relation to, any additional costs relating to any Environmental Remediation under Sections 24.5.2(a) and 24.5.2(b) to the extent resulting from GenCo’s failure to act in accordance with Prudent Utility Practices to administer, manage and enforce the contract with the firm procured to undertake the Environmental Remediation for a Pass-Through Environmental/Archaeological Condition.

24.6 Financial Impacts of a Political Force Majeure Event, Raw Water Force Majeure Event, Change in Law or Change in Raw Water Quality That Does Not Require Restoration

- (a) In the event that a Political Force Majeure Event, Change in Raw Water Quality, Raw Water Force Majeure Event or Change in Law does not require a Restoration but does result in Financial Impacts, then GenCo shall, at GenCo’s cost (it being acknowledged that GenCo shall recover such costs pursuant to a Tariff Adjustment under Section 24.8), develop and deliver to NKEC a written estimate of the projected Financial Impacts resulting from any such Political Force Majeure Event, Raw Water Force Majeure Event, Change in Law or Change in Raw Water Quality (collectively, the “**Financial Impacts Estimate**”); and

- (b) GenCo shall use commercially reasonable efforts to ensure that the Financial Impacts Estimate is as comprehensive and as complete as reasonably practicable under the circumstances.
- (c) GenCo shall deliver the Financial Impacts Estimate within thirty (30) Days after the date by which it was first required to provide notice to NKEC under Section 24.2(a); provided, however, if the Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or Change in Raw Water Quality has not ended by the time of such notice, GenCo shall deliver the Preliminary Restoration Estimate within thirty (30) Days after the date by which it was required to provide the notice under by Section 24.2(c);
- (d) Within ten (10) Days after the delivery of the Financial Impacts Estimate to NKEC, the Parties shall meet to discuss the Financial Impacts Estimate and any action(s) to be taken. In connection with the review, GenCo shall provide promptly to NKEC such additional information pertaining to the Financial Impacts Estimate and the matters described therein as NKEC may reasonably request.
- (e) Disputes in relation to any matter set forth in the Financial Impacts Estimate shall qualify as Technical Disputes for purposes of Dispute resolution proceedings under Article 26.

24.7 Restoration of the KRPP Facility Following a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or Change in Raw Water Quality

24.7.1 Preparation of Preliminary Restoration Estimate Following Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or Change in Raw Water Quality

- (a) In the event that a Political Force Majeure Event, Change in Raw Water Quality or a Raw Water Force Majeure Event results in material damage to the KRPP Facility or that compliance by GenCo with a Change in Law requires a material modification or a material capital addition to the KRPP Facility or that a Change in Raw Water Quality or Raw Water Force Majeure Event requires a material modification or a material capital addition to the water treatment facilities at the KRPP Facility (each such repair of damage, material modification or capital addition referred to herein as a “**Restoration**”), GenCo shall, at GenCo’s cost (it being acknowledged that GenCo shall recover such costs pursuant to a Tariff Adjustment under Section 24.8), engage an independent engineering consultancy firm reasonably acceptable to both Parties (and, to the extent the Parties cannot agree, then an expert appointed by the ICC International Centre for Expertise for ad hoc proceedings in accordance with the ICC Rules for Expertise for ad hoc proceedings) (the “**Restoration Expert**”) to develop and deliver to NKEC a preliminary written estimate (the “**Preliminary Restoration Estimate**”) of:
 - (i) the projected Restoration Costs and any additional Financial Impacts resulting from any such Political Force Majeure Event, Raw Water Force Majeure Event, Change in Law or Change in Raw Water Quality (collectively, the “**Restoration Cost Estimate**”); and
 - (ii) a description of the required work to complete the Restoration and a preliminary schedule (such schedule and each such schedule contained in the Full Restoration Report, a “**Restoration Schedule**,” which Restoration Schedule shall include the period of time reasonably estimated to complete the Restoration, which period shall be referred to herein as the “**Restoration Period**”) for the activities required to complete Restoration.
- (b) GenCo shall use commercially reasonable efforts to ensure that the Restoration Expert’s Preliminary Restoration Estimate is as comprehensive and as complete as reasonably practicable under the circumstances.
- (c) GenCo shall deliver the Preliminary Restoration Estimate within thirty (30) Days after the date by which it was first required to provide notice to NKEC under Section 24.2(a); provided, however, if the Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or

Change in Raw Water Quality has not ended by the time of such notice, GenCo shall deliver the Preliminary Restoration Estimate within thirty (30) Days after the date by which it was required to provide the notice under by Section 24.2(c).

24.7.2 Determination as to Preparation of Full Restoration Report

NKEC and GenCo shall meet within ten (10) Days after the delivery of the Preliminary Restoration Estimate to discuss the conclusions set forth therein. If the Restoration Cost Estimate is less than the Threshold Amount and NKEC agrees with the Restoration Cost Estimate (in which case the Restoration Cost Estimate shall be Pre-Approved Costs) and with the Restoration Schedule, then GenCo and NKEC shall proceed to make the required Tariff Adjustments pursuant to Section 24.9 and GenCo shall proceed with the Restoration in accordance with Section 24.5. If the Restoration Cost Estimate is not less than the Threshold Amount or if NKEC does not agree with the Restoration Cost Estimate or with the Restoration Schedule, GenCo shall proceed with the preparation of a Full Restoration Report and the provisions of Section 24.7.3 shall apply.

24.7.3 Preparation of Full Restoration Report

- (a) When required under Section 24.7.2, GenCo shall engage the Restoration Expert to commence the preparation of an appraisal report (a “**Full Restoration Report**”) within five (5) Days after the date it was determined that a Full Restoration Report would be necessary (it being acknowledged that GenCo shall recover the costs applicable to the Restoration Expert pursuant to a Tariff Adjustment under Section 24.9), and deliver a copy of such Full Restoration Report to NKEC promptly after it is prepared by the Restoration Expert. The Full Restoration Report shall address in good faith and in such detail as is reasonably practicable under the circumstances the following matters (to the extent applicable):
 - (i) a description of the precipitating event and the damage or required modifications to the KRPP Facility, and/or the other effects or impacts on, the KRPP Facility;
 - (ii) a Restoration Schedule;
 - (iii) a statement and explanation regarding whether the Restoration is technically feasible;
 - (iv) the Restoration Costs necessary to restore the KRPP Facility to its condition immediately prior to the precipitating event, the Financial Impacts to address the precipitating event and the expected associated costs under Section 24.5;
 - (v) a revised cash flow forecast for the KRPP Facility; and
 - (vi) the insurance proceeds, if any, that may be recovered, the date or dates on which such proceeds may be received, and the particular purposes for which such proceeds are required to be applied.
- (b) GenCo shall provide reasonable supporting data for the information included in the Full Restoration Report and shall provide copies of all certificates and reports of GenCo’s financial and technical advisers, as appropriate or as reasonably requested by NKEC, in support of the applicable matters referred to in this Section 24.7.3.

24.7.4 Full Restoration Report Disputes

- (a) Within ten (10) Days after the delivery of a Full Restoration Report to NKEC, the Parties shall meet to discuss the Full Restoration Report and any action(s) to be taken. In connection with the review, GenCo shall provide promptly to NKEC such additional information pertaining to the Full Restoration Report and the matters described therein as NKEC may reasonably request.
- (b) Disputes in relation to any matter set forth in the Full Restoration Report shall qualify as Technical Disputes for purposes of Dispute resolution proceedings under Article 26.

24.7.5 Determination Following Full Restoration Report

- (a) Subject to Section 24.7.5(b), if NKEC is entitled to terminate this Agreement pursuant to Section 24.9, NKEC reserves the right to determine whether to proceed with Restoration (subject to its obligation to pay for such Restoration through a Tariff Adjustment) or terminate this Agreement following the delivery of a Full Restoration Report.
- (b) NKEC shall make the determination described in Sections 24.7.5(a) and 24.7.5(c) acting reasonably and in good faith taking into consideration the tariff impact.
- (c) Subject to Section 24.7.5(b), NKEC shall, within fifteen (15) Days after the issuance of the Full Restoration Report, provide GenCo with a written notice of its election to either:
 - (i) terminate this Agreement if entitled pursuant to Section 24.9; or
 - (ii) authorize GenCo to proceed with Restoration (in which case the estimates in the Full Restoration Report of the Restoration Costs and the Financial Impacts shall be Pre-Approved Costs).

24.8 Tariff Adjustments

- (a) In relation to any Political Force Majeure Event, Raw Water Force Majeure Event, Change in Law or Change in Raw Water Quality leading to a Restoration or that does not require a Restoration but does result in Financial Impacts, NKEC shall increase or decrease the tariff in Schedule 1 in a manner that is equitable under the circumstances in order to keep GenCo (and the Sponsor HoldCo and the Ultimate Sponsor) in the same financial position, on an after-tax basis, as they were in had the applicable Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or Change in Raw Water Quality not occurred (collectively, the “**Tariff Adjustments**”). The Tariff Adjustments shall take into account all relevant circumstances and compensate GenCo or NKEC, as applicable, for all Restoration Costs and other Financial Impacts.
- (b) GenCo shall provide NKEC with a summary of all costs actually incurred in implementing the Restoration, together with copies of all invoices for such work, and/or all support for all Financial Impacts, as applicable.
- (c) Following completion of a Restoration and all related work, should the actual Financial Impacts and/or Restoration Costs vary from projections and estimates agreed prior to the Restoration, the Tariff Adjustments shall be revised and trued up to account for any such differences, exclusive of any Tariff Exclusions.
- (d) A Dispute between the Parties regarding the Tariff Adjustments shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 26.
- (e) In no event shall GenCo be obligated to commence or implement a Restoration until the Parties have reached agreement (or resolution of a Technical Dispute in accordance with Section 24.7.4(b)) on (i) the costs set forth in the Preliminary Restoration Estimate or Full Restoration Report, as applicable, and (ii) the Tariff Adjustments.

24.9 Insurance

The obligations of NKEC under Sections 24.5 through 24.8 shall be reduced in the amount of, and with respect to, any proceeds actually recovered from insurance or other third-parties by GenCo for amounts due under Sections 24.5 through 24.8. Should NKEC make payments pursuant to its obligations under Sections 24.5 through 24.8 with respect to amounts for which an insurer or other third party may be legally responsible, NKEC shall be deemed, to the extent necessary, GenCo’s equitable subrogee with respect to, and/or contractual or legal assignee of, the right to pursue recovery of such amounts from such insurer or third party, to the extent of such rights.

For the avoidance of doubt, the terms of this Agreement shall not be construed to reduce, impair, negate, modify, or replace the terms of any applicable insurance policy that also provides coverage for amounts payable under Sections 24.5 through 24.8. Notwithstanding the foregoing, the applicability of any insurance policy or an insurer's failure to perform its obligations with respect to amounts payable under Sections 24.5 through 24.8 shall not excuse, delay, or reduce the obligations of NKEC in any respect or excuse nonperformance of NKEC's obligations under Sections 24.5 through 24.8; however, in determining the respective obligations as between NKEC and any insurer, subsequent to NKEC's payments pursuant to its obligations under Sections 24.5 through 24.8, and in connection with any dispute between NKEC and such insurer as to the insurer's obligation to reimburse NKEC or otherwise provide coverage in relation thereto, any applicable insurance (with the exception of any applicable deductibles or retentions) shall be deemed primary to the obligations set forth under Sections 24.5 through 24.8, and the obligations set forth under Sections 24.5 through 24.8 shall be deemed specifically excess to any such applicable insurance, but only to the extent of any amounts actually paid to the insured under such insurance, and with the further understanding that NKEC will in all events be responsible for the amounts payable under Sections 24.5 through 24.8, to the extent of its obligations herein, within any applicable deductibles or retentions set forth in any such applicable insurance.

24.10 Termination Due to Prolonged Political Force Majeure Event, Raw Water Force Majeure Event, Change in Law, Change in Raw Water Quality, or Materially Increased Costs of Restoration

Notwithstanding anything herein to the contrary, in the event of:

- (a) the occurrence of a Political Force Majeure Event, Raw Water Force Majeure Event, Change in Law or Change in Raw Water Quality (or series of such events):
 - (i) prior to the Commercial Operations Date that has a material adverse effect on GenCo's ability to achieve the Commercial Operations Date, or
 - (ii) after the Commercial Operations Date that materially reduces GenCo's ability to declare Declared Available Capacity of the KRPP Facility

and such Political Force Majeure Event, Raw Water Force Majeure Event, Change in Law or Change in Raw Water Quality (or series of such events) continues to have such effect for a period exceeding six (6) Months; provided, however, that if NKEC or GOK commences taking appropriate actions to cure such effect within six (6) Month period, and thereafter diligently continues to pursue such cure, the cure period shall extend for an additional six (6) Months so long as such effect is capable of being cured within such extended cure period; or

- (b) a Political Force Majeure Event, Raw Water Force Majeure Event, Change in Law or Change in Raw Water Quality following which:
 - (i) the Parties agree or the outcome of the Dispute resolution process under Article 26 is that a Restoration is not feasible; or
 - (ii) the Restoration Costs and/or any Financial Impacts, exceed the Threshold Amount,

then, in each case, GenCo and NKEC shall each have the option to terminate this Agreement immediately.

24.11 Right to Terminate Following an Other Force Majeure Event

- (a) Either Party may, at its option, terminate this Agreement after the Commercial Operations Date if:
 - (i) the KRPP Facility or any part thereof is damaged as a result of an Other Force Majeure Event (or series of such events);

- (ii) the effects of the Other Force Majeure Event (or series of such events) continue for a period of six (6) Months or more; provided, however, that if GenCo or NKEC or GOK commences taking appropriate actions to cure such effect within six (6) Month period, and thereafter diligently continues to pursue such cure, the cure period shall extend for an additional six (6) Months so long as such effect is capable of being cured within such extended cure period; and
 - (iii) the KRPP Facility is unable to generate energy or GenCo is otherwise unable to operate the KRPP Facility, during such period of six (6) Months or twelve (12) Months as specified in Section 24.11(a)(ii), at least forty percent (40%) of the Contract Capacity as a result of such Other Force Majeure Event (or series of such events).
- (b) If the KRPP Facility is damaged as a result of an Other Force Majeure Event and it is clearly evident that the KRPP Facility cannot be reconstructed within a period of twelve (12) Months or the KRPP Facility cannot be repaired or replaced so as to be capable of satisfying all or substantially and materially all of the KRPP Facility requirements under this Agreement, either Party may, at its option, terminate this Agreement.
- (c) If an Other Force Majeure Event occurs and there are (or are reasonably expected to be) costs required to be paid to repair or replace the KRPP Facility resulting from such Other Force Majeure Event that are in excess of available insurance proceeds, then GenCo may, in its sole discretion, either (i) apply all available insurance proceeds and thereafter bear at its expense (without reimbursement pursuant to Schedule 1) all costs necessary to repair or replace the KRPP Facility in excess of available insurance proceeds and without adjustment to any performance standards hereunder or (ii) terminate this Agreement and GOK shall be required to acquire all of GenCo's right, title and interest in the KRPP Facility in accordance with Section 20.4 of the Implementation Agreement.

24.12 Right to Terminate Following a Political Force Majeure Event or Change in Law

In the event that the Implementation Agreement is terminated by either GOK or GenCo pursuant to Section 20.3 (*Termination Following a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or Change in Raw Water Quality*) of the Implementation Agreement, then either Party may terminate this Agreement by notice to the other Party.

24.13 Notice of Termination Required; Compensation

- (a) A Party shall exercise any right to terminate this Agreement under this Article 24 by delivering a notice of termination to the other Party in accordance with Section 27.1. Any such notice from NKEC shall be copied to a duly authorized representative of GOK. A copy of any such notice from GenCo shall be delivered to GOK at the same time the notice is delivered to NKEC in accordance with the provisions of Section 23.1 (*Notices*) of the Implementation Agreement. Such notice shall identify the Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, Change in Raw Water Quality, or Other Force Majeure Event in reasonable detail and the basis for termination. Termination of this Agreement shall be effective at 5:00 p.m. on the thirtieth (30th) Day following the date of delivery of such notice.
- (b) If this Agreement is terminated as a result of a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event or Change in Raw Water Quality under this Article 24, then the provisions of Section 20.3 (*Termination Following a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or Change in Raw Water Quality*) of the Implementation Agreement shall apply.

- (c) If this Agreement is terminated as a result of an Other Force Majeure Event under this Article 24, then the provisions of Section 20.4 (*Termination Following an Other Force Majeure Event*) of the Implementation Agreement shall apply.

Article 25

Default; Termination

25.1 GenCo Events of Default

Each of the following shall constitute an event of default by GenCo (each such event being a “**GenCo Event of Default**”):

- (a) the failure by GenCo to make any payment of any sum due to NKEC hereunder within fifteen (15) Days after GenCo’s receipt of written notice from NKEC that such payment is overdue, which notice shall specify the payment failure in reasonable detail; provided, however that no payment that is due as a result of the resolution of a Payment Dispute, a Technical Dispute, or any other Dispute shall be considered due for the purposes of this Section 25.1(a) until fifteen (15) Business Days following the resolution of such Dispute;
- (b) the appointment of a custodian, receiver, trustee or liquidator of GenCo, or of all or substantially all of the assets of GenCo, in any proceeding brought by GenCo, as applicable, or the appointment of any such custodian, receiver, trustee, or liquidator in any proceeding brought against GenCo that is not discharged within ninety (90) Days after such appointment, or if GenCo consents to or acquiesces in such appointment;
- (c) any representation or warranty made by GenCo under this Agreement proves to have been incorrect in any material respect as of the date made or reaffirmed, and such misrepresentation has or would reasonably be expected to have a material adverse effect on NKEC or the Kosovo e Re Project and such defect is not capable of being cured or is not cured within forty-five (45) Days after GenCo’s receipt of written notice from NKEC, which notice shall specify the misrepresentation in reasonable detail; provided, however, that if GenCo commences taking appropriate actions to cure such defect within such forty-five (45) Day period, and thereafter diligently continues to pursue such cure, the cure period shall extend for an additional ninety (90) Days so long as such defect is capable of being cured within such extended cure period;
- (d) the failure by GenCo in any respect in the observance or performance of any other material obligation of GenCo contained herein, including any material breach or default in the performance of its obligation to act in accordance with Prudent Utility Practices, that GenCo has not cured within thirty (30) Days after GenCo’s receipt of written notice from NKEC specifying the failure in reasonable detail and demanding that the same be remedied; provided, however, that if GenCo commences taking appropriate actions to cure such failure within such thirty (30) Day period, and thereafter diligently continues to cure such failure, the cure period shall extend for an additional ninety (90) Days;
- (e) the failure of GenCo to achieve the Commercial Operations Date not later than fifteen (15) Months after the Required Commercial Operations Date;
- (f) following the Transfer Date, the occurrence of an Abandonment (GenCo) that continues for a period of thirty (30) consecutive Days without the written consent of NKEC and GOK;
- (g) the occurrence of any breach by GenCo of its obligations under Section 27.14;
- (h) after the Commercial Operations Date, the failure by GenCo to maintain an average Declared Available Capacity (excluding, for the purpose of calculating such average, (i) any periods of Scheduled Outage or Force Majeure Events; (ii) the first (1st) time a failure of the generator occurs during the Term of this Agreement, any period up to twelve (12) Months during which the generator failure is ongoing; (iii) the first (1st) time a failure of the turbine occurs during the Term

of this Agreement, any period up to twelve (12) Months during which the turbine failure is ongoing; and (iv) the first (1st) time a failure of the autotransformer occurs during the Term of this Agreement, any period up to twelve (12) Months during which the autotransformer failure is ongoing, but only to the extent that a spare autotransformer was not included in the Tender (Plant)) of eighty percent (80%) or higher of the Contract Capacity over any period of eighteen (18) consecutive Months; provided, however, if such failure is both due to a Major Equipment Failure and GenCo has commenced and is diligently continuing to remedy such Major Equipment Failure during that period, then such eighteen (18) consecutive Month period shall be increased to thirty-six (36) consecutive Months;

- (i) after the Commercial Operations Date, the failure by GenCo to comply with any Contracted Operating Characteristic for a period of eighteen (18) consecutive Months; provided, however, if such failure is both due to a Major Equipment Failure and GenCo has commenced and is diligently continuing to remedy such Major Equipment Failure during that period, then such eighteen (18) consecutive Month period shall be increased to thirty-six (36) consecutive Months;
- (j) the failure of GenCo to deliver or continuously maintain Construction Security as required hereunder that GenCo has not cured within ten (10) Business Days after GenCo's receipt of written notice from NKEC of the occurrence of such failure;
- (k) the occurrence (after taking into account any applicable cure period) of a GenCo Event of Default (as defined in the Implementation Agreement) under the Implementation Agreement; or
- (l) except as provided in the Project Agreements, the sale by GenCo to a third party, or diversion by GenCo for any use (other than unavoidable losses and on-site use) of Contract Capacity, Declared Available Capacity, Net Electrical Output, or any associated rights, including Emission Reduction Rights;

provided, however, that no such event shall be a GenCo Event of Default and GenCo shall be excused from performance under this Agreement (including with respect to the calculation of the Availability Factor and Availability Payment) to the extent such GenCo Event of Default or failure to perform, as applicable, is caused in whole or material part by:

- (i) a breach by NKEC of or a default by NKEC under this Agreement (including any NKEC Event of Default);
- (ii) a Specified POE Action or Inaction;
- (iii) a breach by GOK of or a default by GOK under the Implementation Agreement (including any GOK Event of Default, as defined thereunder); or
- (iv) a Force Majeure Event (except in the case of a payment default pursuant to Section 25.1(a)); and

provided, further, that:

(A) if GenCo is unable to provide Contract Capacity, Dispatched Net Electrical Output (NKEC + KOSTT) or Ancillary Services due to a NKEC Event of Default, Specified POE Action or Inaction, a breach by GOK of or a default by GOK under the Implementation Agreement (including any GOK Event of Default, as defined thereunder) or Force Majeure Event, GenCo is not obligated to secure replacement fuel or other commodity inputs or to provide replacement capacity, power or ancillary services; and

(B) if the Commercial Operations Date is delayed or GenCo is unable to provide Contract Capacity, Dispatched Net Electrical Output (NKEC + KOSTT) or Ancillary Services, in each case, due to a NKEC Event of Default, Specified POE Action or Inaction or a breach by GOK of

or a default by GOK under the Implementation Agreement (including any GOK Event of Default, as defined thereunder), then:

(x) if such fault event occurs prior to the Commercial Operations Date, NKEC shall pay to GenCo (1) all interest payable or accruing on the then-outstanding principal amount of the debt related to the KRPP Facility, plus (2) all fees, penalties and expenses (including Change Orders) payable by GenCo to GenCo Contractors pursuant to the terms of any of the Construction/Maintenance Contracts or any other agreement approved by NKEC and GOK, in each case, during the period affected by the fault event (but only to the extent that such charges are not paid to GenCo by NKEC pursuant to any other provision of this Agreement or by a Specified POE under another Project Agreement); and

(y) if such fault event occurs on or after the Commercial Operations Date, NKEC shall pay to GenCo (1) an amount calculated based on 100% of the Hourly Availability Payment that would be payable in an hour based on the average Declared Available Capacity during the three-month period (or if the event occurs prior to the date that is three months following the Commercial Operations Date, then a reasonable estimate of what would be the available capacity of the KRPP Facility in such period) preceding the fault event, plus (2) all fees, penalties and expenses (including Change Orders) payable by GenCo to GenCo Contractors pursuant to the terms of any of the Construction/Maintenance Contracts or any other agreement approved by NKEC and GOK, in each case, during the period affected by fault event (but only to the extent that such charges are not paid to GenCo by NKEC pursuant to any other provision of this Agreement or by a Specified POE under another Project Agreement).

To the extent that any obligation of GenCo under this Agreement is also an obligation of GenCo under any other Project Agreement, then any cure, settlement, or waiver of a breach of such obligation under the applicable Project Agreement shall constitute a cure, settlement, or waiver under this Agreement if NKEC received reasonable advance notice of such proposed cure, settlement or waiver of such obligation under the applicable Project Agreement and failed to reasonably object to such cure, settlement, or waiver within a reasonable period of time.

GenCo may cure a GenCo Event of Default by causing a GenCo Contractor to cure such GenCo Event of Default.

25.2 NKEC Events of Default

Each of the following shall constitute an event of default by NKEC (each such event being a “**NKEC Event of Default**”):

- (a) the failure by NKEC to make any payment of any sum due to GenCo hereunder within fifteen (15) Days after NKEC’s receipt of written notice from GenCo that such payment is overdue, which notice shall specify the payment failure in reasonable detail; provided, however that no payment that is due as a result of the resolution of a Payment Dispute, a Technical Dispute, or any other Dispute shall be considered due for the purposes of this Section 25.2(a) until fifteen (15) Business Days following the resolution of such Dispute;
- (b) the appointment of a custodian, receiver, trustee or liquidator of NKEC, or of all or substantially all of the assets of NKEC, in any proceeding brought by NKEC, as applicable, or the appointment of any such custodian, receiver, trustee, or liquidator in any proceeding brought against NKEC that is not discharged within ninety (90) Days after such appointment, or if NKEC consents to or acquiesces in such appointment;
- (c) any representation or warranty made by NKEC under this Agreement proves to have been incorrect in any material respect as of the date made or reaffirmed, and such misrepresentation

has or would reasonably be expected to have a material adverse effect on GenCo or the Kosovo e Re Project, and such defect is not capable of being cured or is not cured within forty-five (45) Days after NKEC's receipt of written notice from GenCo, which notice shall specify the misrepresentation in reasonable detail; provided, however, that if NKEC commences taking appropriate actions to cure such defect within such forty-five (45) Day period, and thereafter diligently continues to pursue such cure, the cure period shall extend for an additional ninety (90) Days, so long as such defect is capable of being cured within such extended cure period; and

- (d) the failure by NKEC in any respect in the observance or performance of any other material obligation of NKEC contained herein that NKEC has not cured within thirty (30) Days after NKEC's receipt of written notice from GenCo specifying the failure in reasonable detail and demanding that the same be remedied; provided, however, that if NKEC commences taking appropriate actions to cure such failure within such thirty (30) Day period, and thereafter diligently continues to cure such failure, the cure period shall extend for an additional ninety (90) Days;
- (e) the occurrence (after taking into account any applicable cure period) of a GOK Event of Default (as defined in the Implementation Agreement) under the Implementation Agreement; or
- (f) the occurrence of any breach by NKEC of its obligations under Section 27.14;

provided, however, that no such event shall be a NKEC Event of Default and NKEC shall be excused from performance under this Agreement if it is caused in whole or material part by:

- (i) a breach by GenCo of or a default by GenCo under this Agreement (including any GenCo Event of Default);
- (ii) a GenCo Action or Inaction; or
- (iii) a Force Majeure Event (except in the case of a payment default pursuant to Section 25.2(a)); and

provided, further, that to the extent that any obligation of NKEC under this Agreement is also an obligation of NKEC under any other Project Agreement, then any cure, settlement, or waiver of a breach of such obligation under the applicable Project Agreement shall constitute a cure, settlement, or waiver under this Agreement if GenCo received reasonable advance notice of such proposed cure, settlement or waiver of such obligation under the applicable Project Agreement and failed to reasonably object to such cure, settlement, or waiver within a reasonable period of time.

NKEC may cure a NKEC Event of Default by causing a Contractor of NKEC cure such NKEC Event of Default.

Notwithstanding any provision of this Agreement or any other Project Agreement, NKEC's failure to comply with, or otherwise take any action in relation to, the Applicable Standards or the Laws of Kosovo shall not be a NKEC Event of Default and there shall be no remedies whatsoever of GenCo in connection therewith, except as provided in Section 19.2(i) through Section 19.2(k) of the Implementation Agreement (and all related provisions (in all Project Agreements) providing for GenCo's rights and/or remedies in respect of a GOK Event of Default (as defined in the Implementation Agreement) or in respect of protections for the benefit of GenCo relating to any Specified POE Action or Inaction.

25.3 Notice to GOK of a NKEC Event of Default

In the event that a NKEC Event of Default occurs, GenCo shall deliver a notice (a "**Special GOK Notice of Default**") of the occurrence of such NKEC Event of Default to GOK at the address specified in the Implementation Agreement. GOK shall have the Applicable Counterparty Cure Period following the receipt of the Special GOK Notice of Default during which to make any payment or perform any act

required of NKEC hereunder to cure the NKEC Event of Default, with the same effect as if such payment or act had been made or performed by NKEC.

25.4 Termination Notice

- (a) Subject to Section 25.4(c) and Section 25.5, if any GenCo Event of Default or NKEC Event of Default, as the case may be, occurs and is continuing, the non-defaulting Party may terminate this Agreement by delivering a notice (a “**Termination Notice**”) to the defaulting Party, which notice shall specify in reasonable detail the GenCo Event of Default or NKEC Event of Default, as the case may be, giving rise to the Termination Notice; provided, however, that GenCo may not deliver a Termination Notice unless and until it has delivered a Special GOK Notice of Default and the cure period set forth in Section 25.3 has expired without GOK having effected a cure
- (b) Subject to Section 25.4(c) and Section 25.5, if any other Project Agreement is terminated in accordance with its terms, then either Party may terminate this Agreement by delivering a Termination Notice to the other Party, which notice shall specify the other Project Agreement that has terminated; provided, however, in the event that (i) there occurs a Buy-Out (as defined in the Implementation Agreement) under the Implementation Agreement, and (ii) this agreement is required to be novated pursuant to Schedule 4 (*Buy-Out Arrangements*) of the Implementation Agreement, then neither Party may deliver such a Termination Notice.
- (c) This Agreement shall terminate on the date specified in the Termination Notice, which date shall not be earlier than the date that is ten (10) Business Days following the date on which the Termination Notice is delivered to the other Party or later than thirty (30) Days following the date of such delivery.

25.5 Obligations Following Termination Notice

The Parties shall continue to perform their respective obligations under this Agreement pending the final resolution of any Dispute relating to or arising from a Termination Notice.

25.6 Other Remedies

- (a) Except as provided in this Agreement and subject to Sections 25.6(b) and 25.6(c), the exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude such Party from exercising other rights or remedies that are provided in this Agreement or are available at law or in equity; provided, however, that no Party shall have a right to terminate or treat its obligations under this Agreement as repudiated except in accordance with the provisions of this Agreement. Subject to the provisions of Article 19 and except as may otherwise be set forth in this Agreement, remedies are cumulative, and the exercise of, or failure to exercise, any one or more of such rights or remedies by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other rights or remedies by such Party.
- (b) Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event GenCo terminates the Implementation Agreement pursuant to the terms of the Implementation Agreement, GOK purchases the KRPP Facility and GenCo transfers the KRPP Facility to GOK pursuant to the terms of the Implementation Agreement and each Party has been paid all amounts due and owing under this Agreement and the Project Agreements as part of the purchase compensation, then, upon such transfer, and payment, any claims against or liability of the Parties under this Agreement shall be fully extinguished and neither Party shall have any further claim or recourse against the other Party under this Agreement, except as provided in Section 27.4.
- (c) Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event that GOK terminates the Implementation Agreement pursuant to the terms of the Implementation Agreement, GOK purchases the KRPP Facility and GenCo transfers the KRPP

Facility to GOK pursuant to the terms of the Implementation Agreement and each Party has been paid all amounts due and owing under this Agreement and the Project Agreements as part of the purchase compensation, then, upon such transfer and payment, any claims against or liability of the Parties under this Agreement shall be fully extinguished and neither Party shall have any further claim or recourse against the other Party under this Agreement, except as provided in Section 27.4.

25.7 Right to Terminate for Failure to Achieve the Transfer Date

- (a) Notwithstanding any other term of this Agreement, if GenCo terminates the Site Transfer Agreement pursuant to Section 5.4 (*Termination for Failure to Satisfy Conditions Precedent*) thereof, then GenCo or NKEC shall have the right to terminate this Agreement by notice to the other Party.
- (b) Notwithstanding any other term of this Agreement, if KEK Generation terminates the Site Transfer Agreement pursuant to Section 5.4 (*Termination for Failure to Satisfy Conditions Precedent*) thereof, then NKEC or GenCo shall have the right to terminate this Agreement by notice to the other Party.

Article 26 Dispute Resolution

26.1 Notice of Dispute

In the event that there arises between the Parties any Dispute, controversy, or claim arising out of or relating to this Agreement or the breach, termination, or validity thereof, the Party wishing to declare a Dispute shall deliver to the other Party a written notice identifying the disputed issue in reasonable detail.

26.2 Dispute Resolution Procedures

26.2.1 Informal Dispute Resolution by Parties

Upon receipt by a Party of a notice from the other Party of a Dispute in accordance with Section 26.1 identifying the Dispute in reasonable detail, the Parties shall for a period of twenty (20) Days from the date of delivery of such notice attempt in good faith to settle such Dispute by discussions among representatives of each Party. In the event that the Parties are unable to reach agreement within such twenty (20) Day period, or such longer period as they may agree, then the Dispute shall be resolved in accordance with the formal Dispute resolution procedures described in Section 26.2.2.

26.2.2 Formal Dispute Resolution Procedures—Appropriate Forum

- (a) In the event that the Parties are unable to resolve a Dispute by informal discussions in accordance with Section 26.2.1 and such Dispute is a Technical Dispute or a Payment Dispute, then the Dispute shall be resolved by referral to an expert in accordance with Section 26.3 (in the case of a Technical Dispute) or in accordance with Section 26.4 (in the case of a Payment Dispute), as the case may be, in each case subject to Section 26.2.2(g).
- (b) RESERVED.
- (c) In the event that a Dispute may be considered both a Payment Dispute and a Technical Dispute, the Dispute shall be referred to Section 26.4 and the expert appointed thereunder shall determine, in accordance with Section 26.4(c), whether such Dispute may be resolved, in whole or in part, as a Payment Dispute. If the expert determines the Dispute may be so resolved, all or such portion of the Dispute capable of resolution as a Payment Dispute shall be resolved pursuant to Section 26.4 and the remaining portion (if any) shall be referred to and resolved pursuant to Section 26.3.

- (d) If the Parties cannot reasonably agree within five (5) Business Days as to whether a Dispute is a Technical Dispute, the determination of whether the Dispute is a Technical Dispute shall be resolved pursuant to Section 26.3.
- (e) If any Party does not accept the recommendation of the expert with respect to a Technical Dispute or a Payment Dispute, it may refer the Dispute for resolution in accordance with the procedures described in Section 26.5; provided, however, that if such Party has not referred the Dispute for resolution in accordance with the procedures described in Section 26.5 within ninety (90) Days following the delivery of the recommendation by the expert, such recommendation shall become a binding determination on the Parties to the fullest extent permitted under law. If the expert has not submitted its recommendation to the Parties within the time period provided in Section 26.3(f) (in the case of a Technical Dispute) or Section 26.4(f) (in the case of a Payment Dispute) then either Party may refer the Dispute for resolution in accordance with the procedures described in Section 26.5.
- (f) In the event that the Parties are unable to resolve a Dispute by informal discussions in accordance with Section 26.2.1 and such Dispute is not a Technical Dispute or a Payment Dispute, then the Dispute shall be resolved in accordance with Section 26.5.
- (g) The Parties may, through mutual agreement, elect to resolve any Dispute (including a Technical Dispute and a Payment Dispute) in accordance with Section 26.5.

26.3 Technical Disputes

Any Technical Dispute subject to this Section 26.3 shall be resolved in accordance with the following provisions:

- (a) The expert shall have demonstrated expertise in the area to which such Technical Dispute relates and shall not be an agent, employee, or contractor or a former agent, employee, or contractor of either Party involved in, and shall otherwise have no interest in, the Technical Dispute.
- (b) The Party initiating submission of the Technical Dispute to the expert shall provide the other Party with a notice to such effect and nominating the person it proposes to be the expert from the list of experts set forth on Schedule 22 hereto. If the Parties are unable to appoint an expert from the list on Schedule 22 or cannot agree on an expert from the list on Schedule 22, or if the Technical Dispute involves issues that require an expert not listed on Schedule 22, the Party initiating submission of the Technical Dispute to the expert shall provide the other Party with a notice nominating the person it proposes to be the expert. The other Party shall, within five (5) Business Days after receiving such notice, notify the initiating Party whether such person is acceptable. If the Party receiving such notice fails to respond during such period or notifies the initiating Party that the person is not acceptable, then if the expert proposed by the other Party is listed on Schedule 22, such person shall become the expert for the purpose of resolving the Technical Dispute. Otherwise, the Parties shall, as soon as practicable, meet and discuss in good faith for a period of five (5) Business Days to agree upon a person to be the expert. If the Parties fail to meet within a reasonable amount of time or are unable to agree on an expert at the end of such five (5) Business Day period, the Party initiating the submission of the Technical Dispute shall request the ICC Centre for Expertise to appoint the expert for ad hoc proceedings in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of Commerce, with the request that the ICC Centre for Expertise shall appoint within five (5) Business Days or as soon as practicable thereafter, and such Person so appointed shall be the expert for the purpose of resolving the Technical Dispute.
- (c) Within five (5) Business Days after receiving the written materials described in Section 26.3(d), or as soon as practicable thereafter, the expert shall determine whether the Dispute is capable of being resolved as a Technical Dispute through expert determination as set out in this Section

26.3. If the expert determines that the Dispute is not capable of such resolution, the Dispute shall be resolved pursuant to Section 26.5.

- (d) The Party initiating submission of the Technical Dispute by the expert shall submit within ten (10) Business Days after the appointment of the expert to both the expert and the other Party written materials setting forth:
 - (i) its description of the Technical Dispute in reasonable detail; and
 - (ii) a detailed written proposed resolution of the Technical Dispute.
- (e) Within ten (10) Business Days after the date that a Party has submitted the materials described in the preceding sentence, the other Party shall submit to the expert and to the initiating Party:
 - (i) its description of the Technical Dispute in reasonable detail; and
 - (ii) a detailed written proposed resolution of the Technical Dispute.
- (f) 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.
- (g) The expert shall have a period of ten (10) Business Days after receipt of the non-initiating Party's counter-proposal to select either the initiating Party's or the non-initiating Party's proposed resolution as the final and binding resolution of such Technical Dispute subject to the Parties' rights under Section 26.2.2(e) and Section 26.3(h).
- (h) Except as provided in Section 26.3(i) with respect to the payment of costs, the proceedings under this Section 26.3 shall be without prejudice to either Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings, including an arbitration proceeding under Section 26.5. The process under this Section 26.3 shall not be regarded as arbitration but as dispute resolution, and the laws relating to commercial arbitration shall not apply.
- (i) The costs of engaging an expert shall be borne equally by the Parties, and each Party shall bear its own costs in preparing materials for, and making presentations to, the expert.

26.4 Payment Disputes

Any Payment Dispute subject to this Section 26.4 shall be resolved in accordance with the following provisions:

- (a) The expert shall have demonstrated expertise in the area to which such Payment Dispute relates and shall not be an agent, employee, or contractor or a former agent, employee, or contractor of either Party involved in, and shall otherwise have no interest in, the Payment Dispute.
- (b) The Party initiating submission of the Payment Dispute to the expert shall provide the other Party with a notice to such effect and nominating the person it proposes to be the expert from the list of experts set forth on Schedule 22 hereto. If the Parties are unable to appoint an expert from the list on Schedule 22 or cannot agree on an expert from the list on Schedule 22, or if the Payment Dispute involves issues that require an expert not listed on Schedule 22, the Party initiating submission of the Payment Dispute to the expert shall provide the other Party with a notice nominating the person it proposes to be the expert. The other Party shall, within five (5) Business Days after receiving such notice, notify the initiating Party whether such person is acceptable. If the Party receiving such notice fails to respond during such period or notifies the initiating Party that the person is not acceptable then if the expert proposed by the other Party is listed on

Schedule 22, such person shall become the expert for the purpose of resolving the Payment Dispute. Otherwise,, the Parties shall, as soon as practicable, meet and discuss in good faith for a period of five (5) Business Days to agree upon a person to be the expert. If the Parties fail to meet within a reasonable amount of time or are unable to agree on an expert at the end of such five (5) Business Day period, the Party initiating the submission of the Payment Dispute shall request the ICC Centre for Expertise to appoint the expert for ad hoc proceedings in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of Commerce, with the request that the ICC Centre for Expertise shall appoint within five (5) Business Days or as soon as practicable thereafter, and such Person so appointed shall be the expert for the purpose of resolving the Payment Dispute.

- (c) Within five (5) Business Days after receiving the written materials described in Section 26.4(d), or as soon as practicable thereafter, the expert shall determine whether such Dispute is capable of being resolved as a Payment Dispute as set out in this Section 26.4. If the expert determines that the Dispute is not capable of such resolution, the Dispute shall be resolved pursuant to Section 26.5; provided, however, that if the Dispute was referred to this Section 26.4 pursuant to Section 26.2.2(b), the Dispute shall be resolved pursuant to Section 26.3.
- (d) The Party initiating submission of the Payment Dispute by the expert shall submit within ten (10) Business Days after the appointment of the expert to both the expert and the other Party written materials setting forth:
 - (i) its description of the Payment Dispute in reasonable detail; and
 - (ii) a detailed written proposed resolution of the Payment Dispute.
- (e) Within ten (10) Business Days after the date that a Party has submitted the materials described in the preceding sentence, the other Party shall submit to the expert and to the initiating Party:
 - (i) its description of the Payment Dispute in reasonable detail; and
 - (ii) a detailed written proposed resolution of the Payment Dispute.
- (f) 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.
- (g) The expert shall have a period of ten (10) Business Days after receipt of the non-initiating Party's counter-proposal to select either the initiating Party's or the non-initiating Party's proposed resolution as the final and binding resolution of such Payment Dispute subject to the Parties' rights under Section 26.2.2(e) and Section 26.4(h).
- (h) Except as provided in Section 26.4(i) with respect to the payment of costs, the proceedings under this Section 26.4 shall be without prejudice to either Party and any evidence given or statements made in the course of this process may not be used against a Party in any other proceedings, including an arbitration proceeding under Section 26.5. The process under this Section 26.4 shall not be regarded as arbitration but as dispute resolution, and the laws relating to commercial arbitration shall not apply.
- (i) The costs of engaging an expert shall be borne equally by the Parties, and each Party shall bear its own costs in preparing materials for, and making presentations to, the expert.

26.5 Arbitration

- (a) Any Dispute subject to this Section 26.5 shall, subject to Section 26.5(c), be finally settled in accordance with the Rules of Procedure for Arbitration Proceedings (the “**ICSID Rules**”) of

ICSID established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the “**ICSID Convention**”), and each of the Parties hereby consents to the jurisdiction of ICSID and to arbitration thereunder. Each Party to this Agreement stipulates that the transaction to which this Agreement relates is an “investment” within the meaning of the ICSID Convention. The Parties hereby agree that, although each of GenCo and NKEC is a national and resident of Kosovo, while either GenCo or NKEC, as the case may be, is controlled by nationals of another Contracting State (as such term is used in the ICSID Convention) GenCo or NKEC, as the case may be, shall be treated as a national of another Contracting State (as such term is used in the ICSID Convention) for the purposes of the ICSID Convention.

- (b) To the extent that any Party to this Agreement is a Specified POE (and to the extent such Specified POE is a Publicly Owned Enterprise), it is hereby stipulated that such Party is an agency of GOK, and that such Party shall be designated to ICSID by GOK in accordance with Article 25(1) of the ICSID Convention. In accordance with Article 25(3) of the ICSID Convention, GOK has given its approval to such Party’s consent in this Agreement to arbitration under the ICSID Convention.
- (c) If the jurisdictional requirements of Article 25 of the ICSID Convention are not met, or if for any other reason the Dispute cannot be settled in accordance with the ICSID Rules, such Dispute shall be finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (the “**ICC Rules**”).
- (d) The language to be used in the arbitral proceedings shall be English.
- (e) Unless otherwise agreed by the Parties, the number of arbitrators shall be three (3), with such arbitrators to be nominated by each Party selecting one (1) arbitrator within:
 - (i) thirty (30) Days after an initiation by a Party of arbitration proceedings pursuant to this Section 26.5, for an arbitration under the ICSID Convention; or
 - (ii) the period for selecting the arbitrator specified in the ICC Rules,and the two (2) arbitrators thus nominated shall, within thirty (30) Days after the selection of the second arbitrator, select the third (3rd) arbitrator; provided, however, that to the extent that more than two Parties participate in the arbitration, the International Chamber of Commerce shall be designated as the appointing authority for purposes of selecting the arbitrators in accordance with the Rules of ICC as Appointing Authority.
- (f) No arbitrator appointed pursuant to this Section 26.5 shall be a national of the jurisdiction of a Party nor shall any such arbitrator be a shareholder, director, employee, agent, or contractor or former shareholder, director, employee, agent or contractor of a Party.
- (g) The seat (legal place) of arbitration is in London, England.
- (h) The Parties agree that the marshalling of evidence, pre-hearing disclosure, and examination of witnesses and experts authorized by Rules 34 through 36 of the ICSID Rules (or Article 19 of the ICC Rules should the ICC be the administering authority), shall be construed by the tribunal to allow any Party to request the production of documents and other information that is reasonably calculated to lead to the discovery of evidence that is relevant to any claim or defense relating to the Dispute, including by the following means:
 - (i) written interrogatories;
 - (ii) requests for production of documents, including production of electronically stored information in a convenient electronic format in accordance with the IBA Rules; and

- (iii) a reasonably sufficient number of oral depositions appropriate for the subject matter of the Dispute, including the deposition of a representative designated by an entity as its agent to testify as to specific matters on its behalf;

and to allow the non-requesting Party to object to such request, in which case the tribunal shall issue a ruling on such request.

- (i) Each Party shall use reasonable endeavors to ensure that its advisors, agents, and Contractors are available for any depositions and other discovery mechanisms that are ordered by the tribunal as provided for in Section 26.5(h).
- (j) Each Party shall be responsible for its own legal fees and related costs in connection with any arbitration.
- (k) The decision of the arbitrators shall be final and binding upon the Parties, and shall not be subject to appeal.
- (l) Any Party may petition any court having jurisdiction to enter judgment upon the arbitration award. At the request of any of the Parties, the arbitrators shall seek to have such arbitration award filed with the highest jurisdictional court in Kosovo and any other court so requested by a Party.
- (m) The arbitral award shall be made and payable in Euros, and the award shall be grossed up for Tax unless the amount paid would have been subject to Tax if paid in the normal course.
- (n) The Parties waive their rights to claim or recover, and the arbitrators shall not award, any punitive, multiple, or other exemplary damages, whether statutory or common law (except to the extent such damages (i) have been awarded to a third party and are subject to allocation among the Parties) or (ii) are expressly contemplated to be paid under the terms and conditions of this Agreement).

26.6 Related Disputes

- (a) The arbitral tribunal may consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to one or more of the Project Agreements if the subject matter of the Disputes arises out of or relates to essentially the same facts or transactions. Such consolidated arbitration shall be determined by the arbitral tribunal appointed for the arbitration proceeding that was commenced first in time.
- (b) Except as otherwise provided in Section 26.2, 26.3 and 26.4, the rights of the Parties to proceed with Dispute resolution under Section 26.2, 26.3 and 26.4 shall be independent of their rights or the rights of related entities to proceed with Dispute resolution under any of the other Project Agreements. Notwithstanding the foregoing or anything to the contrary in this Agreement, a final determination of a Dispute under and in accordance with any of the Project Agreements shall be a final and binding resolution of the same issue as it relates, *mutatis mutandis*, to the obligations of GenCo or NKEC hereunder.

26.7 Obligations Continue

The pendency of a Dispute shall not in and of itself relieve either Party of its duty to perform under this Agreement, and each Party shall continue to perform its obligations, and shall have the right to exercise its rights, under this Agreement pending resolution of such Dispute, without limiting Section 25.5.

26.8 Sovereign Immunity; Jurisdiction

- (a) NKEC hereby irrevocably and unconditionally:
 - (i) agrees that should any proceedings be brought against NKEC or its assets in any jurisdiction in connection with this Agreement or any of the transactions contemplated by

this Agreement, no claim of immunity from such proceedings will be claimed by or on behalf of NKEC on behalf of itself or any of its assets;

- (ii) waives any right of immunity that it or any of its assets now has or may in the future have in any jurisdiction in connection with any such proceedings;
 - (iii) agrees that the execution, delivery and performance by it of this Agreement and any other Project Agreement to which it is a party constitutes its private and commercial acts and waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 26.8(a), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same;
 - (iv) agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court; and
 - (v) consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may thereafter acquire, of any court of competent jurisdiction for any action filed by GenCo to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve any Dispute between the Parties.
- (b) GenCo hereby irrevocably and unconditionally:
- (i) consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now owns or may hereafter acquire, of any court of competent jurisdiction for any action filed by NKEC to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve any Dispute between the Parties;
 - (ii) waives any right of immunity that it or any of its assets now has or may in the future have in any jurisdiction in connection with any such proceedings;
 - (iii) waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 26.8(b), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same; and
 - (iv) agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court.

Article 27

Miscellaneous

27.1 Notices

- (a) Except to the extent otherwise required under the Connection Agreement, all notices and other communications required or permitted to be given by a Party (including any invoices or Invoice Dispute Notices required or permitted to be delivered hereunder) shall be in writing and either delivered personally or by courier or sent by fax or by e-mail to the address or number of the other Party specified below:
- (i) If to NKEC:

Government of Kosovo
Rr. Nene Tereza Nr. 36,
Pristina, Kosovo
Attention: Minister of Economic Development

Fax: [_____]
E-mail: [_____]

(ii) If to GenCo:

ContourGlobal plc,
15 Berkeley Street, 6th Floor
London W1J 8DY, United Kingdom
Attention: The board of directors
Tel: +44 7825 028835
Fax: +1 646 386 9915
E-mail: CGK_CEO@contourglobal.com and
CGK_GC@contourglobal.com

provided, however, that a Party may change the address to which notices are to be sent to it by giving not less than thirty (30) Days' prior written notice to the other Party in accordance with this Section 27.1(a).

- (b) No notice or other communication shall be effective until received or deemed received. Notices or other communications shall be deemed to have been received by the receiving Party:
(i) when delivered if personally delivered;
(ii) three (3) Business Days after sending, if sent by international courier;
(iii) upon sending if sent by fax, subject to confirmation of an uninterrupted transmission report and provided that a hard copy is dispatched not later than the following Business Day to the recipient by international courier or personal delivery; or
(iv) upon sending if sent by e-mail, provided that a hard copy is dispatched not later than the following Business Day to the recipient by international courier or personal delivery; provided, however, the Parties may from time to time mutually agree in writing that no hard copy delivery requirements are required with respect to certain day-to-day or similarly routine operational communications.
(c) A Party delivering a notice or other communication in accordance with Section 27.1(a) shall use commercially reasonable efforts to provide to the receiving Party a reasonably accurate translation in Albanian within five (5) Business Days after sending such notice or other communication in English; provided, however, that a Party shall not be required to provide a translation of any technical drawings or similar technical or engineering documents. In the event of any inconsistency between the English original and the Albanian translation of any notice or other communication, the English version shall prevail over the Albanian version. For the avoidance of doubt, failure to deliver a translation of a notice or other communication in accordance with this Section 27.1(c) shall not affect the effectiveness of such notice or other communication as established pursuant to Section 27.1(b).
(d) In the event that a notice delivered by GenCo to NKEC or GOK pursuant to this Agreement requires NKEC or GOK, as applicable, to either provide a response (including any approval or non-objection) within a certain time period or be deemed to have approved or not objected to the taking of any action by GenCo, GenCo shall include in such notice a description of the response period and consequences of the failure of NKEC or GOK, as applicable, to respond (including any deemed approval or non-objection).

27.2 Amendment

An amendment or modification of this Agreement shall be effective or binding on a Party only if made in writing and signed by a duly authorized representative of each of the Parties; provided, however, that no such amendment shall affect GOK's obligations under this Agreement or any other Project Agreement unless GOK is a party to the agreement amending this Agreement (or the amended and restated version of this Agreement) or GOK otherwise consented to the amendment of this Agreement.

27.3 NKEC's Cooperation, Assistance and Information

NKEC shall comply with the provisions of Section 3.2 (*No Discrimination; No Expropriation*), Section 3.4.2 (*Financing Support*), Section 3.4.3 (*Consent to Collateral Assignment*), and Section 4.4 (*GOK Support to Obtain Consents*) of the Implementation Agreement as though such provisions were applicable to NKEC and were set forth herein.

27.4 Survival

- (a) On the expiry of this Agreement or the earlier termination of this Agreement, all covenants, obligations, representations and warranties contained in this Agreement shall terminate and be of no force or effect and the Parties shall have no further obligations or liabilities under this Agreement, except for those obligations and liabilities that arose prior to and remain undischarged at the date of expiry or termination, and those obligations and liabilities that expressly survive such expiry or termination pursuant to Section 27.4(b).
- (b) Notwithstanding anything contained in this Agreement to the contrary, the provisions of Article 1 (*Definitions; Interpretation*), Section 12.7 (*Recording of Communications*), Section 12.12 (*Maintenance of Operating Records*), Article 17 (*Billing and Payment*), Article 19 (*Limitation of Liability*), Article 20 (*Indemnification*), Section 21.4 (*Insurance Reports*), Section 21.6 (*No Limitation on Liability*), Section 25.6 (*Other Remedies*), Article 26 (*Dispute Resolution*), Article 27 (*Miscellaneous*), and Section 1.2 (*Interpretation*) of Schedule 1 (*Tariff*), and Schedule 21 (*Potential Tax Credits*) shall expressly survive any termination or expiry of this Agreement.

27.5 Third Party Beneficiaries

Except for the rights expressly granted herein, this Agreement is intended solely for the benefit of the Parties and nothing in this Agreement shall be construed to create any rights in, duty to, standard of care to, or any liability to, any Person not a Party.

27.6 Liquidated Damages

The Parties acknowledge and agree that:

- (a) it would be difficult or impossible at the date of this Agreement to determine with absolute precision the amount of damages that would or might be incurred by NKEC as a result of GenCo's failure to perform those matters for which liquidated damages are provided in this Agreement, and the liquidated damages provided for therein are the Parties' reasonable and genuine estimates of the losses and damages that may reasonably be anticipated from such failures in respect of such matters, and do not constitute a penalty;
- (b) amounts due as liquidated damages under this Agreement shall be payable as liquidated damages and not as a penalty, and GenCo waives, to the fullest extent permitted by law, any claim to the contrary; and
- (c) without prejudice to NKEC's rights under Article 25, the amounts of liquidated damages provided under this Agreement are in lieu of actual damages and shall be the sole remedy of NKEC in respect of the matters to which such liquidated damages relate.

27.7 No Waiver

No default by either Party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of the other Party. No waiver by either Party of any default by the other Party in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

27.8 Relationship of the Parties

- (a) This Agreement does not and shall not be interpreted or construed to create any association, joint venture, or partnership between the Parties or to impose any partnership obligations or similar liability upon either Party.
- (b) Except as otherwise provided in Article 11, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, to act on behalf of, or be an agent or representative of, or to otherwise bind, the other Party, and neither Party shall hold itself out to any third party as having such right, power, or authority.

27.9 Expenses of the Parties

Except as otherwise agreed in Article 16 (*Advisors' and Engineer's Fees Prior and Subsequent to Financial Closing*) of the Implementation Agreement or as may be otherwise agreed in any other Project Agreement, as between the Parties to this Agreement, all expenses incurred by or on behalf of each Party, including all fees and expenses of agents, representatives, counsel, and accountants employed by the Parties in connection with the preparation of this Agreement and the consummation of the transactions contemplated by this Agreement, shall be borne solely by the Party who shall have incurred such expenses, and the other Party shall have no liability in respect thereof.

27.10 Consent

Unless otherwise provided herein, whenever a consent or approval is required by a Party from the other Party, such consent or approval shall be in writing and shall not be unreasonably withheld, conditioned or delayed.

27.11 Language

This Agreement has been drafted in English and the English version shall prevail over any translations. All notices, certificates, and other documents and communications (including copies) given or made under or in connection with this Agreement shall be in English.

27.12 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of New York.

27.13 Entirety

This Agreement shall be the full and final expression of the agreement between the Parties on the matters contained herein. Except for the other Project Agreements and any agreement or other communication required thereunder, all written or oral representations, understandings, offers, or other communications of every kind between the Parties in relation to the Kosovo e Re Project prior to this Agreement, including the Memorandum of Understanding between GOK and the Ultimate Sponsor dated on 18 December 2015, are hereby abrogated and withdrawn.

27.14 Assignment

- (a) Within sixty (60) days of the execution of this Agreement, GenCo may assign all of its rights, title and interest in and to, and delegate its obligations under, this Agreement to an entity formed under the laws of Kosovo. Furthermore, GenCo may assign as collateral its interest hereunder to

a Lender or any other Person in connection with the exercise of collateral rights of the Lender. Except as expressly permitted by this Section 27.14(a), this Agreement shall not be assigned by GenCo to any other party without the prior written consent of NKEC.

- (b) Subject to Section 27.14(c), this Agreement shall not be assigned by NKEC to any other party without the prior written consent of GenCo.
- (c) NKEC may assign all of its rights, title and interest in and to, and delegate its obligations under this Agreement to the New Kosovo Electric Company. Furthermore, the Parties acknowledge and agree that GOK might privatize, or separate from NKEC, the electricity trading functions of NKEC. Notwithstanding Section 27.14(b), in the event a NKEC Reorganization or Privatization occurs, NKEC may assign all of its right, title, and interest in and to this Agreement to any Licensed NKEC Successor if (i) GOK without interruption guarantees the performance of the Licensed NKEC Successor on the same terms and conditions as the Government Guarantee or such other commercial security is provided for the obligation of the Licensed NKEC Successor that in the reasonable business judgment of GenCo provides an adequate alternative to the Government Guarantee, (ii) the Licensed NKEC Successor is reasonably capable of performing all NKEC rights and obligations under this Agreement, and (iii) such assignment will not result in any Material GenCo Effect. The novation of this Agreement or transfer of assets by NKEC pursuant to this Section 27.14 shall not relieve NKEC of its obligations under any Project Agreement or any Financing Document existing as of the date of such novation, transfer, or assignment.
- (d) This Agreement shall bind and inure to the benefit of the Parties and any successor or assignee acquiring an interest hereunder consistent with Section 27.14(a) and Section 27.14(b).
- (e) Any assignment in contravention of this Section 27.14 shall be null and void.

27.15 Contracting

- (a) Each Party may delegate its responsibilities under this Agreement to one or more Contractors; provided, however, that no such delegation shall relieve the relevant Party of its obligations or responsibilities under this Agreement. Each Party shall contractually require all its Contractors to have all the required skills and capacity necessary to perform or cause to be performed any tasks that they undertake in a timely and professional manner, utilizing sound engineering principles, project management procedures, supervisory procedures, and generally acceptable industry practices.
- (b) To the extent that a Party delegates its responsibilities under this Agreement to one or more Contractors, such Party shall ensure that each such Contractor is required, pursuant to its contract with such party, to perform its obligations in accordance with the Applicable Standards. Such Party shall provide the other Party with copies of all such contracts, which contracts may be redacted as necessary for purposes of confidentiality.

27.16 Confidentiality

- (a) Subject to Section 27.16(d), this Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and, subject to Section 27.16(c) such information shall not be disclosed in whole or in part by either Party without the prior consent of the other Party.
- (b) This obligation does not apply to information that (when used or disclosed) has been made public other than through a breach of this Agreement or has been, or could have been, lawfully acquired by the Party.
- (c) Notwithstanding the provisions of Section 27.16(a), neither Party shall be required to obtain the prior consent of the other in respect of disclosure of information:

- (i) to directors and employees and Affiliates of such Party, provided that such Party shall use reasonable endeavors to ensure that such Affiliates keep the disclosed information confidential on the same terms as are provided in this Section 27.16;
 - (ii) to Persons professionally engaged by or on behalf of such Party (including its advisors, consultants and insurers); provided, however, that such Persons shall be required by such Party to undertake to keep such information confidential and that such Party shall use reasonable endeavors to secure compliance with such undertaking;
 - (iii) to any government department or any governmental or regulatory agency having jurisdiction over such Party but only to the extent that such Party is required by law to make such disclosure;
 - (iv) to:
 - (A) any lending or other financial institution, including the World Bank Group, in connection with the financing or refinancing of such Party's operations and, in each case, their advisors, consultants, and insurers in connection with any financing or refinancing;
 - (B) any rating agencies, and their advisors, consultants and insurers;
 - (C) any actual or potential equity investors, and, in each case, their advisors, consultants, and insurers; or
 - (D) any bona fide intended assignee or transferee (and, in each case, their advisors, consultants, and insurers) of the whole or any part of the rights and interests of the disclosing Party under this Agreement,
 but (in each case) only to the extent required in connection with obtaining such financing, refinancing, rating, equity investment or in respect of such proposed assignment and subject to such Person or intended assignee or transferee first agreeing with such Party to be bound by confidentiality provisions substantially the same as those contained in this Section 27.16; or
 - (v) to any expert or arbitrator appointed pursuant to and under the terms of this Agreement.
- (d) Notwithstanding the provisions of Section 27.16(a), the Parties acknowledge that (i) GOK may release this Agreement and any of the other Project Agreements to the public at any time after the Transfer Date (but only to the extent that such release is mandated by the applicable Laws of Kosovo or the public policy of GOK and provided any commercially sensitive information is redacted to the extent legally permissible), and (ii) the Parties, GOK and their Affiliates may share each Project Agreement in accordance with the provisions of each such Project Agreement. Upon the release by GOK of this Agreement or any part thereof to the public, the restrictions set forth in this Section 27.16 shall no longer apply to GenCo in respect of any such information released to the public.

27.17 No Liability for Review

No review and approval by a Party of any agreement, document, instrument, drawing, specifications, or design proposed by a Party nor any inspection carried out by a Party pursuant to this Agreement shall relieve a Party from any liability that it would otherwise have had for its negligence in the preparation of such agreement, document, instrument, drawing, specification, or design or the carrying out of such works or failure to comply with the applicable Laws of Kosovo with respect thereto, or to satisfy a Party's obligations under this Agreement nor shall a Party be liable to a Party or any other Person by reason of its review or approval of an agreement, document, instrument, drawing, specification, or design or such inspection.

27.18 Counterparts

This Agreement may be executed in two (2) or more original copies and each such copy may be executed by each of the Parties in separate counterparts, each of which copies when executed and delivered by the Parties shall be an original, but all of which shall together constitute one and the same instrument.

27.19 Further Assurances

The Parties shall each execute any and all reasonable documents necessary to effectuate the purposes of this Agreement.

27.20 Severability

If any term or provision of this Agreement is determined by a court or other authority of competent jurisdiction to be invalid, void, illegal, unenforceable, or against public policy, (i) the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by such determination in any way, and (ii) the Parties shall promptly meet and negotiate a substitute for such affected provision or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties.

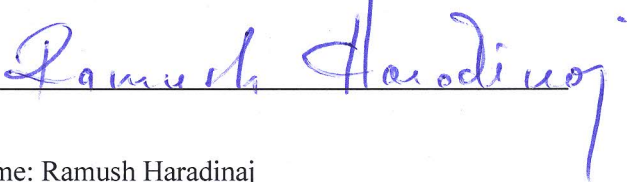
27.21 Partial Invalidity

The illegality, invalidity, or unenforceability of any provision of this Agreement in whole or in part under the law of any jurisdiction shall neither affect:

- (a) its legality, validity or enforceability under the law of any other jurisdiction; nor
- (b) the legality of any other provision or part thereof.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement in Pristina, Kosovo as of the date first above written.

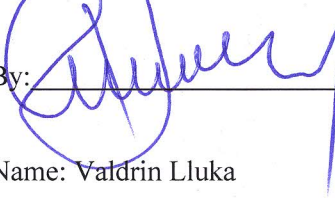
The Republic of Kosovo
acting through the **Office of Prime Minister**

By: 

Name: Ramush Haradinaj

Title: Prime Minister

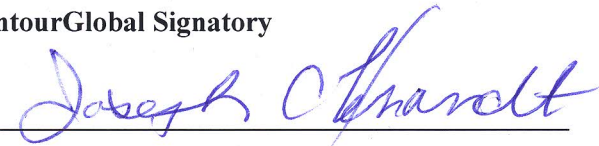
The Republic of Kosovo
acting through the **Ministry of Economic Development**

By: 

Name: Valdrin Lluka

Title: Minister of Economic Development

ContourGlobal Signatory

By: 

Name: Joseph C. Brandt

Title: CEO, ContourGlobal

By: _____

Name: _____

Title: _____

Schedule 1
Tariff
Article 1
Definitions; Interpretation

1.1 Definitions

Capitalized terms used but not defined in this Schedule 1 shall have the meaning given to them in the body of the Agreement.

1.2 Interpretation

- (a) For the purposes of any calculations made pursuant to this Schedule 1, the number of Months between two (2) dates shall equal the sum of (i) the number of full Months occurring during such period, and (ii) the number of Days in any partial Month occurring during such period divided by the total number of Days in such Month.
- (b) The Parties acknowledge and agree that this Schedule 1 and the components included in the calculations herein are intended to include and cover all of GenCo's costs and expenses and all of GenCo's Affiliates' costs and expenses related to the Kosovo e Re Project, including all investments, development costs, financial costs, costs of insurance policies, profit margins of all kinds, return on GenCo's equity investment, operating and maintenance costs, administrative costs, actual costs of all consumables, acquisition of spare parts and the hire of workforce, but in all cases excluding the Tariff Exclusions and subject to such other exclusions and limitations as set forth in the Project Agreements. If a Dispute arises with respect to whether GenCo is entitled to reimbursement of any costs or expenses under this Schedule 1 or as to whether the reimbursement of such cost or expense should include a return on GenCo's equity investments, and the expert or arbitrator, as applicable, finds the terms of this Schedule 1 are conflicting, ambiguous, or silent regarding such disputed costs or expenses, the Parties acknowledge and agree that the Base Case Financial Model may be used to inform the expert or arbitrator, as applicable, of the Parties' intent with respect to such costs or expenses.

Article 2
The Monthly Availability Payment

2.1 Calculation of the Monthly Availability Payment as the Sum of the Hourly Availability Payments

The Availability Payment for any Month 'm' shall be calculated as the sum of all Hourly Availability Payments in such Month.

2.2 Calculation of Hourly Availability Payment

For each hour 'i', the Hourly Availability Payment shall be determined as follows:

- (a) Subject to Section 2.2(b), the Hourly Availability Payment during hour 'i' shall be calculated as follows:

$$HAP_i = BAC_i \times AvCap_i$$

where:

HAP_i means the amount of the Hourly Availability Payment for hour 'i';

BAC_i means the amount of the Base Availability Credit for hour ‘i’, as calculated in accordance with Section 3.2;

$AvCap_i$ means the Declared Available Capacity for hour ‘i’, as declared by GenCo pursuant to Section 12.4.4 of the Agreement, as adjusted from forecasted Ambient Conditions to Reference Conditions in accordance with the Technical Correction Factor Methodology;

- (b) The Hourly Availability Payment during a Scheduled Outage shall be equal to zero Euros (€0); provided, however, that if the KRPP Facility is available for Real-Time Electrical Dispatch during such Scheduled Outage and if the KRPP Facility is dispatched during such Scheduled Outage, then NKEC shall pay to GenCo the Hourly Availability Payment calculated in respect of the KRPP Facility in accordance with Section 2.2(a).

2.3 Bonuses for Availability Above the Expected Availability and Penalties for Availability Below the Expected Availability

2.3.1 Bonus for Availability Above the Expected Availability

In the event that the Availability Factor during any ½-Year Period exceeds the Expected Availability Factor for such ½-Year Period, then GenCo shall be paid an availability bonus equal to the difference in the Availability Factor and the Expected Availability Factor multiplied by the number of hours in such ½-Year Period multiplied by the BAC applicable during such ½-Year Period multiplied by 20%.

2.3.2 Penalty for Availability Below the Expected Availability

- (a) In the event that the Availability Factor during any ½-Year Period is less than the Expected Availability Factor for such ½-Year Period, then GenCo shall be assessed an availability penalty equal to the difference in the Availability Factor and the Expected Availability Factor multiplied by the number of hours in such ½-Year Period multiplied by the Excessive Outage Rate. The Excessive Outage Rate equals:

$$ExcOutRate_P = \frac{LDAm_t_P}{(ExpAF_P - MinAF_P) \times Hours_P \times ContCap}$$

where:

$ExcOutRate_P$ means the liquidated damages payable for each MWh of unavailability during the relevant period;

$LDAm_t_P$ means €2,000,000, as adjusted to the end of ½-Year Period ‘P’ in accordance with Index Adjustment Factor;

$ExpAF_P$ means the Expected Availability Factor applicable during such ½-Year Period ‘P’;

$MinAF_P$ means the Minimum Availability Factor applicable during such ½-Year Period ‘P’;

$Hours_P$ means the number of hours in the ½-Year Period ‘P’;

$ContCap$ means the Contract Capacity (MW).

- (b) Notwithstanding Section 2.3.2(a), no further reductions shall be made to the aggregate Monthly Availability Payments for an Agreement Year pursuant to this Section 2.3.2 once the aggregate amount of reductions made to the Monthly Availability Payments under this Section 2.3.2 during

such Agreement Year equals four million Euros (€4,000,000) as adjusted in accordance with Index Adjustment Factor.

Article 3

Calculation of the Base Availability Credit Amount Used to Determine the Monthly Availability Payments in Each ½-Year Period

3.1 Calculating GenCo’s ½-Year Revenue Requirement for Each ½-Year Period

3.1.1 Components of ½-Year Revenue Requirement

(a) GenCo’s ½-Year Revenue Requirement for a given ½-Year Period shall be calculated as follows:

$$RevReq_p = \left[\begin{array}{l} RpyTfDbtAndInt_p + TfEqRpyRtn_p \\ + CorpIncTx_p + OthTx_p \\ + O \& M_p + Ad \min Srvc_p + FixedLTMA_p \\ + WC_p + MiscOperational_p \\ - Re serve Re ductions_p - IntEarned_p + \frac{K_{y-2}}{2} \end{array} \right]$$

where:

- RevReq_p* means GenCo’s ½-Year Revenue Requirement for ½-Year Period ‘P’;
- RpyTfDbtAndInt_p* means the amount of the RR Repayment of Tariff Debt/Interest Component for ½-Year Period ‘P’ as determined in accordance with Section 3.1.2;
- TfEqRpyRtn_p* means the amount of the RR Tariff Equity Repayment & Return Component for ½-Year Period ‘P’ as determined in accordance with Section 3.1.3;
- CorpIncTx_p* means the amount of the RR Corporate Income Tax Component for ½-Year Period ‘P’ as determined in accordance with Section 3.1.4;
- OthTx_p* means the amount of the RR Other (Non-Income) Taxes Component for ½-Year Period ‘P’ as determined in accordance with Section 3.1.5;
- O&M_p* means the amount of the RR Fixed O&M Component for ½-Year Period ‘P’ as determined in accordance with Section 3.1.6;
- AdminSrvc_p* means the amount of the RR Fixed Admin Component for ½-Year Period ‘P’ as determined in accordance with Section 3.1.7;
- FixedLTMA_p* means the amount of the RR Fixed LTMA Component for ½-Year Period ‘P’ as determined in accordance with Section 3.1.8;
- WC_p* means the amount of the RR Working Capital Component for ½-Year Period ‘P’ as determined in accordance with Section 3.1.9.
- MiscOperational_p* means the amount of the RR Miscellaneous Operational Charges Component for ½-Year Period ‘P’ as determined in accordance with Section 3.1.9(a);

ReserveReductions_P means, subject to the preference for the application of the reserve fund releases to reduce the Tariff Equity as described in Section 3.4.3, the aggregate amount of reductions to the Debt Service Reserve Account, the Working Capital Reserve Account, or any other reserve account during ½-Year Period ‘P’ for which GenCo is obligated to make a payment to the Lenders as a reduction of the amount due under the Financing Documents in accordance with Section 3.4.3(a)(ii); provided, however, that, to the extent that in ½-Year Period ‘P’ there is an increase in any reserve account funded out of tariff revenue (as opposed to an increase in reserve funds out of Actual Debt or Actual Equity), the amount of *ReserveReductions_P* shall be a negative amount so as to increase GenCo’s ½-Year Revenue Requirement;

IntEarned_P means the interest accruing for GenCo’s benefit during the ½-Year Period ‘P’ on any Debt Service Reserve Account, the Working Capital Reserve Account, any other reserve account, or any other amount accruing for the benefit of GenCo that has the effect of reducing the amount of principal or interest payable by GenCo under the Financing Documents in the ½-Year Period ‘P’;

K_{y-2} means (a) zero in the first four (4) ½-Year Periods, and (b) thereafter, for each ½-Year Period in Agreement Year ‘y’, means the correction factor for Agreement Year ‘y-2’ calculated in accordance with Section 3.3.5(b), where ‘y’ is the Agreement Year during which ½-Year Period ‘P’ occurs.

- (b) The final RR Repayment of Tariff Debt/Interest Component and RR Tariff Equity Repayment & Return Component of each ½-Year Revenue Requirement shall be calculated for all ½-Year Periods occurring during the Term as of the Final Draw Date, and shall not be subject to any adjustment whatsoever other than in accordance with Section 16.5 of the Agreement in the event of a Refinancing.
- (c) The RR Tariff Equity Repayment & Return Component, RR Corporate Income Tax Component, RR Other (Non-Income) Taxes Component, RR Fixed LTMA Component, and RR Miscellaneous Operational Charges Component of each ½-Year Revenue Requirement may be calculated or adjusted from time to time during the Term.
- (d) Notwithstanding any other provision of this Schedule 1, no amount shall be included in GenCo’s ½-Year Revenue Requirement for a given ½-Year Period that is a Tariff Exclusion.

3.1.2 RR Repayment of Tariff Debt/Interest Component

The RR Repayment of Tariff Debt/Interest Component of GenCo’s ½-Year Revenue Requirement for a given ½-Year Period shall be equal to the actual amount required to pay the principal of the Tariff Debt and the interest on the Tariff Debt (calculated as of the Final Draw Date, and which resulting values of this component from such final calculation shall not be subject to any further adjustment during the Term, except that if the interest rates under the Financing Documents are variable interest rates, the amount for each ½-Year Period shall be adjusted at the time of invoicing using the actual rates of interest payable on the Actual Debt) during ½-Year Period ‘P’.

3.1.3 RR Tariff Equity Repayment & Return Component

The RR Tariff Equity Repayment & Return Component of GenCo’s ½-Year Revenue Requirement for a given ½-Year Period shall be calculated as follows:

$$TfEqRpyRtn_p = TfEqIncAEUDC \times AnnuityReturnPMTfactor$$

where:

- TfEqRpyRtn_p* means the amount of RR Tariff Equity Repayment & Return Component of the ½-Year Revenue Requirement for ½-Year Period ‘P’;
- TfEqIncAEUDC* means the Tariff Equity Including AEUDC as of the Final Draw Date;
- AnnuityReturnPMTfactor* means the annuity style payment calculation factor to be used to calculate the amount necessary to be paid to GenCo each ½-Year Period to return GenCo’s equity investments in the Kosovo e Re Project and the return thereon, which shall be calculated as follows:

$$AnnuityReturnPMTfactor = \frac{EqRoR^{1/2Yr}}{1 - (1 + EqRoR^{1/2Yr})^{-n}}$$

where:

- EqRoR^{1/2Yr}* means the Equity Rate of Return (½-Year);
- n* means the number of ½-Year Periods in the Term.

3.1.4 RR Corporate Income Tax Component

- (a) The RR Corporate Income Tax Component of GenCo’s ½-Year Revenue Requirement for a given ½-Year Period shall equal the amount necessary to enable GenCo to pay its corporate income taxes on the income derived from this Agreement.
- (b) A reasonable estimate of the net corporate income taxes payable by GenCo during each Agreement Year shall be agreed by the Parties not later than 90 days before the start of each Agreement Year. One-half of such amount shall be included in the first ½-Year Period occurring during such Agreement Year and one-half of such amount shall be included in the second ½-Year Period occurring during such Agreement Year. Any net difference between (i) the estimate of corporate income taxes for an Agreement Year and (ii) the actual corporate income taxes paid by GenCo during that Agreement Year shall be added or credited to the Base Availability Credit along with the interest accrued at the Delayed Payment Rate prevailing as of the start of the next Agreement Year, through the implementation of the BAC Correction Factor in accordance with Section 3.3.5(b).
- (c) GenCo shall use commercially reasonable efforts to keep its corporate income tax liabilities to a minimum.

3.1.5 RR Other (Non-Income) Taxes Component

- (a) The RR Other (Non-Income) Taxes Component of GenCo’s ½-Year Revenue Requirement for a given ½-Year Period shall equal an amount necessary to enable GenCo to pay all Other (Non-Income) Taxes that become payable during the Agreement Year in which the ½-Year Period occurs; provided, however, the RR Other (Non-Income) Taxes Component shall not include any value added tax to the extent such is payable to GenCo under Article 16 of the Agreement or otherwise pursuant to the Project Agreements.
- (b) A reasonable estimate of the net Other (Non-Income) Taxes payable by GenCo during each Agreement Year shall be agreed by the Parties not later than ninety (90) days before the start of

each Agreement Year. One-half of such amount shall be included in the first ½-Year Period occurring during such Agreement Year and one-half of such amount shall be included in the second ½-Year Period occurring during such Agreement Year. Any net difference between (i) the estimate of Other (Non-Income) Taxes for an Agreement Year and (ii) the actual paid by GenCo during that Agreement Year shall be added or credited to the Base Availability Credit along with the interest accrued at the Delayed Payment Rate, through the implementation of the BAC Correction Factor in accordance with Section 3.3.5(b).

- (c) GenCo shall use commercially reasonable efforts to keep its liabilities for Other (Non-Income) Taxes to a minimum.

3.1.6 RR Fixed O&M Component

The RR Fixed O&M Component of the ½-Year Revenue Requirement for a given ½-Year Period shall be calculated as follows:

$$O \& M_p = MonthlyO \& M_{Budget} \times Months$$

where:

$O \& M_p$ means the amount of the RR Fixed O&M Component of the ½-Year Revenue Requirement for ½-Year Period ‘P’;

$MonthlyO \& M_{Budget}$ means the monthly amount of Budgeted Monthly O&M Costs applicable to the ½-Year Period, as determined in accordance with Section 3.13(e)(ii) of the Agreement, as adjusted using the Index Adjustment Factor;

$Months$ means the number of Months in the ½-Year Period.

3.1.7 RR Fixed Admin Component

The RR Fixed Admin Component of the ½-Year Revenue Requirement for a given ½-Year Period shall be calculated as follows:

$$AdminSrvc_p = MonthlyAdmin_{Budget} \times Months$$

where:

$AdminSrvc_p$ means the amount of the RR Fixed Admin Component of the ½-Year Revenue Requirement for ½-Year Period ‘P’;

$MonthlyAdmin_{Budget}$ means the monthly amount of Budgeted Monthly Administrative Services Costs applicable to the ½-Year Period, as determined in accordance with Section 3.14(d)(ii) of the Agreement;

$Months$ means the number of Months in the ½-Year Period.

3.1.8 RR Fixed LTMA Component

The RR Fixed LTMA Component of the ½-Year Revenue Requirement for a given ½-Year Period shall be calculated as follows:

$$FixedLTMA_p = FixedMonthlyLTMA_{ref} \times IAF_p \times Months$$

where:

FixedLTMA_P means the amount of the RR Fixed LTMA Component of the ½-Year Revenue Requirement for ½-Year Period ‘P’;

FixedMonthlyLTMA_{ref} means the Fixed Monthly LTMA Fee applicable to the ½-Year Period (or, if more than one such rate applies, then the weighted average thereof);

IAF_P means the Index Adjustment Factor applicable during ½-Year Period ‘P’, as calculated in accordance with Section 7.1;

Months means the number of Months in the ½-Year Period.

3.1.9 RR Working Capital Component

- (a) The RR Working Capital Component of the ½-Year Revenue Requirement for each ½-Year Period shall be calculated as follows:

$$WC_P = WCReq_P - StartingWCamt_P + (WCFacDbtAndInt_P + WCResAcctReplenishment_P)$$

where:

WC_P means the amount of the RR Working Capital Component of the ½-Year Revenue Requirement for ½-Year Period ‘P’;

WCReq_P the amount of working capital that GenCo reasonably and prudently requires for such ½-Year Period ‘P’, taking into account that the Working Capital Amount shall be reduced to reflect any amounts collected by GenCo under this Schedule 1 and not yet paid to the applicable contracting party, Lender, Public Authority, or other relevant third party;

StartingWCamt_P the Working Capital Amount maintained by GenCo at the start of such ½-Year Period ‘P’;

WCFacDbtAndInt_P the actual amount required to pay the principal (in full, unless otherwise directed by NKEC, but never less than the amount required to be repaid during the ½-Year Period ‘P’ under the Working Capital Facility) of the Working Capital Facility and all interest and fees on the Working Capital Facility during ½-Year Period ‘P’;

WCResAcctReplenishment_P the amount of any prior Working Capital Reserve Account draws made by GenCo as a result of an insufficient Working Capital Amount in a prior ½-Year Period and permitted by Lenders, but only to the extent the Financing Documents require replenishment of the Working Capital Reserve Amount.

- (b) Except with respect to any *WCResAcctReplenishment_P* amount, the RR Working Capital Component shall not include any costs and expenses associated with the Working Capital Reserve Account or any Working Capital Amount funded out of Actual Debt or Actual Equity, each of which shall be reflected in the RR Repayment of Tariff Debt/Interest Component and RR Tariff Equity Repayment & Return Component.
- (c) The RR Working Capital Component may be positive (indicating an increase in the Working Capital Amount) or negative (indicating a decrease in the Working Capital Amount, thereby

decreasing the total ½-Year Revenue Requirement for ½-Year Period ‘P’) in any ½-Year Period ‘P’.

- (d) When the RR Working Capital Component is positive, the RR Working Capital Component shall be funded (in priority) out of: first, initial working capital required by the Lenders to be funded through the Actual Debt and Actual Equity prior to the Final Draw Date; second, ongoing BAC payments over-funded to allow for the build-up of working capital from ongoing NKEC payments, except to the extent that NKEC directs not to so self-fund such amount and funding is available through the Working Capital Facility; third, out of a Working Capital Facility; or, fourth, if and to the extent permitted by Lenders, the Working Capital Reserve Account.
- (e) Any Working Capital Amount funded out of ongoing self-funding through the BAC shall be, if and to the extent permitted by Lenders, maintained at a Qualified Bank in cash in Euros in a separate account and shall be subject to a deposit account control agreement, in form and substance reasonably satisfactory to NKEC. The Parties acknowledge that it is the intent of NKEC that such account shall be not be subject to Encumbrance by the Lenders and shall be under the control of NKEC.

3.1.10 RR Miscellaneous Operational Charges Component

- (a) The RR Miscellaneous Operational Charges Component of the ½-Year Revenue Requirement for each ½-Year Period shall equal one-half of the amount necessary to enable GenCo to pay the Permitted Ongoing Miscellaneous Operational Charges incurred by GenCo during the Agreement Year during which the ½-Year Period occurs.
- (b) A reasonable estimate of the Permitted Ongoing Miscellaneous Operational Charges payable by GenCo during each Agreement Year shall be agreed by the Parties not later than one month before the start of each Agreement Year. One-half of such amount shall be included in the first ½-Year Period occurring during such Agreement Year and one-half of such amount shall be included in the second ½-Year Period occurring during such Agreement Year. Any difference between (i) the estimate of the Permitted Ongoing Miscellaneous Operational Charges for an Agreement Year and (ii) the actual amount of Permitted Ongoing Miscellaneous Operational Charges paid by GenCo during that Agreement Year shall be added or credited to the Base Availability Credit along with the interest accrued at the Delayed Payment Rate prevailing as of the start of the next Agreement Year, through the implementation of the BAC Correction Factor in accordance with Section 3.3.5(b).
- (c) GenCo shall use commercially reasonable efforts to keep its Permitted Ongoing Miscellaneous Operational Charges to a minimum.

3.2 Calculating the Base Availability Credits Applicable for Each ½-Year Period Based on GenCo’s ½-Year Revenue Requirement

The Base Availability Credits for each hour during each ½-Year Period shall be calculated as follows:

$$BAC_P = \left(\frac{RevReq_P}{Hours \times ContCapacity \times AvailFactor_P} \right)$$

where:

BAC_P means the Base Availability Credit applicable during ½-Year Period ‘P’;

ContCapacity means the initial Contract Capacity, as described in Section 3.1 at the Execution Date, and in accordance with Section 4.4.3(c) of the Agreement without any adjustment thereof in relation to construction;

RevReq_P means the ½-Year Revenue Requirement for ½-Year Period ‘P’;

Hours means 4,380, or such other number of hours as there may be in ½-Year Period ‘P’;

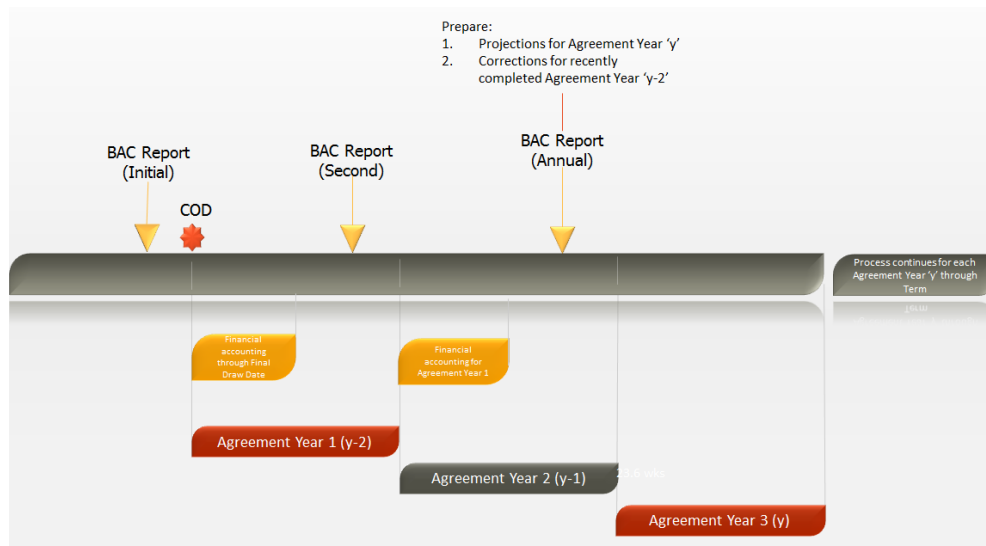
AvailFactor_P means the Minimum Availability Factor applicable during ½-Year Period ‘P’;

OIC_P means the other income component for ½-Year Period ‘P’, which equals ninety percent (90%) of any income of GenCo derived from (i) the sale of Ash (as defined in the Ash and Gypsum Disposal Agreement), during the ½-Year Period ‘P’ measured on an accrual basis, (ii) the sale of Gypsum (as defined in the Ash and Gypsum Disposal Agreement), during the ½-Year Period ‘P’ measured on an accrual basis, and (iii) any refunds and payments paid to GenCo in relation to the GenCo Connection Assets, KOSTT New Connection Assets, or Infrastructure Reinforcement Assets (each as defined in the Connection Agreement) for any third party’s use of such assets during the ½-Year Period ‘P’ measured on an accrual basis, and (iv) any other income of GenCo derived from unanticipated credit or unanticipated revenue payable to GenCo (excluding Availability Payments, Energy Payments, indemnity payments, or other amounts described herein or in any other Project Agreement as payable to GenCo), measured on an accrual basis;

3.3 Process for Determining Project Costs Total and Estimating BACs; Correction of Estimated BACs

3.3.1 BAC Report Timeline

The following summarizes the timeline for estimation and correction of the Base Availability Credit.



3.3.2 BAC Report (Initial)

Not later than ninety (90) days prior to the anticipated start of the first Agreement Year, GenCo shall deliver an informational filing (the “**BAC Report (Initial)**”) to NKEC that includes the estimated Project Costs Total and all estimates and methodology used to calculate such estimates necessary for NKEC to calculate the Availability Payments that accrue during the first Agreement Year.

3.3.3 Determination of Project Costs Total

Not later than six months following the Final Draw Date, the Parties shall finally determine the Project Costs Total, the Tariff Debt, and the Tariff Equity Including AEUDC, and such items shall not be subject to further adjustment during the Term, except as specifically provided hereunder.

3.3.4 BAC Report (Second)

Not later than ninety (90) days prior to the start of the second Agreement Year ‘y’, GenCo shall deliver an informational filing (the “**BAC Report (Second)**”) to NKEC that:

- (a) contains all information, including all estimates and methodology used to calculate such estimates with respect to the second Agreement Year, necessary for NKEC to calculate the Availability Payments that accrue during the second Agreement Year; and
- (b) is accompanied by an opinion of the Accountants stating that (x) in their opinion such statement fairly and accurately represents delivered information in accordance with the requirements of this Schedule 1, and (y) that the amounts shown in respect of the delivered information have been determined in accordance with the accounting records of GenCo which have been maintained in accordance with the International Financial Reporting Standards and the Laws of Kosovo.

3.3.5 Subsequent BAC Reports (Annual)

Not later than ninety (90) days prior to the start of the third Agreement Year and (90) days prior to the start of each Agreement Year thereafter, GenCo shall deliver to NKEC an informational filing (each a “**BAC Report (Annual)**”) that:

- (a) with respect to Agreement Year ‘y’ includes all estimates and methodology used to calculate such estimates necessary for NKEC to calculate the Availability Payments that accrue during such Agreement Year ‘y’: and
- (b) is accompanied by an opinion of the Accountants stating that (1) in their opinion such statement fairly and accurately represents delivered information in accordance with the requirements of this Schedule 1, and (2) that the amounts shown in respect of the delivered information have been determined in accordance with the accounting records of GenCo, which have been maintained in accordance with the International Financial Reporting Standards and the Laws of Kosovo.

3.3.6 Calculation of BAC Correction Factors

The BAC Correction Factor to correct for inaccuracies in the estimated values of a prior ½-Year Period Revenue Requirement shall be calculated as follows:

$$K_{y-2} = (ActualRevReq_{y-2} - EstimatedRevReq_{y-2}) \times (1 + DelPayRate_{y-1})$$

where:

K_{y-2} means the BAC Correction Factor for Agreement Year ‘y-2’;

$ActualRevReq_{y-2}$ means the sum of the actual ½-Year Revenue Requirements for Agreement Year ‘y-2’, as stated in the relevant BAC Report (Annual);

$EstimatedRevReq_{y-2}$ means the sum of the estimated ½-Year Revenue Requirements for Agreement Year ‘y-2’ as estimated in the BAC Report (Initial), the BAC Report (Second), or an BAC Report (Annual), as applicable;

DelPayRate_{t-1} means the average of the Delayed Payment Rate that was prevailing on the first day of each calendar quarter occurring during Agreement Year 'y-1'.

3.3.7 Close-Out Reconciliation Process

- (a) Within ninety (90) Days after the end of the Term or the termination of this Agreement, as the case may be, GenCo shall in accordance with Section 3.3.5, *mutatis mutandis*, submit to NKEC a report (“**BAC Report (Close-Out Reconciliation)**”) stating the information required pursuant to Section 3.3.5, *mutatis mutandis*, for Agreement Year 'y-1', accompanied by an opinion of the Accountants providing that, in their opinion such statement fairly and accurately represents each of the items therein in accordance with the requirements of this Schedule 1, and that the amounts shown in respect of each of the following items have been determined in accordance with the accounting records of GenCo, which have been maintained in accordance with the International Financial Reporting Standards and the Laws of Kosovo.
- (b) Within thirty (30) Days thereafter, GenCo or NKEC, as the case may be, shall make a lump sum payment to the other in an amount equal to the difference between:
 - (i) the budgeted amounts described in Section 3.3.5 for Agreement Years 'y-1' and 'y-2'; and
 - (ii) both
 - (A) with respect to Agreement Year 'y-2', the amounts to be recovered through the correction factors described in Sections 3.3.5(b) that are still unrecovered as of the end of the Term or the date termination of this Agreement, as the case may be; and
 - (B) with respect to Agreement Year 'y-1', the amounts described in the BAC Report (Close-Out Reconciliation).

3.4 Certain Matters

3.4.1 Development Costs

- (a) Development Costs incurred by GenCo and its Affiliates before Financial Closing shall be treated as follows:
 - (i) to the extent the Lenders provide under the Financing Documents debt proceeds associated with the payment to GenCo as a lump sum at Financial Closing of the Development Costs incurred before the Financial Closing, such amount shall (to the extent not a Tariff Exclusion) be Actual Debt and included in accordance with this Schedule 1 in the RR Repayment of Tariff Debt/Interest Component;
 - (ii) to the extent the Lenders do not provide under the Financing Documents debt proceeds associated with the payment to GenCo as a lump sum at Financial Closing of the Development Costs incurred before the Financial Closing, such amount shall (to the extent not a Tariff Exclusion) be Actual Equity from Financial Closing and included in accordance with this Schedule 1 in the RR Repayment of Tariff Debt/Interest Component.

- (b) Within ten Days following the start of each calendar quarter occurring prior to the Financial Closing, GenCo shall submit to NKEC a budget that contains a reasonable estimate of the Development Costs and Soft Costs that will be incurred by GenCo during the calendar quarter. Within twenty (20) Days following the conclusion of each calendar quarter occurring prior to the Financial Closing, GenCo shall submit to NKEC a summary of and supporting documentation for all Development Costs and Soft Costs incurred in the prior calendar quarter.

3.4.2 Application of Unused Contingency Funds

To the extent permitted by the approved Financing Documents, GenCo may receive any unused portion of the Contingency Amount that exist as of the Final Draw Date (or have such unused contingency funds issued as a dividend to GenCo's shareholders), which amounts shall be applied to reduce the amount of the Tariff Equity Including AEUDC and the reduced amount of Tariff Equity Including AEUDC shall be used to recalculate (on the same basis as the initial calculations) the RR Tariff Equity Repayment & Return Component applicable under Section 3.1.3 for all future ½-Year Periods.

3.4.3 Application of Released DSRA, Working Capital Reserve Account and Other Tariff-Eligible Reserve Account Releases

- (a) All funds that are released from the Debt Service Reserve Account, the Working Capital Reserve Account, or any other reserve account shall be treated as follows:
 - (i) To the extent that the approved Financing Documents entered into by GenCo in accordance with Section 3.12 of this Agreement or any approved Refinancing thereof require that the released funds be applied to reduce the principal amount of debt outstanding thereunder (or applied to interest thereon or applied to reduce other financing-related costs payment for which is included in the Base Availability Credit payable under this Agreement or otherwise applied to costs provided for under the Project Agreements), then the released funds shall be so applied and the Actual Debt reduced; otherwise,
 - (ii) To the extent that GenCo is not obligated by the Lenders to apply such released funds in accordance with Section 3.4.3(a)(i), then the released funds shall be fully released to GenCo and the released funds shall be retained by GenCo (or issued as dividend to GenCo's shareholders), and all such funds shall be treated as a reduction of the amount of the Tariff Equity Including AEUDC and the reduced amount of Tariff Equity Including AEUDC shall be used to recalculate (on the same basis as the initial calculations) the RR Tariff Equity Repayment & Return Component applicable under Section 3.1.3 for all future ½-Year Periods.

3.4.4 Adjustments for Scheduled Outage Changes

In the event that, pursuant to Section 13.1.5, NKEC requires GenCo to conduct any Scheduled Outage that was previously scheduled to occur during a particular ½-Year Period during a different ½-Year Period or for other reasons as provided under this Agreement a Scheduled Outage is scheduled for a period other than as anticipated in the Long-Term Maintenance Plan and reflected in the Expected Availability Factor and the Minimum Availability Factor, then NKEC shall adjust the Expected Availability Factor and the Minimum Availability Factor applicable for such ½-Year Periods accordingly and, to the extent the Base Availability Credit has been set for an affected ½-Year Period, recalculate the Base Availability Credit applicable for such ½-Year Period to reflect the change in the Expected Availability Factor and Minimum Availability Factor applicable for such ½-Year Period. Such recalculation of the Base Availability Credit shall take into consideration any Base Availability Credits previously paid (whether overpaid or underpaid based on the initial Base Availability Credit for such

period) to GenCo during the current ½-Year Period if such schedule change occurs during such ½-Year Period.

Article 4 The Energy Payment

4.1 Calculation of the Energy Payment

The Energy Payment for any Month ‘m’ shall be calculated as follows:

$$EP_m = \sum_{i=1}^{hm} (HEP_i - HEPReductions_i)$$

where:

EP_m means the amount of the Energy Payment for Month ‘m’;

hm means the number of hours occurring during Month ‘m’;

HEP_i means the Hourly Energy Payment for hour ‘i’, as calculated in accordance with Section 4.2;

$HEPReductions_i$ means the reductions that are applicable to the Hourly Energy Payment during hour ‘i’ pursuant to Sections 4.3, 4.4, or 4.5; provided, however, that the Parties expressly acknowledge and agree that:

- (a) the reductions to an Hourly Energy Payments during an hour, as calculated in accordance with Sections 4.3, 4.4, or 4.5 may result in such Hourly Energy Payment having a negative value; and
- (b) in the event that the Energy Payment for any Month ‘m’ has a negative number as a result of the cumulative effect of the reductions contemplated by Sections 4.3, 4.4, or 4.5, then NKEC may deliver an invoice to GenCo for the amount (i.e., the negative amount) of the Energy Payment for Month ‘m’ pursuant to Section 17.1.2 of the Agreement.

4.2 Calculation of Hourly Energy Payment

For each hour ‘i’, the Hourly Energy Payment shall be determined as follows:

$$HEP_i = (FC_i + Variable_i + WC_i + LimeC_i + AmnC_i) \times DNEO_i$$

where:

HEP_i means the amount of the Hourly Energy Payment for hour ‘i’;

FC_i means the amount of the Fuel Charge for hour ‘i’, calculated as follows:

$$FC_i = (LigP_i \times LigHR_i) + (FOP_i \times FOHR_i)$$

where:

$LigP_i$ means the Lignite price, in Euros per GJ (LHV), for Lignite delivered to the Delivery Point (Lignite) under the Lignite Supply Agreement for hour ‘i’, as calculated in accordance with Section 4.3;

$LigHR_i$ means the quantity of Lignite, in GJ (LHV), required to generate one kWh of Net Electrical Output at the Dispatched Net Electrical Output (NKEC + KOSTT) during hour ‘i’, as specified by the Technical Correction Factor Methodology

(using the Ambient Conditions prevailing during hour 'i', the commodity conditions during hour 'i', and the Dispatched Net Electrical Output (NKEC + KOSTT) during hour 'i' and reflecting Degradation Factor based on the then-applicable EOH-Year), stated in GJ (LHV) per kWh, except to the extent compensated through a payment for a Start-Up under Article 5;

FOP_i means the Competitively Tendered Fuel Oil Price for the Fuel Oil consumed during hour 'i', stated in € per GJ (LHV), as calculated in accordance with Section 4.7;

$FOHR_i$ means the quantity, in GJ (LHV), of Fuel Oil required to generate one kWh of Net Electrical Output at the Dispatched Net Electrical Output (NKEC + KOSTT) during hour 'i', as specified by the Technical Correction Factor Methodology (using the Ambient Conditions prevailing during hour 'i', the commodity conditions during hour 'i', and the Dispatched Net Electrical Output (NKEC + KOSTT) during hour 'i' and reflecting Degradation Factor based on the then-applicable EOH-Year), stated in GJ (LHV) per kWh, except to the extent compensated through a payment for a Start-Up under Article 5;

$Variable_i$ means the amount of the variable charges for hour 'i' calculated as follows:

$$Variable_i = Variable_{LTMAi} + Variable_{O\&Mi}$$

where:

$Variable_{LTMAi}$ means the amount of the Variable LTMA Charge for hour 'i' calculated as following:

$$Variable_{LTMAi} = Variable_{LTMAref} \times IAF_i$$

where:

$Variable_{LTMAref}$ means Variable LTMA Charge in Euros per kWh, as specified in Paragraph (f) of the EPC/LTM Bid Submission Form incorporated into this Agreement in accordance with Section 3.8 (on an inflation-adjusted basis) (or, if less, then the amount actually paid to the LTM Contractor), which amount shall not include any amounts for Water, Lignite, Fuel Oil, Ammonia, or Limestone;

IAF_i means the Index Adjustment Factor applicable during hour 'i', as calculated in accordance with Section 7.1;

$Variable_{O\&Mi}$ means Variable O&M Charge for hour 'i' in Euros per kWh, as agreed as part of the O&M budget determination process in accordance with Section 3.13 of the Agreement;

WC_i means the amount of the Water charge for hour 'i', calculated as follows:

$$WC_i = WaterRate_i \times WP_i$$

where:

$WaterRate_i$ means the quantity of Water in cubic meters used to generate one kWh of Net Electrical Output at the Dispatched Net Electrical Output (NKEC + KOSTT) during hour 'i';

WP_i means the amount payable for each cubic meter of Water delivered to the Delivery Point (Water) during hour 'i' under the Water Supply Agreement;

$LimeC_i$ means the amount of the Limestone charge for hour 'i', calculated as follows:

$$LimeC_i = LimeRate_i \times LimeP_i$$

where:

$LimeRate_i$ means the quantity of Limestone in tonnes used to generate one kWh of Net Electrical Output at the Dispatched Net Electrical Output (NKEC + KOSTT) during hour 'i';

$LimeP_i$ means the Competitively Tendered Limestone Price for the Limestone consumed during hour 'i', stated in € per tonne;

$AmnC_i$ means the amount of the ammonia charge for hour 'i', calculated as follows:

$$AmnC_i = AmnRate_i \times AmnP_i$$

where:

$AmnRate_i$ means the quantity of Ammonia in mols used to generate one kWh of Net Electrical Output at the Dispatched Net Electrical Output (NKEC + KOSTT) during hour 'i';

$AmnP_i$ means the Competitively Tendered Ammonia Price for the Ammonia consumed during hour 'i', stated in € per mol; and

$DNEO_i$ means the Dispatched & Delivered Net Electrical Output (NKEC + KOSTT) generated during hour 'i'.

4.3 Reductions and Rebates to Energy Payments for Underdelivery

- (a) Subject to Section 4.3(b), in the event that NKEC and/or KOSTT dispatches the KRPP Facility consistent with the technical limits of the KRPP Facility and the Dispatched & Delivered Net Electrical Output (NKEC + KOSTT) is below the Dispatched Net Electrical Output (NKEC + KOSTT) during hour 'i', and the failure of the Dispatched & Delivered Net Electrical Output (NKEC + KOSTT) to equal the Dispatched Net Electrical Output (NKEC + KOSTT) is not directly attributable to Grid Constraints or a Force Majeure Event then the Hourly Energy Payment for hour 'i' shall be reduced by an amount calculated as follows from and after the Commercial Operations Date:

$$Reduction_i = \left[(DisNEO_i - DelNEO_i) \times \frac{BAC_i}{1,000} \right] + \left[(DisNEO_i - DelNEO_i) \times \left(\frac{LDRate \times IAF_i}{1,000} \right) \right]$$

where:

$Reduction_i$ means the reduction in the Hourly Energy Payment calculated in accordance with this Section 4.3(a);

$DelNEO_i$ means the Dispatched & Delivered Net Electrical Output (NKEC + KOSTT) for hour 'i';

DisNEO_i means the Dispatched Net Electrical Output (NKEC + KOSTT) for hour ‘i’;
BAC_i has the meaning given in Section 2.2(a);
LDRate means €15;
IAF_i means the Index Adjustment Factor applicable during hour ‘i’, as calculated in accordance with Section 7.1.

- (b) Notwithstanding Section 4.3(a), no further reductions shall be made to the Hourly Availability Payments for an Agreement Year pursuant to Section 2.3 once the aggregate amount of reductions made to the Hourly Availability Payments during such Agreement Year in connection with Section 2.3 equals two million Euros (€2,000,000), as adjusted in accordance with Index Adjustment Factor.

4.4 Operating Characteristics Liquidated Damages

- (a) Subject to Section 4.4(b), Operating Characteristics Liquidated Damages shall be incurred by GenCo for a Month to the extent the KRPP Facility is not able to perform in accordance with a Contracted Operating Characteristic and such inability is not the result of Grid Constraints or a Force Majeure Event.
- (b) Not later than the Transfer Date, the Parties shall amend this Schedule 1 to add a written description of the Operating Characteristics Liquidated Damages that will apply to the KRPP Facility. The written description shall describe the Operating Characteristics Liquidated Damages and calculation thereof in detail, will provided for the liquidated damages to be set based on the estimated impact to the electric system or NKEC of not having the KRPP Facility operate in a manner consistent with the operating characteristics agreed by the Parties, including minimum generation, minimum run time, cold/warm/hot start time, inability to provide hot standby mode, and inability to provide island mode, and shall not be more than €750,000/Agreement Year as adjusted in accordance with Index Adjustment Factor.

4.5 Reductions to Hourly Energy Payments for Overdelivery

- (a) Subject to Section 4.5(b), from and after the Commercial Operations Date, if the Dispatched & Delivered Net Electrical Output (NKEC + KOSTT) for the KRPP Facility exceeds the Dispatched Net Electrical Output (NKEC + KOSTT) during hour ‘i’ by more than two percent (2%) and such occurrence is not the result of the Grid Constraints or a Force Majeure Event, then the Hourly Energy Payment for hour ‘i’ shall be reduced by the amount of any regulation penalties charged to NKEC in connection with the over-delivery.
- (b) Notwithstanding Section 4.5(a), no further reductions shall be made to the Hourly Energy Payments for an Agreement Year pursuant to Section 4.5(a) once the aggregate amount of reductions made to the Hourly Energy Payments during such Agreement Year in connection with Section 4.5(a) equals two hundred and fifty thousand Euros (€250,000), as adjusted in accordance with the Index Adjustment Factor.

4.6 Calculation of the Price of Lignite per GJ (LHV)

- (a) The price per GJ (LHV) payable for Lignite delivered to the Delivery Point (Lignite) under the Lignite Supply Agreement in an hour ‘i’ shall be equal to the price per GJ of such Lignite for the Day ‘d’ that includes hour ‘i’, which shall be calculated as follows:

$$LigP_d = \frac{(LigPrice_y \times Tonnes_d) + LigCVBonus_d - LigCVOffset_d}{MeasuredGJ_d * Tonnes_d}$$

where:

LigP_d means the Lignite price, in Euros per GJ (LHV), for Lignite delivered to the Delivery Point (Lignite) under the Lignite Supply Agreement for Day ‘d’ (or to the extent the Lignite consumed was delivered prior to Day ‘d’ then the applicable amount on the applicable day on a first in first out basis);

LigPrice_y means the price (including value added taxes payable by GenCo to KEK Mining), in Euros per Tonne, for Lignite delivered to the Delivery Point (Lignite) under the Lignite Supply Agreement during the Agreement Year ‘y’ that includes Day ‘d’, as reasonably required to be paid as set forth in Article 2 under Schedule 1 of the Lignite Supply Agreement (or to the extent the Lignite consumed was delivered prior to Day ‘d’ then the applicable amount on the applicable day on a first in first out basis);

Tonnes_d means the number of Tonnes of Lignite delivered during Day ‘d’ (or to the extent the Lignite consumed was delivered prior to Day ‘d’ then the applicable amount on the applicable day on a first in first out basis);

LigCVBonus_d means the amount (if any) of the payment made from GenCo to KEK Mining as an additional payment for Lignite having a calorific content above the 8.548 GJ/Tonne reference level, as payable under Section 4.1 of Schedule 1 of the Lignite Supply Agreement for Day ‘d’ (or to the extent the Lignite consumed was delivered prior to Day ‘d’ then the applicable amount on the applicable day on a first in first out basis);

LigCVOffset_d means the amount (if any) of the payment made from KEK Mining to GenCo as an offset for Lignite having a calorific content below the 8.548 GJ/Tonne reference level, as payable under Section 4.1 of Schedule 1 of the Lignite Supply Agreement for Day ‘d’ (or to the extent the Lignite consumed was delivered prior to Day ‘d’ then the applicable amount on the applicable day on a first in first out basis);

MeasuredGJ_d means the average heating value (LHV), in GJ/Tonne, of the total quantity of Lignite delivered to the Delivery Point (Lignite) under the Lignite Supply Agreement during Day ‘d’, measured in accordance with Section 4.1 of the Lignite Supply Agreement (or to the extent the Lignite consumed was delivered prior to Day ‘d’ then the applicable amount on the applicable day on a first in first out basis).

4.7 Calculation of the Price of Fuel Oil per GJ (LHV), Ammonia per Mol, and Limestone per Tonne

- (a) The price per GJ (LHV) payable for Fuel Oil in an hour ‘i’ shall be determined on a first in, first out basis using the approach set forth in Section 4.3, mutatis mutandis.
- (b) The price per mol payable for Ammonia in an hour ‘i’ shall be determined on a first in, first out basis using the approach set forth in Section 4.3, mutatis mutandis.
- (c) The price per tonne payable for Limestone in an hour ‘i’ shall be determined on a first in, first out basis using the approach set forth in Section 4.3, mutatis mutandis.
- (d) For the avoidance of doubt, the prices for Fuel Oil, Ammonia, and Limestone include any value-added tax thereon and royalty included therein.

Article 5
Start-Up and Standby Charges

5.1 Start-Up Charges

- (a) Subject to Section 5.1(b), NKEC shall pay GenCo an amount determined in accordance with the following formula for each Month ‘m’ during which GenCo is instructed to, and successfully completes, a Cold Start-Up:

$$StartCh_m = \sum_{i=1}^n StartCh_s$$

where:

$StartCh_m$ means the amount NKEC shall pay to GenCo in respect of the Cold Start-Ups, Warm Start-Ups, and Hot Start-Ups performed during Month ‘m’;

$StartCh_s$ means the base price for a given Cold Start-Up, Warm Start-Up, or Hot Start-Up (as applicable) calculated as follows:

$$StartCh_s = (LigP_s \times Lig_s) + (FOP_s \times FO_s) + LTMA_s$$

where:

$LigP_s$ means the Lignite price, in Euros per GJ (LHV), for Lignite delivered to the Delivery Point (Lignite) under the Lignite Supply Agreement during the Day on which the Cold Start-Up, Warm Start-Up, or Hot Start-Up (as applicable) commences, as calculated in accordance with Section 4.3;

Lig_s means the quantity of Lignite, in GJ (LHV), required to conduct a Cold Start-Up, Warm Start-Up, or Hot Start-Up (as applicable) as specified in Paragraph (g) of the EPC/LTM Bid Submission Form;

FOP_s means the Competitively Tendered Fuel Oil Price for the Fuel Oil consumed during the Day on which the Cold Start-Up, Warm Start-Up, or Hot Start-Up (as applicable) commences, stated in € per GJ (LHV), as calculated in accordance with Section 4.7;

FO_s means the lesser of the quantity, in GJ (LHV), of Fuel Oil required to conduct a Cold Start-Up, Warm Start-Up, or Hot Start-Up (as applicable), as specified in Paragraph (g) of the EPC/LTM Bid Submission Form;

$LTMA_s$ means the charges per Cold Start-Up, Warm Start-Up, or Hot Start-Up (as applicable) under the LTM Agreement, as specified in Paragraph (g) of the EPC/LTM Bid Submission Form (on an inflation-adjusted basis);

n means the number of Cold Start-Ups, Warm Start-Up, or Hot Start-Up (as applicable) commenced and successfully completed during Month ‘m’.

- (b) NKEC shall not be required to pay to GenCo any amount for the first successful Start-Up following a Forced Outage or Partial Forced Outage, but such amount shall be payable following a Maintenance Outage or Scheduled Outage.

- (c) NKEC shall not be required to pay to GenCo any amount relating to any Hot Start-Ups conducted within six (6) hours following any Hot Standby Mode dispatch if GenCo is unable to operate the KRPP Facility in Hot Standby Mode in accordance with Section 8.2 of Schedule 2.

5.2 Hot Standby Charges

NKEC shall pay GenCo an amount determined in accordance with the following for each Month ‘m’ during which GenCo is dispatched to maintain the KRPP Facility in Hot Standby Mode:

$$HotStandbyCh_m = \sum_{i=1}^n HourHSCh$$

where:

HotStandbyCh_m means the amount NKEC shall pay to GenCo in respect of the hours during which the KRPP Facility was maintained in Hot Standby Mode during Month ‘m’;

Hour HSCh means the base price per hour for maintaining the KRPP Facility in Hot Standby Mode, calculated as follows:

$$HourHSCh = (LigP_{HSB} \times Lig_{HSB})$$

where:

LigP_{HSB} means the Lignite price, in Euros per GJ (LHV), for Lignite delivered to the Delivery Point (Lignite) under the Lignite Supply Agreement during the Day on which the Hot Standby Mode commences, as calculated in accordance with Section 4.3;

Lig_{HSB} means the quantity of Lignite, in GJ (LHV), required to operate per hour in Hot Standby Mode, as specified in Paragraph (i) of the EPC/LTM Bid Submission Form (on an inflation-adjusted basis);

n means the number of hours during Month ‘m’ during which the KRPP Facility was maintained in Hot Standby Mode.

Article 6

NKEC Acceptance Test Energy Payment

6.1 NKEC Acceptance Test Energy Payment

The NKEC Acceptance Test Energy Payment payable under Section 16.3 of the Agreement shall be calculated by applying the provisions of Article 4, with the following changes:

- (a) In Section 4.1, the variable ‘hm’ shall be replaced with the variable ‘hct’, which shall mean the number of hours occurring during the NKEC Acceptance Tests.
- (b) In Section 4.2, the variable $DNEO_i$ shall be replaced with the variable NEO_i , which shall mean the Net Electrical Output during hour ‘i’.

Article 7

Index Adjustment Factor

7.1 Index Adjustment Factor

- (a) The index adjustment factor referenced in this Schedule 1 (the “**Index Adjustment Factor**”) shall be calculated according to the following formula:

$$IAF_y = \frac{PPI_{y-1}}{PPI_{Ref}}$$

where:

IAF_y means the Index Adjustment Factor applicable for the Agreement Year ‘y’;

PPI_{y-1} means the AnnualEU28PPI for the Year that concluded prior to the start of the Agreement Year ‘y’;

PPI_{Ref} means the AnnualEU28PPI for the Year during which the Indexation Reference Date occurs.

- (b) The Parties acknowledge that, on 1st January of each Year, the AnnualEU28PPI for the immediately preceding Year may not be available. Commencing on 1st January and until such time as the AnnualEU28PPI for the immediately preceding Year becomes available, the Parties shall use the most recently available AnnualEU28PPI in calculating the Index Adjustment Factor and, as soon as the AnnualEU28PPI for the immediately preceding Year becomes available:
- (i) the Parties shall use the current AnnualEU28PPI for the immediately preceding Year for the remainder of such Year;
 - (ii) either Party may calculate an adjustment with respect to the period during which the AnnualEU28PPI for the immediately preceding Year was not available to enable it to recover any amounts it would have been paid had such AnnualEU28PPI been available and applied as and from 1st January.
- (c) If the EU 28 PPI ceases to be published by Eurostat, the Parties shall apply a mutually agreed upon alternative index, or if not mutually agreed then with any Dispute regarding such determination to be resolved in accordance with the Agreement with the objective of replacing the EU 28 PPI with the index most similar to the EU 28 PPI.
- (d) Calculation of the Index Adjustment Factor shall take into account any resetting, reweighting, or other adjustment of the EU 28 PPI.

Article 8

Technical Correction Factor Methodology

8.1 Description of Technical Correction Factor Methodology

8.1.1 Inputs and Outputs

The Parties shall develop a methodology (the “**Technical Correction Factor Methodology**”) using prudent engineering practice that provides in any hour the following information (collectively the “**Required Settlement Information**”):

- (a) the quantity of Lignite in GJ required to generate one kWh of Net Electrical Output at the Dispatched Net Electrical Output (NKEC + KOSTT) and other relevant conditions for a given hour, stated in GJ (LHV) per kWh;

- (b) the quantity of Fuel Oil in GJ required to generate one kWh of Net Electrical Output at the Dispatched Net Electrical Output (NKEC + KOSTT) and other relevant conditions for a given hour, stated in GJ (LHV) per kWh; and
- (c) the Net Electrical Output from the KRPP Facility at Ambient Conditions that corresponds to the Net Electrical Output under Reference Conditions,

in each case based on (collectively, the “**Hourly Operating Conditions**”):

- (a) the Ambient Conditions (including the Actual KOSTT Grid Conditions for purposes of including in the Technical Correction Factor Methodology the impact of any Ancillary Services for which GenCo is dispatched);
- (b) the Dispatched Net Electrical Output (NKEC + KOSTT);
- (c) the xylite content of Lignite being consumed by the KRPP Facility;
- (d) the sulphur content of Lignite being consumed by the KRPP Facility;
- (e) the EOH-Year for purposes of Degradation Factor; and
- (f) the power factor and any other technical factor for which the dispatch of Ancillary Services has a material impact on the Net Electrical Output of the KRPP Facility.

8.1.2 Structure of the Technical Correction Factor Methodology; Bid Cases

- (a) The Technical Correction Factor Methodology shall:
 - (i) use as its source material correction curves and guaranteed performance data provided by the original equipment manufacturers and applicable design tools, codes and standards, as based on the winning EPC/LTM Bidder Consortium’s bid;
 - (ii) assume that the KRPP Facility is operating in its optimum energy conversion configuration given the prevailing Hourly Operating Conditions, and any loss in efficiency due to differences in the actual configuration shall be ignored;
 - (iii) reflect 25-30 years (225,000 EOHs), with Required Settlement Information varying per year based on Degradation Factor, as based on the winning EPC/LTM Bidder Consortium’s bid; and
 - (iv) provide for a translation from Test Conditions (as specified in the EPC Contract) to the NKEC Acceptance Test conditions.
- (b) The Technical Correction Factor Methodology shall be developed such that:
 - (i) when the values of each of the Hourly Operating Conditions are as specified for the respective Bid Cases, then the Required Settlement Information actually resulting from the application of the Technical Correction Factor Methodology shall equal those of the relevant Bid Cases described in the winning EPC/LTM Bidder Consortium’s bid; and

- (ii) the Required Settlement Information for intermediate points between the Bid Cases are calculated in a manner that is reasonably related to the Required Settlement Information specified for the Bid Cases.
- (c) The Parties shall select the Bid Cases to reflect the full expected operating range of the KRPP Facility to allow for the implementation of the Technical Correction Factor Methodology and the accurate determination of the Required Settlement Information under the expected operating range of the KRPP Facility.

8.2 Development of Technical Correction Factor Methodology

- (a) NKEC shall cause the GOK-Appointed Independent Engineer to develop a draft of the Technical Correction Factor Methodology and deliver the draft Technical Correction Factor Methodology to the Parties not later than twelve (12) Months prior to the date on which the first ignition of the boiler of the KRPP Facility is anticipated to occur.
- (b) The Parties will have a period of ninety (90) Days during which to comment on the draft of the Technical Correction Factor Methodology developed pursuant to Section 8.2(a). Following the receipt by the GOK-Appointed Independent Engineer of the comments of the Parties, GenCo, NKEC, and the GOK-Appointed Independent Engineer shall jointly finalize the Technical Correction Factor Methodology by the date that occurs not later than six (6) Months prior to the date on which the first ignition of the boiler of the KRPP Facility is anticipated to occur.

Schedule 2
Contracted Operating Characteristics

1. Technical Limits

1.1 Voltage and Frequency

- (a) The nominal voltage and voltage variation (such that the KRPP Facility will be capable of maintaining continuous operation with the rated active power output at the rated power factor within the specified variation) at the Connection Point shall be as follows:

Nominal voltage: 400 kV

Minimum voltage: 380 kV

Maximum voltage: 420 kV

Voltage variation on taps: as set in Grid Code

- (b) The nominal frequency and limits on frequency variation (such that the KRPP Facility will be capable of maintaining continuous operation with the rated active power output at the rated power factor within the specified variation) for the specified period, as measured at the Connection Point, shall be as follows:

- (c) Nominal frequency: 50 Hz

Limits on frequency variation:

Frequency Range	Time Period for Operation
47.5 Hz – 48.5 Hz	30 minutes
48.5 Hz – 49.0 Hz	30 minutes
49.0 Hz – 51.0 Hz	Unlimited
51.0 Hz – 51.5 Hz	30 minutes

1.2 Stability limits

- (a) The on-line stability limit of the KRPP Facility (i.e., the ability to remain connected to the KOSTT Grid system) shall be as follows:

Minimum on-line stability limit (ability to remain connected to the KOSTT Grid system)	Minimum
Any 400 kV system configuration adversely affecting the transfer of power generated by KRPP Facility to the KOSTT Grid	150 milliseconds
Normal operating conditions (normal operating conditions and power transfer capability from KRPP Facility)	150 milliseconds

1.3 Power factor measured at the Connection Point

The power factor shall be as follows: 0.85 lagging; 0.90 leading. The power factor across the range of loads shall be as set forth in the PQ diagram to be as provided by the EPC Contractor under Schedule 14.

1.4 Wave form and harmonic content

The wave form and permitted harmonic content of the Net Electrical Output shall be as set forth in the Grid Code and the Laws of Kosovo.

1.5 Measured no-load saturation and three-phase short circuit characteristics

The measured no-load saturation and sustained three-phase short circuit characteristics shall approximate the curves specified by the EPC Contractor as part of the pass/fail criteria under item (f) of Schedule 14.

2. Modes of Operation

The KRPP Facility will be capable of the following:

- undertaking a Cold Start-Up;
- undertaking a Warm Start-Up;
- maintaining the KRPP Facility in Hot Standby Mode for up to six (6) continuous hours;
- undertaking a Hot Start-Up;
- operating in Full Speed No Load Mode for up to five (5) continuous minutes and for no more than three hundred (300) total minutes per Year; and
- operating in Island Mode for up to twenty (20) continuous minutes.

3. Load Following Ability - Electrical

The KRPP Facility shall have the ability to follow electrical load under automatic control across the full load range of the KRPP Facility (from Minimum Generation up to the Overload Capacity).

The KRPP Facility shall have the ability to react on frequency deviations as follows:

1. Primary control activation is triggered before the frequency deviation towards the nominal frequency exceed ± 20 mHz. In case of quasi steady-state frequency deviation of ± 200 mHz from nominal frequency, all available primary control reserve are expected to be fully activated not more than 30 seconds later; and
 2. for primary control purposes the accuracy of local frequency control measurements must not exceed ± 10 mHz.
4. Overload Capacity Design Rating

The KRPP Facility shall have the capability to provide Overload Capacity (MW net, at Reference Conditions) as follows: 102% of Contract Capacity for not more than fifteen (15) continuous minutes and not more than three times per Year.

5. Dispatch Ramp Rates - Electrical

Maximum Ramp Rate (up and down) across all levels of load, under Reference Conditions:

% Load	Minimum Loading Rate (MW/min)	Minimum Unloading Rate (MW/min)
MinGen- 50%	Amount specified by the EPC Contractor as part of the pass/fail criteria under Paragraph (cc) in Schedule 14.	Amount specified by the EPC Contractor as part of the pass/fail criteria under Paragraph (cc) in Schedule 14.
50%-	Amount specified by the EPC	Amount specified by the EPC

90%	Contractor as part of the pass/fail criteria under Paragraph (cc) in Schedule 14.	Contractor as part of the pass/fail criteria under Paragraph (cc) in Schedule 14.
90%-100%	Amount specified by the EPC Contractor as part of the pass/fail criteria under Paragraph (cc) in Schedule 14.	Amount specified by the EPC Contractor as part of the pass/fail criteria under Paragraph (cc) in Schedule 14.

6. Minimum Generation

Minimum Generation (MW net, at Reference Conditions): the percentage of Contract Capacity on a continuous basis as specified by the EPC Contractor as part of the pass/fail criteria under Paragraph (dd) in Schedule 14.

7. Minimum Run Time

MinRun: Minimum run time if dispatched from a non-synchronous state (hours): 6 hours

8. Starts

8.1 Qualifying for a Start-Up

The KRPP Facility shall be considered as requiring a Cold Start-Up, Warm Start-Up, or Hot Start-Up following the number of hours after the point in time when the KRPP Facility was last synchronized with the KOSTT Grid specified below:

	Cold Start-Up	Warm Start-Up	Hot Start-Up
	more than 48 hours	8-48 hours	less than 8 hours

8.2 Time required for a Start-Up

The time required to undertake a Cold Start-Up, Warm Start-Up, and Hot Start-Up shall be as follows:

Cold Start-Up	Warm Start-Up	Hot Start-Up
start-up to synchronous speed: as specified by the EPC Contractor as part of pass/fail criteria under Paragraph (ff) in Schedule 14.	start-up to synchronous speed: as specified by the EPC Contractor as part of pass/fail criteria under Paragraph (ff) in Schedule 14.	start-up to synchronous speed: as specified by the EPC Contractor as part of pass/fail criteria under Paragraph (ff) in Schedule 14.

Maximum starts

	Maximum Number in Agreement Year
Cold Start-Up	6
Warm Start-Up	12
Hot Start-Up	25

provided, however, that in the event that a Hot Start-Up is necessary within six (6) hours following GenCo's inability to operate the KRPP Facility in the Hot Standby Mode when called in accordance with Paragraph (y) of Schedule 14, such Hot Start-Ups shall not count towards the maximum number of Hot Start-Ups in any Agreement Year.

Schedule 3
Form of Construction Reports

The following report summarizes the progress on the construction of the KRPP Facility and the GenCo Connection Works for the Month of [Month/Year].

The report shall provide a brief summary of the developments in the relevant Month with respect to each of the following topics under the following headings and be signed by GenCo:

1. Overall summary of progress
2. Significant activities in the prior Month, including exceptions with respect to the prior Month's report
3. Planned significant activities in the coming Month
4. Overall schedule status, including:
 - a. expected commencement of the EPC Works;
 - b. expected date of completion for the laying of the foundation for the boiler houses and turbine halls;
 - c. expected date of completion of the GenCo Connection Assets, KOSTT New Connection Assets, and the Infrastructure Reinforcement Assets;
 - d. expected date of installation of the step up transformer(s);
 - e. expected date of erection of each boiler;
 - f. expected date of installation of each turbine;
 - g. expected commencement of Commissioning;
 - h. expected Scheduled Commercial Operations Date;
 - i. expected Commercial Operations Date);
 - j. expected Required Commercial Operations Date;
 - k. expected date of completion of the GenCo Connection Works; and
 - l. a brief description of any event that could materially impact the above and the potential impact the schedule;
5. Any action items for NKEC in the following Month required under the Power Purchase Agreement;
6. A summary of the weather conditions effecting progress in the month;
7. A list of the shipments for the coming Month;

8. A photographic progress comparison on Monthly basis with up to date pictures from the site and from pre-manufacturing in the workshop;
9. A summary of health and safety issues, e.g. personal injuries, property and environmental damage, public participation, authorities involved and accidents from earlier periods not yet covered by different reports; and
10. A summary of quality assurance activities and results based on agreed quality procedures.

Schedule 4
Testing Procedures
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Article 1 Introduction

1.1 Introduction

This Schedule 4 specifies the testing procedures relating to testing to be undertaken pursuant to Article 9 of the Agreement.

Article 2 Tests Prior to Synchronization of the KRPP Facility

2.1 Automatic Voltage Regulator Setting and Adjusting with the Generator Running at No Load

2.1.1 Test Description

The test shall be carried out with the KRPP Facility's generator operating at rated terminal voltage and speed. The test shall be conducted by injecting a two percent (2%) step change into the automatic voltage regulator reference input and measuring the dynamic response parameters, overshoot and settling time.

2.1.2 Minimum Satisfactory Result

The demonstrated voltage regulation capability of the automatic voltage regulator shall meet the required specifications set forth in the Grid Code.

2.2 Steam Turbine Governor Control Checks and Over Speed Test

2.2.1 Test Description

The test shall be carried out with the KRPP Facility's turbine generator operated at rated terminal voltage and speed. The test shall be conducted by injecting a two percent (2%) step into the turbine governor reference input and measuring the dynamic response parameters, overshoot and settling time. The range of speed/frequency control shall also be demonstrated by measuring the KRPP Facility's speed at each extreme of the controller.

An over speed test shall be carried out on the steam turbine in accordance with the procedures specified for such test by the original equipment manufacturer.

2.2.2 Minimum Satisfactory Result

The demonstrated speed control capability of the governor shall meet the required Contracted Operating Characteristics specified in Schedule 2.

2.3 Open and Short Circuit Tests

2.3.1 Test Description

No-load saturation (open circuit) and sustained three-phase short-circuit characteristics shall be measured in accordance with the test procedures detailed in IEC 60034-4.

2.3.2 Minimum Satisfactory Result

The measured no-load saturation and sustained three-phase short circuit characteristics shall approximate the curves described in the required Contracted Operating Characteristics specified in Schedule 2. In addition the short circuit ratio K_c as calculated from the measured characteristics, shall not be less than

the design minimum value specified in required Contracted Operating Characteristics specified in Schedule 2 and as required by the Grid Code.

2.4 Protection Level Settings

Following the submission by GenCo to and approval by the GOK-Appointed Independent Engineer of a report identifying protection settings and associated tripping logic, GenCo shall undertake tests, using secondary injection methods, to set the following protection level settings to the those specified in such report:

- stator over current protection;
- reverse power protection;
- under and over frequency protection;
- under and over voltage protection;
- stator earth fault protection;
- negative phase sequence protection;
- trip functions associated with control systems protection;
- generator transformer over-current and earth fault protection;
- high voltage bus-bar protection;
- generator differential protections;
- field/rotor ground failure;
- generator breaker failure; and
- phase short circuit failure.

2.5 Voltage Phasing and Related Tests

GenCo shall conduct voltage phasing checks between the sub-station of the KRPP Facility and the KOSTT Grid, including the following tests.

2.5.1 Current/Voltage Transformer Tests

The current/voltage transformer tests shall include verification of the selected operating ratio, phasing and polarity.

2.5.2 Protection Tests

The protection tests shall include:

- demonstration of stability of differential protection schemes;
- functional check of protection scheme logic; and
- pursuant to Section 2.4 of this Schedule 4, the application of relay settings as determined in the relevant approved protection settings report.

2.6 Inter-tripping Tests

GenCo shall prove all inter-tripping circuits between the KRPP Facility and the KOSTT Grid, including the following tests.

2.6.1 Circuit Breaker Tests

The circuit breaker tests shall, at a minimum, include checks of the following operations:

- auto-reclosing at the minimum functional pressure for operation;
- closing at the minimum functional pressure for operation;
- opening at the minimum functional pressure for operation;

- simulation of fault-making operation and check of anti-pumping device;
- behavior of the circuit breaker on a closing command while an opening command is already present;
- application of an opening command on both releases simultaneously; and
- protection against pole discrepancy.

2.6.2 Functional Trip Tests

The functional trip tests shall include local and remote close and trip operation at minimum voltage.

2.6.3 Mechanical Operations Test

After completion of the checks and commissioning tests, a minimum of fifty (50) no-load operations shall be performed on the circuit breaker. This test is only to be performed where major sub-assemblies are combined at site without previous routine tests on the complete circuit breaker.

2.6.4 Disconnect and Earth Switch Tests

The disconnect and earth switch tests shall include:

- manual and electro/mechanical closing and opening tests (including tests at minimum voltage);
- control and indication checks, including local and remote operation; and
- interlock checks.

2.6.5 Control System Tests

The control systems tests shall include:

- demonstration of data communications systems including the SCADA System between the switchyard control system, local control rooms, and system control room;
- verification of local and remote display and logging of data points; and .
- demonstration of the automatic and manual operation of all open and closed loop controls as well as the effective transfer between the two operating modes. The demonstration shall also include the operation of associated out-of-limit alarms, interlocks, automatic start-up and shut-down sequences and control loop transfer functions.

2.7 Other KOSTT Required Tests

GenCo shall undertake all other tests required by KOSTT under the Grid Code or the Connection Agreement prior to the synchronization of the KRPP Facility with the KOSTT Grid.

Article 3 NKEC Acceptance Tests

3.1 General Requirements for NKEC Acceptance Tests

The NKEC Acceptance Tests may be carried out in any order, subject to the following:

- The Reliability Test shall commence only upon completion of the prior tests and study set out in Sections 3.1 through 3.6; provided, however, with the prior written concurrence of the GOK-Appointed Independent Engineer, the tests set out in Sections 3.4 to 3.6 may be included within the Reliability Test, but in any event prior to the conduct of any test related to the Bid Cases;
- The emissions test described in Section 3.8 shall be included within the Reliability Test.

The Capacity Test shall commence only upon completion of the prior tests and study set out in Sections 3.1 through 3.8 and shall be commenced immediately following the Reliability Test.

The Heat Rate Test shall be administered in conjunction with the Capacity Test.

The NKEC Acceptance Tests shall be undertaken with all normal auxiliaries in service. However, cranes/hoists, firefighting equipment and any other equipment which is not permanently in operation during normal operation of the KRPP Facility, will not be required to be in operation while conducting the NKEC Acceptance Tests.

During the NKEC Acceptance Tests, the KRPP Facility shall be operated in accordance with Prudent Utility Practices and within the Contracted Operating Characteristics specified in Schedule 2.

3.2 Full Load Rejection Study

GenCo shall submit to the GOK-Appointed Independent Engineer a simulation study, to demonstrate the ability of the KRPP Facility to safely control the rejection of full load output.

The results of the study shall demonstrate:

- compliance with the requirements of the Grid Code;
- that the KRPP Facility complies with the technical limits specified in Schedule 2.

3.3 Excitation System Test

3.3.1 Test Description

On-load tests shall be carried out to determine the steady state and dynamic stability of the excitation system including the power system stabilizer.

3.3.2 Minimum Satisfactory Result

The measured steady state and dynamic response of the excitation system shall comply as a minimum with the requirements of the Grid Code and shall not exceed the technical limits specified in Schedule 2.

3.4 Turbine Governor Operating Test

3.4.1 Test Description

This test shall be carried out at not less than three load points of the KRPP Facility's generator in the range of forty percent (40 %) to one hundred percent (100%) of rated load, and shall consist of a series of sub-tests. At each load point a simulated frequency deviation of varying amplitude shall be injected into the turbine control system and the response of the power output of the KRPP Facility. The results shall be within plus or minus twenty percent (+/- 20 %) of the value stated in the Contracted Operating Characteristics. Only positive frequency steps shall be at one hundred percent (100%) load and only negative frequency steps shall be simulated at forty percent (40%) load.

3.4.2 Minimum Satisfactory Result

Following each step change, the speed measurements shall be noted after a delay of thirty (30) seconds, and continued every thirty (30) seconds, over a period of at least three (3) minutes. The speed governor response shall be, and each of the speed measurements noted shall be, within one (1) RPM of the desired setting; for example, 1 RPM in 3000 RPM over the range +/- 5% of nominal.

3.5 Reactive Capability Test

3.5.1 Test Description

The generator of the KRPP Facility shall be operated at full load (100% gross) over the power factor range from zero point eighty-five (0.85) lagging/overexcited to zero point nine five (0.95) leading/underexcited. In the event that during the test the KOSTT Grid maximum and minimum voltage conditions are beyond those specified in the Contracted Operating Characteristics, the tests shall be performed at attainable power factors closest to the rated lagging and leading limits and such that the voltage limits are not exceeded.

3.5.2 Minimum Satisfactory Result

The KRPP Facility shall be capable of continuous operation at full load (100% gross) over the power factor range from zero point eighty-five (0.85) lagging/overexcited to zero point nine five (0.95) leading/underexcited for all normal transmission system voltage conditions.

3.6 Response of the KRPP Facility to Step Load Changes Test

3.6.1 Test Description

A test shall be carried out to demonstrate that the KRPP Facility can continuously adjust active power output so as to contribute to frequency control of the transmission system.

3.6.2 Minimum Satisfactory Result

The results and characteristics measured from such tests shall comply as a minimum with the requirements to the Grid Code and shall not exceed the technical limits specified in Schedule 2 or the requirements detailed in the Contracted Operating Characteristics.

3.7 Reliability Test

3.7.1 Test Description

The Reliability Test shall last for a period of thirty (30) Days. The Reliability Test shall be used to demonstrate the ability of the KRPP Facility to operate in the operating states required under Schedule 2.

During the Reliability Test, the equipment and systems shall be placed in normal mode of operation.

The Reliability Test shall commence from cold, shutdown conditions. The time to complete a Cold Start-Up shall be established.

- (a) The Reliability Test shall include all modes specified in Schedule 2.
- (b) Lignite and Fuel Oil shall be used as required and permitted.
- (c) During the Reliability Test, the KRPP Facility shall be subject to (i) AGC, or (ii) an appropriate means of control for any other previously agreed tests.
- (d) The Net Electrical Output data may be adjusted: (i) to account for trips and suspensions for which GenCo is not responsible; and (ii) for corrections based on actual conditions that differ from the Reference Conditions.

3.7.2 Minimum Satisfactory Result

The Reliability Test shall have been satisfactorily completed only if all of the following conditions are met:

- Times to complete each of a (i) Cold Start-Up; (ii) Warm Start-Up; (iii) and Hot Start-Up: shall be no longer than specified in the Contracted Operating Characteristics.
 - In respect of Hot Standby Mode, the relevant states shall be maintained for no less than the period specified in the Contracted Operating Characteristics.
 - The KRPP Facility shall have operated in Full Speed No Load Mode for no less than the period specified in the Contracted Operating Characteristics (30 minutes).
- (a) The KRPP Facility shall have operated in Island Mode for no less than the period specified in the Contracted Operating Characteristics (180 minutes).
- (b) The Ramp Rate shall be no less than specified in the Contracted Operating Characteristics.
- (c) The Overload Capacity shall be no less than as specified in the Contracted Operating Characteristics.
- (d) The Minimum Generation shall be no greater than as specified in the Contracted Operating Characteristics.
- (e) The ability to follow load shall be as specified in the Contracted Operating Characteristics.
- (f) For all other periods during the Reliability Test only three interruptions shall be allowed. Each interruption shall not be greater than stated in Table 1 below. In circumstances where the interruption is greater than stated in the table, then GenCo shall recommence the Reliability Test at the first Day of that period/portion. For example, if a failure occurs on Day 16 for greater than the period on Table 1 below, GenCo shall recommence the test at Day 11. Should more than one interruption to the Reliability Test be as a result of the same mechanism of failure then the Reliability Test shall be restarted from Day 0.
- (g) In the event that interruptions are caused by events beyond the reasonable control of GenCo then the test shall resume after the interruption as if it had not occurred. In any case, any loss of hours due to interruption(s) shall be added to the end of the Reliability Test.

Table 1 Reliability Test Interruptions

Portion of Reliability Test	Maximum Period of Interruption Allowed	
	Day 1 to Day 10	Twelve hours
Day 11 to Day 20	Eight hours	
	Day 21 to Day 30	Four hours

For purposes of the Reliability Test, an interruption is any loss of, or reduction in, generating capacity attributable to the behavior of the KRPP Facility or GenCo’s actions. For the avoidance of doubt, any loss of load not attributable to the behavior of the KRPP Facility, or GenCo’s actions, shall not be treated as an interruption.

3.8 Emissions Test

3.8.1 Test Description

A continuous emission measurements system (CEMS) shall be installed and calibrated in accordance with EN14181:2004 and EN15259:2007, along with any other equipment necessary for emissions testing. The KRPP Facility and associated pollution abatement equipment shall be operated under stable conditions with measurement of the pollutants in the flue gases. No normally operating equipment shall be taken out of service. The test shall provide for heavy metals testing and analysis.

The test of emission, using the CEMS shall be conducted for the full duration of the Reliability Test.

3.8.2 *Minimum Satisfactory Result*

The emissions test shall be successfully completed when the results from the CEMS, along with any other equipment necessary for emissions testing, during the Reliability Test comply with the Environmental Standards.

3.9 Capacity Test

3.9.1 *Test Description*

Each Capacity Test shall have a duration of six (6) continuous hours. The test procedure shall, in all material respects, accord with ASME PTC 46-1996, or equivalent international standard. Steam properties shall be determined in accordance with ASME steam tables based on IAPWS – IF97, or equivalent international standard.

Only Lignite may be used as the fuel and the sampling and measurement thereof shall be to the approval of the GOK-Appointed Independent Engineer and shall be in accordance with the procedures described in ASME PTC 4-1998, or equivalent international standard.

KOSTT Grid voltage, frequency and power factor shall be recorded at not less than ten (10) minute intervals over the test period.

The Parties shall schedule the KRPP Facility (and request Real-Time Electrical Dispatch from KOSTT) such that the relevant Real-Time Electrical Dispatch Instructions for the duration of the Capacity Test shall be up to but not exceeding the technical limits of the KRPP Facility specified in Schedule 2.

GenCo shall notify NKEC of the commencement of the Capacity Test and record the Net Electrical Output of the KRPP Facility as indicated by the Metering System and any other high accuracy instrumentation as may be required under the relevant ASME or equivalent code. GenCo shall notify NKEC when the test run is complete and record the Net Electrical Output indicated by the Metering System and any other high accuracy instrumentation as may be required under the relevant ASME or equivalent code.

For the duration of the Capacity Test, the KRPP Facility shall be operated continuously at up to but not exceeding the technical limits specified in Schedule 2.

The capacity achieved during the Capacity Test shall be calculated by taking the difference between the recorded Net Electrical Output at the completion and commencement of the Capacity Test and dividing it by the duration of the Capacity Test (in hours). This calculated capacity for the Capacity Test shall be corrected to that which would have been achieved at the Reference Conditions using the Technical Correction Factor Methodology. The resulting corrected capacity shall be the Tested Capacity, and be expressed in MW.

3.9.2 *Instruments*

Prior to the commencement of each Capacity Test, all test instruments required for the measurement of test data shall be checked and recalibrated if necessary. Instruments for primary measurements shall be

calibrated using standard reference sources or shall have been previously calibrated and certified by independent nationally or internationally approved calibration authorities.

3.9.3 Capacity Test Certificate

The GOK-Appointed Independent Engineer shall prepare a Capacity Test Certificate for each Capacity Test, which certificate shall include the test procedure, measurements obtained, calculation methodology, and correction of results to determine the Tested Capacity of the KRPP Facility. The Capacity Test Certificate shall include the following information:

- date(s) of test;
- description of the test, arrangements, equipment, and instruments (and their location and operating conditions);
- summary of relevant measurements and observations;
- calculation methodology;
- calibration curves of instruments and apparatus used in the test;
- adjustments to be made to the test results because of deviations, if any, in the test operating conditions from Reference Conditions;
- test result corrected to Reference Conditions if test operating conditions have deviated from those specified and all calculations in reasonable detail to produce the corrected test results;
- a summary of the test result; and
- a statement as to whether or not Contract Capacity has been demonstrated.

3.9.4 Minimum Satisfactory Results

The Capacity Test shall be successfully completed when the Tested Capacity for the KRPP Facility equals or exceeds:

- the applicable Contract Capacity; or
- in the event that GenCo shall have reduced the applicable Contract Capacity pursuant to Section 4.4.2 of the Agreement and paid the liquidated damages specified in Section 4.4.3, the Contract Capacity as reduced for the KRPP Facility as reduced pursuant to Section 4.4.2.

3.10 Heat Rate Test

3.10.1 Test Description

The Heat Rate during the Capacity Test shall be computed on the basis of the Net Electrical Output delivered and the Lignite consumed during the period of the Capacity Test.

3.10.2 Minimum Satisfactory Result

The Heat Rate at the Contract Capacity, adjusted as necessary to correspond to the relevant Reference Conditions, shall be at least equal to or better than the Guaranteed Heat Rate.

3.11 Water Test

3.11.1 Test Description

A test shall be carried out to demonstrate that the KRPP Facility can process Water received from the Water Supplier and prepare water consistent with the Power Plant Water Quality Standards such that the KRPP Facility could be reasonably expected to be operated on a permanent basis using such Water consistent with Prudent Utility Practice.

3.11.2 Minimum Satisfactory Result

The results and characteristics measured from such tests shall comply as a minimum with the Power Plant Water Quality Standards.

Article 4 Annual Tests

4.1 Annual Capacity Test During Each Demonstration Period

4.1.1 Test Description

Each Annual Capacity Test shall have a duration of six (6) continuous hours. The test procedure shall, in all material respects, accord with ASME PTC 46-1996, or equivalent international standard. Steam properties shall be determined in accordance with ASME steam tables based on IAPWS – IF97, or equivalent international standard.

Only Lignite may be used as the fuel and the sampling and measurement thereof shall be to the approval of the GOK-Appointed Independent Engineer and shall be in accordance with the procedures described in ASME PTC 4-1998, or equivalent international standard.

KOSTT Grid voltage, frequency and power factor shall be recorded at not less than ten (10) minute intervals over the test period.

The Parties shall schedule the KRPP Facility (and request Real-Time Electrical Dispatch from KOSTT) such that the relevant Real-Time Electrical Dispatch Instructions for the duration of the Annual Capacity Test shall be up to but not exceeding the technical limits specified in Schedule 2.

GenCo shall notify NKEC of the commencement of the Annual Capacity Test and record the Net Electrical Output of the KRPP Facility as indicated by the Metering System and any other high accuracy instrumentation as may be required under the relevant ASME or equivalent code. GenCo shall notify NKEC when the test run is complete and record the Net Electrical Output indicated by the Metering System and any other high accuracy instrumentation as may be required under the relevant ASME or equivalent code.

For the duration of the Annual Capacity Test, the KRPP Facility shall be operated continuously at up to but not exceeding the technical limits specified in Schedule 2.

The capacity achieved during the Annual Capacity Test shall be calculated by taking the difference between the recorded Net Electrical Output at the completion and commencement of the Annual Capacity Test and dividing it by the duration of the Annual Capacity Test (in hours). This calculated capacity for the Annual Capacity Test shall be corrected to that which would have been achieved at the Reference Conditions using the Technical Correction Factor Methodology. The resulting corrected capacity shall be the Tested Capacity, and be expressed in MW.

4.1.2 Instruments

Prior to the commencement of each Annual Capacity Test, all test instruments required for the measurement of test data shall be checked and recalibrated if necessary. Instruments for primary measurements shall be calibrated using standard reference sources or shall have been previously calibrated and certified by independent nationally or internationally approved calibration authorities.

4.1.3 Annual Capacity Test Certificate

The GOK-Appointed Independent Engineer shall prepare a Capacity Test Certificate for each Annual Capacity Test, which certificate shall include the test procedure, measurements obtained, calculation

methodology, and correction of results to determine the Tested Capacity. The Capacity Test Certificate shall include the following information:

- date(s) of test;
- manufacturer's name and engine designation;
- description of the test, arrangements, equipment, and instruments (and their location and operating conditions);
- summary of relevant measurements and observations;
- calculation methodology;
- calibration curves of instruments and apparatus used in the test;
- adjustments to be made to the test results because of deviations, if any, in the test operating conditions from Reference Conditions;
- test result corrected to Reference Conditions if test operating conditions have deviated from those specified and all calculations in reasonable detail to produce the corrected test results;
- a summary of the test result and the Tested Capacity; and
- a statement as to whether or not applicable Contract Capacity has been demonstrated.

4.2 Annual Heat Rate Test

4.2.1 Test Description

The Heat Rate during the Annual Capacity Test shall be computed on the basis of the Net Electrical Output delivered and the Lignite consumed during the period of the Annual Capacity Test.

4.2.2 RESERVED

4.3 Island Mode Test

Unless otherwise specified by GOK and NKEC, GenCo shall perform and successfully complete Island Mode testings on an annual basis in accordance with Prudent Utility Practices.

4.4 Full Speed No Load Mode Test

Unless otherwise specified by GOK and NKEC, GenCo shall perform and successfully complete Full Speed No Load Mode testings in accordance with Prudent Utility Practices.

**Schedule 5
Insurance**

1.1 Insurance Coverages

(a) Commercial General Liability Insurance

Coverage: The insurance shall include coverage for bodily injury, personal injury, property damage, products and completed operations, contractual liability (including coverage specifically applicable to the undertakings in this Agreement), independent contractors, and sudden/accidental pollution liability. Each such coverage may be part of the policy (or a separate policy) or provided through an endorsement. The insurance shall not exclude explosion, collapse, or underground hazards.

Jurisdiction: The policy shall cover liability under all jurisdictions worldwide, including USA and Canada.

Sum Insured: Not less than **one hundred million Dollars (\$100,000,000)** per claim (such limit to apply without reference to the type of covered claim) and **one hundred million Dollars (\$100,000,000)** in the aggregate per Year.

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **five hundred thousand Dollars (\$500,000)** per claim.

Term: This insurance shall be in effect from the Transfer Date and throughout the Term. Separate policies may cover construction period and operation period, and this obligation to maintain liability coverage may be satisfied through the builder's risk policy described in Section 1.1(e) below provided that it satisfies the terms and conditions set forth herein.

Insureds: GenCo, together with the GenCo Parties.

Additional

Insured: NKEC, together with the NKEC Parties, GOK, any Specified POE that is a party to a Project Agreement, and all Lenders. Coverage of an additional insured shall be the same as that of the insured.

Other: Such policy shall include a severability of interest clause providing that in the event of a claim by one insured for which another insured covered by the same policy may be held liable, the insured against whom the claim is made is covered in the same manner as if separate policies had been issued (recognizing that such clause shall not operate to increase the limit of coverage).

Such insurance shall be primary with respect to the interests of NKEC, the NKEC Parties, GOK, any Specified POE that is a party to a Project Agreement, and all Lenders such that the insurer shall not call upon any other insurance procured by other parties for defense, payment, or contribution.

The amounts of insurance required in this Section 1.1(a) may be satisfied by GenCo purchasing any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified in this Section 1.1(a).

(b) Automobile Liability Insurance

Coverage: This insurance shall include coverage for owned, non-owned and hired automobiles for both bodily injury and property damage and containing

appropriate no fault insurance provisions or similar endorsements to the extent required under the Laws of Kosovo.

Sum Insured: A combined single limit of not less than **one million Euros (€1,000,000)** per person and **one million Euros (€1,000,000)** per accident.

Term: This insurance shall be in effect from the Transfer Date and throughout the Term.

Insureds: GenCo, together with the GenCo Parties.

Additional

Insured: NKEC, together with the NKEC Parties, GOK, any Specified POE that is a party to a Project Agreement, and all Lenders, with the same rights of coverage as that of the insured.

Other: The amounts of insurance required in this Section 1.1(b) may be satisfied by GenCo purchasing any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified in this Section 1.1(b).

(c) Employers Liability Coverage

Coverage: Employers liability.

Sum Insured: A **one million Dollars (\$1,000,000)** minimum limit per occurrence and per Year.

Term: This insurance shall be in effect from the Transfer Date and throughout the Term.

Insureds: GenCo, together with the GenCo Parties.

Other: The amounts of insurance required in this Section 1.1(c) may be satisfied by GenCo purchasing any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified in this Section 1.1(c).

(d) Worker's Compensation Insurance

Coverage: As required by the Laws of Kosovo.

Sum Insured: As required by the Laws of Kosovo.

Term: As required by the Laws of Kosovo.

Insureds: As required by the Laws of Kosovo.

(e) "All Risks" Builder's Risk Insurance

Coverage: For the construction of entire KRPP Facility. The builder's risk insurance shall include coverage for all risks of physical loss or damage, including for flood and earthquake, as well as volcano, tsunami, storm, cyclone, inundation, and land slip. GenCo shall obtain a policy providing for twelve (12) months' delay in startup insurance and contingent delay in startup insurance, with respect to any supplier under a Project Agreement (exclusive of any contingent delay in startup cover associated with non-supply under the Lignite Supply Agreement or the Water Supply Agreement), each against all risk on the basis of an amount of the Availability Payment based on Contract Capacity.

Sum Insured: **Full replacement cost** basis, as such replacement cost may be reviewed to avoid underinsurance from time to time.

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **five million Euros (€5,000,000)** per occurrence and a deductible of forty-five (45) to sixty (60) days for delay in startup or contingent delay in startup.

Term: Any period in which GenCo is constructing, expanding, modifying, or restoring the KRPP Facility in accordance with the Agreement.

Insureds: GenCo.

(f) **Property Insurance; Boiler and Machinery Insurance**

Coverage: The entire KRPP Facility, including conveyor belt system for Lignite supply, pumping station, and pipeline for water supply. The insurance shall include coverage for all risks of physical loss or damage, including for fire, flood, and earthquake, as well as volcano, tsunami, storm, cyclone, inundation, land slip, machinery breakdown, and electrical breakdown. The policy shall provide for twelve (12) to fifteen (15) months' business interruption insurance and contingent business interruption insurance with respect to any supplier, including under a Project Agreement (exclusive of any contingent business interruption cover associated with non-supply under the Lignite Supply Agreement or the Water Supply Agreement), each on the basis of an amount of the Availability Payment based on Contract Capacity and the amount of the Annual TOPQ Deficiency Payment (as defined in the Lignite Supply Agreement) payable to KEK Mining.

Sum Insured: **Full replacement cost** basis, as such replacement cost may be reviewed to avoid underinsurance from time to time.

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **five million Euros (€5,000,000)** per occurrence and a deductible of forty-five (45) to sixty (60) days for business interruption or contingent business interruption.

Term: From the conclusion of the Construction Period and throughout the Term.

Insureds: GenCo, NKEC, together with NKEC Parties, GOK, any Specified POE that is a party to a Project Agreement, and Lenders, all as their interests may appear.

(g) **Ocean Marine, Air, Land Cargo Insurance**

Coverage: Loss of or damage to materials, machinery or equipment of all GenCo Contractors, and all subcontractors, to be used at or installed into the KRPP Facility while in transit by wet marine conveyances or by air transportation and/or by land conveyances.

Sum Insured: Not less than the value of the **largest single cargo shipment, including** coverage for loss of or damage to materials, machinery, or equipment of all GenCo Contractors, and all subcontractors, to be used at or installed into the KRPP Facility while in transit by wet marine conveyances or by air transportation, and/or by land conveyances

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **fifty thousand Euros (€50,000)** per occurrence.

Term: Any time during which cargo is being shipped in connection with this Agreement.

Insureds: GenCo.

(h) **Environmental Impairment Liability Insurance**

- Coverage: The insurance shall include coverage for the entire KRPP Facility with respect to Environmental Conditions first occurring on and after the Transfer Date. For the avoidance of doubt, the environmental impairment liability insurance shall include pollution legal liability insurance covering costs, damages, and Losses arising from pollution incidents, including, but without limitation, with respect to bodily injury and property damage arising from exposure to Hazardous Materials, the discharge, emission, seepage, migration, dispersal, release, or escape of any Hazardous Materials, or the presence of any Hazardous Materials that have been illegally disposed of or abandoned at the Site by any party other than GenCo, and including, but without limitation, the costs of environmental investigations, remediation, and monitoring associated with or arising from an Environmental Condition.
- Sum Insured: Not less than **fifteen million Euros (€15,000,000)** per claim and in the aggregate.
- Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **five hundred thousand Euros (€500,000)** per event.
- Term: This insurance shall be in effect from the Transfer Date and throughout the Term.
- Insureds: GenCo, together with the GenCo Parties.
- Additional Insured: NKEC, together with the NKEC Parties, GOK, any Specified POE that is a party to a Project Agreement, and all Lenders. Coverage of an additional insured shall be the same as that of the insured.
- Other: Such policy shall include a severability of interest clause providing that in the event of a claim by one insured for which another insured covered by the same policy may be held liable, the insured against whom the claim is made is covered in the same manner as if separate policies had been issued (recognizing that such clause shall not operate to increase the limit of coverage).
- Such insurance shall be primary with respect to the interests of NKEC, the NKEC Parties, GOK, any Specified POE that is a party to a Project Agreement, and all Lenders such that the insurer shall not call upon any other insurance procured by other parties for defense, payment, or contribution.

(i) **Political Violence Insurance**

None. See the terms and conditions of the Project Agreements.

1.2 General Conditions

- (a) To the extent consistent with the provisions of Section 21.1 of the Agreement, GenCo shall obtain “occurrence” form policies rather than “claims made” form coverage. If any policy must be written on a “claims-made” basis and such policy is not renewed or the retroactive date of such policy is to be changed, such policy shall contain the broadest basis and supplemental extended reporting period coverage or “tail” reasonably available in the commercial insurance market for each such policy and GenCo shall provide proof that such basic and supplemental extended reporting period coverage or “tail” has been obtained.

- (b) Each policy issued in accordance with Section 1.1 shall:
- (i) provide that it shall not be canceled or non-renewed by the insurer except upon thirty (30) Days' prior written notice; and
 - (ii) require the insurer to promptly (but in any event within ten (10) Days after any such event) advise the insured party of any failure to pay any premium that is due and payable within thirty (30) Days following the due date.
- (c) In an endorsement to each policy issued in accordance with Section 1.1, or in an endorsement thereto, the insurer shall provide that NKEC shall be a cancellation notice recipient, and any such notice shall be delivered by fax and confirmed in writing delivered by first class mail or, if sent from an office outside Kosovo, by international courier.
- (d) If the "all risks" builder's risk insurance and "all risks" property and boiler and machinery insurance described in Section 1.1(e) and Section 1.1(f) are provided by different insurers, there shall be included as part of the respective policies a joint loss agreement allocating loss between the respective insurers.
- (e) In respect of GenCo's "all risks" builder's risk insurance and "all risks" property and boiler and machinery insurance described in Section 1.1(e) and Section 1.1(f), comprehensive or commercial general liability insurance described in Section 1.1(a), employer liability insurance described in Section 1.1(c), and environmental impairment liability insurance described in Section 1.1(h), GenCo shall use all reasonable efforts to obtain an endorsement in such policies to provide that in the event that GOK (or its nominee) assumes operation of the KRPP Facility in accordance with the terms of the Implementation Agreement, and GOK (or its nominee) provides notice of such assumption to the insurers, GOK (or its nominee) shall
- (i) be able to maintain such policies in full force and effect and
 - (ii) be a named insured under the "all risks" property and boiler and machinery insurance to the extent of activities by GOK (or its nominee) in connection with the KRPP Facility,
- provided that GOK (or its nominee) pays all premiums, if any, then outstanding and pays all further premiums in accordance with the terms of such policies.
- (f) The terms, conditions, and limits of any insurances required to be provided pursuant to this Schedule 5 and those like insurances that may be required to be provided by any other agreement into which GenCo enters, may be satisfied by the purchase of a single insurance program or by inclusion into GenCo's parent company's global insurance program, without any accumulation of the limits required to be obtained pursuant to this Agreement with the limits of similar policies to be obtained under other contracts.
- (g) In each policy issued in accordance with Section 1.1, the insurer shall waive all rights of subrogation against GOK and each of its ministries, officers and employees and NKEC and the NKEC Parties and each Specified POE that is a party to a Project Agreement, Lenders and their officers and employees.
- (h) The amount of the coverage required to be provided under Section 1.1 shall be adjusted from time to time to reflect material changes in coverage arising as a result of inflation.
- (i) Lenders' security agent shall be the loss payee in respect of insurance proceeds with respect to losses in excess of **five million Euros (€5,000,000)**, net of any deductibles and/or any self-insured retentions, paid pursuant to any builder's risk insurance, property insurance, boiler and machinery insurance, and/or ocean marine, air, land cargo insurance maintained pursuant to this

Schedule 5 until all debt is paid. GenCo shall be the loss payee in respect of insurance proceeds after all debt is paid.

Schedule 6
Long-Term Maintenance Plan

For planning purposes, the cycle of Scheduled Outages for the KRPP Facility will be based on manufacturer's recommended inspection intervals and the expected frequency for such inspections as shown in the LTM Agreement.

Schedule 7
Specified Environmental/Archaeological Conditions

1. Removal and disposal of all debris, rubbish, and similar non-Hazardous Materials on the surface of the Plant Site (KRPP) as of the Execution Date.
2. To the extent inconsistent with the Environmental Standards, removal and disposal of all lignite on the surface of the Water Delivery Systems Corridor (as defined in the Site Transfer Agreement) as of the Execution Date.
3. Any Environmental/Archaeological Conditions specifically identified in the Phase II study undertaken in relation to the ESIA (GenCo), other than in relation to any groundwater contamination existing on the Site but originating at a location upstream of or otherwise not on the Site.

Schedule 8
Known Pass-Through Environmental/Archaeological Conditions and Potential Other Pass-Through Environmental/Archaeological Conditions

The following Pass-Through Environmental/Archaeological Conditions have been identified but are not Specified Environmental/Archaeological Conditions as described in Schedule 7:

1. Kosovo B ash pile site, to the extent it is part of the Site.

In addition, the Parties recognize that the following would, to the extent present on the Site as of the Transfer Date, qualify as Pass-Through Environmental/Archaeological Conditions if subsequently identified:

2. Any of the following Hazardous Materials on the Site as of the Execution Date:
 - (i) asbestos;
 - (ii) waste containing Hazardous Materials;
 - (iii) oil products, including oils contaminated with PCBs;
 - (iv) soil contaminated with heavy metals, arsenic, naphthalene and other chemical elements or substances, in each case in a concentration which exceeds the limits defined by the applicable Environmental Standards; and
 - (v) surface water and groundwater contaminated with Hazardous Materials in a concentration which exceeds the limits defined by the applicable Environmental Standards.
3. The following Environmental/Archaeological Conditions that may exist at the Kosovo B site but only to the extent they create Environmental/Archaeological Conditions at the Site.
 - (i) Any flow to nearby rivers and infiltration of the groundwater by the waste water from the Kosovo B site and the ash disposal area. The main contaminants of this waste water include ash, oil, chemical residues, fecal matter and microbes.
 - (ii) The new ash disposal site in the Mirash mine has no lining, potentially resulting in leaking of Hazardous Materials to groundwater and the environment. An aftercare programme for this ash disposal site may not have been developed.
 - (iii) The existing storage area for Hazardous Materials is poorly maintained, improperly utilized and may have resulted in land contamination.
 - (iv) Fuel oil storage tanks may not be properly contained to prevent spillages and land contamination.
 - (v) Potential contamination of soil, surface water and groundwater.
 - (vi) No environmental management system has been implemented on the Kosovo B site to identify and manage environmental issues in accordance with ISO14001 or other certified management systems.

The Parties further recognize that the foregoing list of known and potential Pass-Through Environmental/Archaeological Conditions is not meant to be exhaustive and that other Environmental/Archaeological Conditions may exist at the Site or in relation to the Kosovo e Re Project that shall be Pass-Through Environmental/Archaeological Conditions.

Schedule 9
Scheduling Agency Terms

Article 1
Definitions

1.1 Definitions

Capitalized terms used but not defined in this Schedule 9 shall have the meaning given to them in the body of the Agreement. Wherever the following terms appear in this Schedule 9, they shall have the meanings stated below:

“Suspension Notice” - Has the meaning given thereto in Section 3.1(a).

Article 2
Appointment of NKEC as Dispatching Agent; Scope of Agency

2.1 Scope of Dispatching Agency

Effective as of 0:00 of the Commercial Operations Date and for the remainder of the Term of this Agreement, GenCo hereby appoints NKEC, or, at NKEC’s election, KESCO, to serve as its exclusive, authorized agent for all purposes related to the scheduling of electrical capacity available and delivering Net Electrical Output or Ancillary Services of the KRPP Facility with KOSTT and any transmission related thereto. Such appointment shall not grant to the agent any right to operate the KRPP Facility for purposes of meeting such schedule.

2.2 Acceptance by Dispatching Agent

NKEC or KESCO, as the case may be, hereby accepts its appointment as agent for the purposes described in Section 2.1 for the Term of this Agreement.

2.3 Agency Obligations

In acting as GenCo’s agent, NKEC or KESCO, as the case may be, shall not: (a) pledge the credit of GenCo in any way; (b) knowingly cause a breach by GenCo of its obligations under this Agreement or violate any Laws of Kosovo; (c) perform or engage in any action not expressly permitted by this Agreement; (iv) make any representation or warranty relating to GenCo; (v) initiate or take part in any dispute resolution procedures on behalf of GenCo; (vi) settle, compromise, assign, pledge, transfer, release, or otherwise consent to any of the foregoing with respect to, any claim, suit, debt, demand or judgment against GenCo by any third party; or (vii) amend, extend, terminate or otherwise modify any agreements to which GenCo is a party.

2.4 Forbearance by GenCo of Any Rights to Self-Dispatch

During such period as NKEC or KESCO, as the case may be, is serving as agent for GenCo for the purposes described in Section 2.1, GenCo shall not in connection with the KRPP Facility schedule any transmission related thereto.

Article 3
Suspension

3.1 Suspension

(a) In the event of a NKEC Event of Default, GenCo may suspend with respect to the KRPP Facility the effectiveness of the appointment of NKEC as GenCo’s agent pursuant to Section 2.1 by

delivering written notice (a “**Suspension Notice**”) to NKEC informing NKEC that a NKEC Event of Default has occurred and specifying a date, which shall not be less than two (2) Business Days after the date of the Suspension Notice, on which the suspension shall become effective. The suspension shall be effective from 0:00 hours on the date specified.

- (b) Such suspension of the effectiveness of the appointment of NKEC or KESCO, as the case may be, as GenCo’s agent pursuant to Section 2.1 shall remain in effect during the pendency of a NKEC Event of Default and, unless otherwise agreed in writing by the Parties, until 0:00 on the Operating Day occurring on the Business Day following the cure or other resolution of the NKEC Event of Default.

Article 4 Communications

4.1 Delivery of Copy of Day-Ahead Scheduling Instructions and Acknowledgments

NKEC shall promptly provide to GenCo a copy of (and provide prompt notice of any related oral communications) all communications that NKEC or KESCO delivers to and receives from KOSTT in connection with the scheduling of Net Electrical Output or Ancillary Services and transmission related thereto, including all Real-Time Electrical Dispatch Instructions, Day-Ahead Scheduling Instructions and Day-Ahead Revised Scheduling Instructions.

Schedule 10
Form of Construction Letter of Credit

Any Construction Letter of Credit shall:

1. name NKEC as the beneficiary thereof;
2. have a term of not less than one (1) Year;
3. be issued by a Qualified Bank (or branch thereof) located in, and be drawable in, the European Union or any other location approved by NKEC; and
4. have a maximum amount available for draw equal to thirty million Euros (€30,000,000).
5. expressly state that neither the account party nor the issuer may terminate it prior to its stated expiration date without the written consent of NKEC;
6. become drawable on first demand solely against delivery of a demand and notice to the issuer of the occurrence of a Construction Security Drawing Event or a Replacement Failure Drawing Event;
7. not contain any condition to drawing other than the confirmation by the issuer that any drawing certificate required to be delivered in connection with a drawing appears to comply on its face with the requirements of such Construction Letter of Credit;
8. be reasonably satisfactory in form to NKEC; provided, however, that a letter of credit substantially in the form of the letter of credit attached hereto as Annex 1 to this Schedule 10 that otherwise meets the criteria set forth herein shall meet the requirements as to the form of the Construction Letter of Credit ;
9. provide that the beneficiary thereof may make multiple drawings upon it; and
10. expressly state that it shall be subject to International Standby Practices 1998, and, to the extent not inconsistent with International Standby Practices 1998, the Laws of New York.

**Annex 1 to Schedule 10
Form of Construction Security**

[Letterhead of Issuing Bank]

IRREVOCABLE STANDBY LETTER OF CREDIT

Number: [●]
Amount: [●]
Stated Expiration Date : [●]
Account Party: [●]

Kosovo Electricity Supply Company J.S.C.
[●]
[●], Kosovo

Subject: Letter of Credit No. [●]

We refer to the Power Purchase Agreement, dated [●] (as amended or otherwise modified, the “*Power Purchase Agreement*”) between NKEC (the “*Beneficiary*”) and [GenCo]. Capitalized terms used but not defined herein shall have the meaning given to them in the Power Purchase Agreement.

We hereby establish this Irrevocable Standby Letter of Credit No. [●] (this “*Letter of Credit*”) for the benefit of the Beneficiary in an amount not exceeding a total of [●] ([●]) (the “*Drawing Amount*”). Funds under this Letter of Credit are available to you upon our receipt of a certificate in the form of Appendix A attached hereto notifying us of the occurrence of a Construction Security Drawing Event or a Replacement Failure Drawing Event (a “*Demand Certificate*”), appropriately completed and purportedly signed by your duly authorized officer, employee, or signatory, if such Demand Certificate is presented as hereinafter specified on or before the Expiration Date (as hereinafter defined).

You shall present one Demand Certificate dated the date of presentation for each drawing hereunder to [name and address of issuing bank]. If you present the Demand Certificate by 10:00 a.m. local time on any day on which we are open for business (each such day, a “*Business Day*”), in strict conformance with the terms and conditions of this Letter of Credit, we will honor the same by making payment in immediately available funds, in accordance with your payment instructions and without any restrictions, conditions, inquiry, or right of objection whatsoever on our part, without notice to the account party prior to such payment and notwithstanding any conditions, demands, or objections by the account party or any other party, without you having to further substantiate such demand, by 4:00 p.m. local time on such Business Day, otherwise we will honor your Demand Certificate by 10:00 a.m. local time the following Business Day.

If any demand for payment does not conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice of the same stating the reasons therefor and that we will, upon your request, hold any documents presented to us for five (5) Business Days or return the same to you. Upon being notified that any demand for payment did not conform to this Letter of Credit, you may correct any such non-conforming demand; provided that such corrected demand shall be made and presented to us on or before the Expiration Date (as defined below).

This Letter of Credit shall expire at 5:00 p.m. at our office on the earliest of the following: (i) the stated expiration date; (ii) our honoring of demands presented hereunder that, in the aggregate, equal the Drawing Amount; and (iii) the surrender by you of the original Letter of Credit for cancellation. The

earliest of the foregoing dates is referred to herein as the “*Expiration Date*”. Except as otherwise expressly provided in this paragraph, this Letter of Credit shall not terminate prior to the Expiration Date for any reason whatsoever.

You may make multiple and partial drawings hereunder. Each drawing hereunder shall reduce the amount available for drawing under this Letter of Credit.

This Letter of Credit sets forth in full our undertaking and references herein to any document, instrument or agreement, except the Demand Certificate referred to herein, shall not in any way amend, modify, amplify, or limit our undertaking.

All documents presented to us in connection with any demand for payment hereunder, as well as all notices and other communications to us in respect of this Letter of Credit shall be in writing and addressed and presented to us at our office at [address of issuing bank] Attention: [●], and shall make reference to this Letter of Credit by number. You shall personally deliver such documents, notices and other communications to us or send them to us by fax to [●], or such other number as we may specify from time to time in writing to you.

This Letter of Credit shall be subject to the International Standby Practices 1998 (“*ISP98*”), and to the extent not inconsistent with *ISP98*, governed by the Laws of New York.

[ISSUING BANK]

By: _____
Name:
Title:

**THIS APPENDIX A FORMS AN INTEGRAL PART OF
LETTER OF CREDIT NO. [●]
DATED [●]**

**APPENDIX A
DEMAND CERTIFICATE
[DATE]**

[Address of Issuing Bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit

Ladies and Gentlemen:

We refer to your Letter of Credit No. [●] (the "*Letter of Credit*"). Unless the context otherwise requires, capitalized terms used but not defined herein shall have the meaning given to them in the Letter of Credit. We hereby certify that a [Construction Security Drawing Event] [Replacement Failure Drawing Event] has occurred and that the Beneficiary is entitled to draw in the amount designated below in accordance with the terms of the Power Purchase Agreement. The Beneficiary hereby demands payment of [amount] under the Letter of Credit, such payment to be made to [insert account instructions].

IN WITNESS WHEREOF, this Demand Certificate has been executed and delivered by the Beneficiary on the [●] day of [●].

**KOSOVO ELECTRICITY
DISTRIBUTION AND SUPPLY**

By: _____
Name:
Title:

Schedule 11
[Reserved]

Schedule 12
Agreed Non-Pricing Criteria

The following non-pricing criteria have been agreed as of the Execution Date:

	Non-Pricing Criteria	To be quantified in monetary terms?	Max weighting in overall score (%)
1.	None		
Total Maximum weighting for all non-pricing factors:			10%

**Schedule 13
EPC/LTM Bid Submission Form**

[On letterhead of a member of the pre-qualified EPC/LTM Bidder Consortium]

[Date]

[GenCo Address]

Re: The Kosovo e Re Project

Ladies and Gentlemen,

Reference is hereby made to the Request for Proposals for the EPC Contract and O&M Contracts for the lignite-fired electric power generation facility to be located on the Site at Obiliq, Kosovo issued by **[GenCo]** on **[date]** (the “**Request for Proposals**”) and the Power Purchase Agreement between **[GenCo]** and **[NKEC]** dated **[date]** (the “**PPA**”). Capitalized terms used but not defined herein shall have the meaning given in the PPA.

After having carefully examined the Request for Proposals and PPA, and examined the actual site conditions, satisfied ourselves with the nature and location of the works and services referenced above and the general and local conditions to be encountered in the performance thereof, and having analyzed all of the documents provided in the Data Room, we propose as part of our proposal the following inputs, which we understand will be incorporated into the PPA in the event that we are selected as the winning EPC/LTM Bidder Consortium:

(a) Capacity (to be incorporated into Section 4.4.1 of the PPA):

Capacities	Bid
Contract Capacity	[•] MW (net, at Reference Conditions, on a continuous basis)

(b) Turnkey, fixed price EPC costs (gen facility):

EPC Costs	Bid
EPC Costs	€[•]

(c) Amounts of quarterly payments to EPC Contractor under the EPC Contract (such amounts not to include amounts retained by GenCo as a retainage payable at substantial completion):

EPC Payments Per Quarter	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Q13	Q14	Q15	Q16	Q17	Q18	Q19				
Proposed Milestone***	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]	€[•]			Substantial Completion	Final Completion
EPC Payments*** *	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age	€[•], LESS retain age			all retainage	€[•]

* If substantial completion is to be achieved prior to Q19, then insert €0 for all quarters following anticipated substantial completion.

** From notice to proceed date.

*** All payments must be payable upon achievement of a specific construction milestone; however, the amount payable in each quarter shall not exceed the quarterly amounts specified above, notwithstanding the early achievement of any milestone triggering payment. EPC/LTM Bidder Consortia should provide anticipated milestones to trigger payments. Payment amounts should be related to the amount anticipated to be expended in achieving the specified milestone. Quarterly amounts may reflect the sum of more than one milestone (e.g., Q1 may have two milestones, with their sum indicated as the quarterly maximum for Q1).

**** All payments subject to a retainage, in the amount set forth in the Tender (Plant), unless the EPC Contractor provides a letter of credit in lieu of retainage in accordance with the requirements of the EPC Contract.

(d) The following required substantial completion dates (to be incorporated as the Required Commercial Operations Date as specified in Section 1.1 of the PPA):

Required Commercial Operations Date :	
---------------------------------------	--

(e) Scheduled outages and guaranteed availability:

Agreement Year	Y1		Y2		Y3		Y4		Y5		Y6		Y7		Y8		Y9		Y10	
½ Year Period	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2
Scheduled outage hours (LTMA)	[•] hou rs	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours
Guaranteed effective availability (%)	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]

Agreement Year	Y11		Y12		Y13		Y14		Y15		Y16		Y17		Y18		Y19		Y20	
½ Year Period	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2	1/2	2/2
Scheduled outage hours (LTMA)	[•] hou rs	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours	[•] hours
Guaranteed effective availability (%)	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]	[•]

(f) Reference LTMA charges and fees (to be incorporated into Sections 3.1 and 4.2 of Schedule 1 of the PPA):

	Bid				
	Through and including first Major Overhaul	Through and including second Major Overhaul	Through and including third Major Overhaul	Through and including fourth Major Overhaul	Through and including fifth Major Overhaul
Variable LTMA Charge (to be incorporated into Section 4.2 of Schedule 1 of the PPA)	€[•] per kWh (subject to indexation using the Index Adjustment Factor)	€[•] per kWh (subject to indexation using the Index Adjustment Factor)	€[•] per kWh (subject to indexation using the Index Adjustment Factor)	€[•] per kWh (subject to indexation using the Index Adjustment Factor)	€[•] per kWh (subject to indexation using the Index Adjustment Factor)
Fixed Monthly LTMA Fee (to be incorporated into Section 3.1 Schedule 1 of the PPA)	€[•] per month (subject to indexation using the Index Adjustment Factor)	€[•] per month (subject to indexation using the Index Adjustment Factor)	€[•] per month (subject to indexation using the Index Adjustment Factor)	€[•] per month (subject to indexation using the Index Adjustment Factor)	€[•] per month (subject to indexation using the Index Adjustment Factor)

(g) Base prices for start-up charges (to be incorporated into Section 5.1 of Schedule 1 of the PPA):

Start-up Charge	Bid Fuel Oil (GJ/Start)	Bid Lignite (GJ/Start)	Bid LTMA Charge
Cold Start-Up base price	[•]	[•]	€[•] per Cold Start-Up
Warm Start-Up base price	[•]	[•]	€[•] per Warm Start-Up
Hot Start-Up base price	[•]	[•]	€[•] per Hot Start-Up

*For purposes of the quantity of Fuel Oil, assume usage of only heavy fuel oil or light fuel oil as specified by the EPC/LTM Bidder Consortium based on the design of the KRPP Facility.

(h) The minimum number of personnel recommended to be on the Plant Site (KRPP) to operate and maintain the KRPP Facility: [•] persons.

(i) Standby charges (to be incorporated into Section 5.2 of Schedule 1 of the PPA):

Standby Charge	Bid Lignite (GJ/Min)
Reference Minute Hot Standby Charge	[•]

*For purposes of the quantity of Fuel Oil, assume usage of only heavy fuel oil or light fuel oil as specified by the EPC/LTM Bidder Consortium based on the design of the KRPP Facility.

(j) Construction Period Utilities, Fuel, and Other*

Water	Limestone (tons)	Ammonia (mols)	Lignite (GJ)	Fuel Oil (GJ)	Electricity (kWh)
[•]	[•]	[•]	[•]	[•]	[•]

* Should commodities in excess of the amounts specified above be required by the EPC/LTM Bidder Consortium for the construction and commissioning of the KRPP Facility, costs associated with provision of such additional amounts of any of the commodities mentioned above shall be payable by the EPC Contractor.

(k) Specify the amount of any break costs in the event of a GenCo's termination for convenience after the first Major Overhaul, second Major Overhaul, third Major Overhaul, or fourth Major Overhaul:

	Termination Date			
	Between first and second Major Overhaul	Between second and third Major Overhaul	Between third and fourth Major Overhaul	After fourth Major Overhaul
LTM Scope B Break Costs	€[•]	€[•]	€[•]	€[•]

(l) Bid Cases:

As set forth in the Tender (Plant).

Note:

1. Specify the Required Settlement Information in the table below based on the Hourly Operating Conditions assumed for each Bid Case. Bid to the 4th digit.
2. Repeat for each Agreement Year during the Term up to two hundred twenty-five thousand (225,000) equivalent operating hours.

In addition, include the guaranteed curves as set forth in the Tender (Plant).

- (m) Specify the number of Equivalent Operating Hours that are in the EPC/LTM Bidder Consortium's Agreement Year for purposes of Bid Cases specified in Paragraph (j), above.

EOH in an Agreement Year:	[•] Equiv. Operating Hours
---------------------------	----------------------------

- (n) Electrical Load at Optimum Capacity
Specify the electrical load at optimum capacity.
- (o) Electrical Load at Minimum Generation
Specify the minimum generation of the KRPP Facility.

[Signatures required. If EPC/LTM Bidder is a consortium, both EPC Contractor and LTM Contractor should sign separately.]

Schedule 14

Required Technical Specifications of the Plant; Pass/Fail Criteria to be Included in Tender (Plant)

1. Required Technical Specifications:

- (a) Capacity. The KRPP Facility shall have a design capacity of 450 MW +/- 20 MW (net, at Reference Conditions, on a continuous basis), i.e., not less than 430 MW (net, at Reference Conditions, on a continuous basis) nor greater than 470 MW (net, at Reference Conditions, on a continuous basis).
- (b) BAT. The KRPP Facility shall be designed and constructed consistent with Best Available Techniques, as described in Council Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions and integrated pollution prevention and control. In accordance with the foregoing, further information regarding Best Available Techniques is available in the IPPC Reference Document on Best Available Techniques for Large Combustion Plants (Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions).

Without limiting the foregoing and for avoidance of doubt, the minimum thermal efficiency standards applicable to the Kosovo e Re Project shall be as follows:

Fuel	Comb. Tech	Thermal efficiency (net, LHV) (%)
Lignite	PC (DBB)	>40.0
	FBC	>40.0
	PFBC	>40.0
PC: Pulverized combustion DBB: Dry bottom boiler FBC: Fluidized bed combustion PFBC: Pressurized fluidized bed combustion		

(c) Emissions.

With Emissions Option: Without limiting the obligation to comply with Best Available Techniques as described above, the KRPP Facility must comply with the least stringent emission limit values set forth in the EU Industrial Emissions Standards.

Without Emission Option: Without limiting the obligation to comply with Best Available Techniques as described above, the KRPP Facility must comply with the following emission limit values, consistent with the standards set forth in in Council Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions and integrated pollution prevention and control:

Gaseous or Particulate Emission			Limit, depending on technology of the KRPP Facility*	
Element	metric	period	PCC	CFBC
SO _x	mg/Nm ³	monthly average	150	200
		95-percentile of hourly values over the year	300	400
NO _x	mg/Nm ³	monthly average	200	150
		95-percentile of hourly values over the year	400	300
Dust	mg/Nm ³	monthly average	10	10
		95-percentile of hourly values over the year	20	20
CO	mg/Nm ³	monthly average	200	200
NH ₃	mg/Nm ³	monthly average	5	5

- (d) Noise. The KRPP Facility shall be designed to comply with Section 1.7 of the World Bank Group EHS Guidelines, available at: <http://www.ifc.org/wps/wcm/connect/06e3b50048865838b4c6f66a6515bb18/1-7%2BNoise.pdf?MOD=AJPERES>.
- (e) Cogen Ready. The KRPP Facility shall be designed to be capable to deliver heat to the local district heating system owned by Termokos. The design of the KRPP Facility must ensure that at any time after the commercial start of the plant a retrofit can be implemented which will supply the heat exchangers located at the Kosovo B site. The functional parameters of the recently implemented Termokos district heating station are provided in the study by Engieconsulting Heidelberg International, “Basic Design of Heat Extraction Station at Kosovo B”. Cogeneration readiness entails the following minimum criteria:
- a. Defined tapping points for the future steam take out(s) at the turbines (regarding steam parameters and volumes as described in the above mentioned document) will be defined;
 - b. All space is given for adequate pipe routings from KRPP Facility up to the heat exchangers located at the Kosovo B site (including all supports, fixings, mountings, insulations, ladders, platforms, catwalks, EIC facilities etc.) to guarantee that the cogeneration system can be installed in compliance with all required quality and safety standards;
 - c. The KRPP Facility’s EIC system is prepared for the integration of all necessary EI&C parts, modules or systems of the substantial cogeneration system. (Space for cubicles, cable routes, interface to the plant control system etc.);
 - d. That there is enough space for the construction works including tools, cranes and lifts for the later installation of the system without the necessity to shut down the plant for cold construction works; and,
 - e. That there is enough space for maintenance and repair of the cogeneration system in compliance with all required quality and safety standards.
 - f. The reduction of the net electrical capacity of the KRPP Facility caused by the delivery of heat under an amendment to this Agreement regarding the supply of heat by GenCo to

NKEC executed under the Implementation Agreement shall be less than or equal to ten percent (10%).

- (f) Carbon Capture Ready. The KRPP Facility shall be designed and constructed so as to:
- a. ensure that suitable space on the Site is available for the equipment necessary to capture and compress carbon dioxide as specified by Council Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions and integrated pollution prevention and control; and
 - b. enable retrofitting of the KRPP Facility in the future with carbon dioxide capture and storage technologies (including that the steam turbine have the ability to be retrofitted to extract low pressure steam for CO₂ solvent regeneration and that the FGD have the ability to be retrofitted for high efficiency SO_x removal to meet the needs of a CO₂ scrubber and an ability to upgrade the efficiency).

- (g) Max Completion Date. Achievement of substantial completion not later than:

Required substantial completion date (such that the KRPP Facility is ready for commercial operations):	56 months from the Transfer Date
--	----------------------------------

- (h) Battery Limits: The EPC Contractor shall be responsible for designing, procuring, and constructing the KRPP Facility up to the following battery limits:
- i. Receipt of Lignite from KEK Mining at the Delivery Point (Lignite) identified in the Lignite Supply Agreement;
 - ii. Receipt of any Fuel Oil at the Site, storage of such at the Site, and delivery of such to the plant;
 - iii. HV side of generator step-up transformer;
 - iv. Receipt of raw water from the Water Supplier at the Delivery Point (Water) identified in the Water Supply Agreement;
 - v. Delivery of the Ash and Gypsum (each as defined in the Ash and Gypsum Disposal Agreement) slurry to the GenCo Exclusive Ash Landfill and GenCo Exclusive Gypsum Landfill identified in the Ash and Gypsum Disposal Agreement;
 - vi. Treatment of waste water on the Site and delivery to the Sitnica River.
 - vii. Delivery of drainage water from the GenCo Exclusive Ash Landfill and GenCo Exclusive Gypsum Landfill to the Sitnica River or return to the plant.
- (i) Fuel Oil: Fuel Oil is to be stored in storage tanks, situated within sealed containment bunds of sufficient size to accommodate 110% of the biggest tank plus free board for fire protection systems. The oil offloading locations must be equipped with containment structures to prevent leaks and releases into the environment. HFO tanks should be sized to provide at least such amount of storage sufficient to enable the KRPP Facility to be operated continuously at full output for a minimum period of one (1) Day under normal operating and Real-Time Electrical Dispatch conditions; LFO tanks (if applicable) should be sized to be able to store at least such

amount of LFO sufficient to enable the KRPP Facility to be operated continuously at full output for a minimum period of one (1) Day under normal operating and Real-Time Electrical Dispatch conditions.

- (j) Control Room: The operation of the KRPP Facility shall be controlled from a single control room. In normal operation the control room plant should be capable of full monitoring and control (including station plant as necessary) from this single control room.
- (k) Min. Availability Factor. The guaranteed availability for the KRPP Facility shall average no less than the following over the initial 25-year period from substantial completion:

Agreement Year	Average availability (guaranteed) for Years 1-25
Guaranteed availability	90%

- (l) Max Scheduled Outage Duration. No Scheduled Outages required in an amount greater than:
 - a. Twenty-four (24) Days in any Agreement Year for which no maintenance is scheduled that is expected to be performed on an annual or more frequent basis (which period may be split across more than one Agreement Year if the maintenance cycle is not on an Agreement Year basis or adjusted on a pro rata basis to the extent a maintenance cycle is less than 12-months due to KRPP Facility dispatch);
 - b. forty-five (45) Days in any Agreement Year in which maintenance is scheduled that is not expected to be performed on an annual or more frequent basis, other than a Major Overhaul (which period may be split across more than one Agreement Year if the maintenance cycle is not on an Agreement Year basis or adjusted on a pro rata basis to the extent a maintenance cycle is less than 12-months due to KRPP Facility dispatch); and
 - c. sixty-nine (69) Days in any Agreement Year in which there is a Major Overhaul (which period may be split across more than one Agreement Year if the maintenance cycle is not on an Agreement Year basis or adjusted on a pro rata basis to the extent a maintenance cycle is less than 12-months due to KRPP Facility dispatch).
- (m) Seismic Design. The KRPP Facility and all structures constructed on the Site (other than structures in existence as of the Transfer Date, if any) shall comply with the greater of:
 - 1. the seismic design factors set forth in the Seismic Study; and
 - 2. the seismic design factors required by the Laws of Kosovo.
- (n) Weather Station. The KRPP Facility shall include a weather station consistent with Prudent Utility Practice to measure and record in real time at least the Plant Site (KRPP) temperature, cooling water temperature, relative humidity, wind speed and direction and barometric pressure.
- (o) Type of Fuel Oil. The KRPP Facility shall be designed to conduct all Start-Ups using only the Fuel Oil, as specified by the EPC/LTM Bidder Consortium (in addition to lignite, water, and other normal inputs), and not any Fuel Oil not specified by the EPC/LTM Bidder Consortium.

- (p) Lignite Specifications. The KRPP Facility shall be designed to operate using the Lignite within the quality specifications set forth in the Lignite Supply Agreement.
- (q) Raw Water Treatment Facility. The KRPP Facility shall include a water treatment facility capable of taking in raw water within the Specified Raw Water Quality Standards and treating such water so that it satisfies the Power Plant Water Quality Standards.
- (r) Operating Life. The KRPP Facility shall be designed so that it may be reasonably expected to provide a useful life of not less than two hundred twenty-five thousand (225,000) Operating Hours from and after the Commercial Operations Date, with the possibility of continued operation with appropriate rehabilitations and additional investments for a useful life of not less than forty (40) Years.
- (s) Frequency Control. The KRPP Facility shall be designed to include all frequency control equipment required under the Grid Code.
- (t) Voltage: The nominal voltage and voltage variation (such that the KRPP Facility will be capable of maintaining continuous operation with the rated active power output at the rated power factor within the specified variation) at the Connection Point shall be as follows:
 1. Nominal voltage: 400 kV
 2. Minimum voltage: 380 kV
 3. Maximum voltage: 420 kV
 4. Voltage variation on taps: as set in Grid Code
- (u) Frequency: The nominal frequency and limits on frequency variation (such that the KRPP Facility will be capable of maintaining continuous operation with the rated active power output at the rated power factor within the specified variation) for the specified period, as measured at the Connection Point, shall be as follows:

Nominal frequency: 50 Hz

Limits on frequency variation:

Frequency Range	Time Period for Operation
47.5 Hz – 48.5 Hz	30 minutes
48.5 Hz – 49.0 Hz	30 minutes
49.0 Hz – 51.0 Hz	Unlimited
51.0 Hz – 51.5 Hz	30 minutes

- (v) Stability Limits: The on-line stability limit of the KRPP Facility (i.e., the ability to remain connected to the KOSTT Grid system) shall be as follows:

Minimum on-line stability limit (ability to remain connected to the KOSTT Grid system)	Minimum
Any 400 kV system configuration adversely affecting the transfer of power generated by KRPP Facility to the KOSTT Grid	150 milliseconds
Normal operating conditions (normal operating conditions and power transfer capability from KRPP Facility)	150 milliseconds

(w) Power Factor: The power factor shall be as follows: 0.85 lagging; 0.90 leading. The power factor across the range of loads shall be as set forth in the PQ diagram to be as provided by the EPC Contractor under Schedule 14.

(x) Wave form and harmonic content: The wave form and permitted harmonic content of the Net Electrical Output shall be as set forth in the Grid Code and the Laws of Kosovo.

(y) Modes of Operation: The KRPP Facility will be capable of the following:

- undertaking a Cold Start-Up;
- undertaking a Warm Start-Up;
- maintaining the KRPP Facility in Hot Standby Mode for up to six (6) continuous hours;
- undertaking a Hot Start-Up;
- operating in Full Speed No Load Mode for up to five (5) continuous minutes and for no more than three hundred (300) total minutes per Year; and
- operating in Island Mode for up to twenty (20) continuous minutes.

(z) Hot Standby Mode: During the Hot Standby Mode Fuel Oil may be used.

(aa) Load Following Ability – Electrical: The KRPP Facility shall have the ability to follow electrical load under automatic control across the full load range of the KRPP Facility (from Minimum Generation up to the Overload Capacity).

The KRPP Facility shall have the ability to react on frequency deviations as follows:

1. Primary control activation is triggered before the frequency deviation towards the nominal frequency exceed ± 20 mHz. In case of quasi steady-state frequency deviation of ± 200 mHz from nominal frequency, all available primary control reserve are expected to be fully activated not more than 30 seconds later; and
 2. for primary control purposes the accuracy of local frequency control measurements must not exceed ± 10 mHz.
- (bb) Overload Capacity Design Rating: The KRPP Facility shall have the capability to provide Overload Capacity (MW net, at Reference Conditions) as follows: 102% of Contract Capacity for not more than fifteen (15) continuous minutes and not more than three times per Year.

(cc) Ramp Rates: Dispatch Ramp Rates not less than the following:

% Load	Minimum Loading Rate (MW/min)	Minimum Unloading Rate (MW/min)
MinGen -50%	Not to be less than 1% of max. installed electrical capacity per	Not to be less than 1% of max. installed electrical capacity per

	minute	minute
50%-90%	Not to be less than 3.5% of max. installed electrical capacity per minute	Not to be less than 3.5% of max. installed electrical capacity per minute
90%-100%	Not to be less than 1% of max. installed electrical capacity per minute	Not to be less than 1% of max. installed electrical capacity per minute

(dd) MinGen: Minimum Generation shall be no greater than:

Minimum Generation	Minimum
Minimum Generation (MW net, at Reference Conditions)	40% of Contract Capacity on a continuous basis

(ee) MinRun: Minimum run time if dispatched from a non-synchronous state (hours): 6 hours

(ff) Max Start Times: The time required for a Start-Up is no more than:

Cold Start-Up	Warm Start-Up	Hot Start-Up
start-up to synchronous speed (assuming boiler is filled): 480 minutes start-up to synchronous speed (assuming boiler is not filled): as above, plus 120 minutes	start-up to synchronous speed: 240 minutes	start-up to synchronous speed: 100 minutes

* The KRPP Facility shall be considered as requiring a Cold Start-Up, Warm Start-Up, or Hot Start-Up following the number of hours after the point in time when the KRPP Facility was last synchronized with the KOSTT Grid specified below:

	Cold Start-Up	Warm Start-Up	Hot Start-Up
	more than 48 hours	8-48 hours	less than 8 hours

(gg) Max Start Number: The KRPP Facility shall be designed to undertake the following number of start-ups each year:

	Maximum Number in Agreement Year
Cold Start-Up	6
Warm Start-Up	12
Hot Start-Up	25

- (hh) Other: Other items agreed by GenCo, GOK, and NKEC.
2. Pass/Fail Criteria:
- (a) Bid Bond: Each EPC/LTM Bidder Consortium is required to provide, together with its bid, an irrevocable standby letter of credit in the amount of seven and one half million Euros (€7.5 million) for the required securities in the form outlined in the Tender (Plant) documentation.
- (b) Retainage: The EPC Contractor shall specify whether it will provide a retainage in the amount set forth in the Tender (Plant) against each payment due under the EPC Contract or will provide a letter of credit in lieu of retainage in accordance with the requirements of the EPC Contract.
- (c) Identification of Fuel Oil Type: Specify whether the KRPP Facility is designed for heavy fuel oil or light fuel oil.
- (d) Arching: Inclusion of a position paper detailing how the proposed design of the hoppers and their cones will prevent lignite from arching in the boiler fuel hoppers.
- (e) Spares: Inclusion of a position paper detailing the spare parts that are prudently to be maintained by GenCo, and the EPC Contractor shall provide any spare parts recommended for the warranty period as part of the contract price.
- (f) Operating Curves: Provide:
- (i) no-load saturation and short circuit characteristic curves for the KRPP Facility;
 - (ii) the maximum recommended loading rate (MW/min) and the maximum recommended unloading rate (MW/min) for the KRPP Facility;
 - (iii) the Minimum Generation (as a % of the MCR) for the KRPP Facility;
 - (iv) the amount of time required for the KRPP Facility to perform a Cold Start-Up, a Warm Start-Up, and a Hot Start-Up;
 - (v) a PQ diagram for the KRPP Facility;
 - (vi) correction curves and guaranteed performance data provided by the original equipment manufacturers and applicable design tools, codes and standards, or, in the case of the boilers, detailed computer models that calculate the performance of the boilers provided by the original equipment manufacturers, which shall be consistent with the EPC/LTM Bidder Consortium's bid.
- (g) Phase 1 RFP Requirements: Provide each of the following:
- (i) *schedule*: a development, construction, and commissioning programme, in MS Project Gantt chart format in sufficient detail to show all significant activities during the above phases of the development. Events or activities that are the responsibility of GenCo should be clearly indicated and any assumptions made by the EPC/LTM Bidder Consortium in generating the programme should be clearly stated;
 - (ii) *project management team*: organograms of the project teams showing the project manager (with a demonstrated minimum relevant experience of 15 years) and other key project team personnel. Curricula vitae of all key personnel, indicating relevant

- experience, should be provided. (Note: An EPC/LTM Bidder Consortium may only change the project manager with the prior approval of GenCo);
- (iii) *O&M staffing plan*: a narrative describing an appropriate plan for operations and maintenance staffing by GenCo. The information provided should include at least the following recommendations based on the plant design:
 - (A) number, type, and responsibilities of operating shift personnel;
 - (B) number, type, and responsibilities of permanent onsite maintenance personnel.
 - (iv) *health and safety*: an outline of the proposed health and safety procedures and how they will be implemented during construction and operation, including:
 - (A) EPC/LTM Bidder Consortium's construction, health, and safety policy;
 - (B) proposed field health and safety organisation for the project, including a description of how the EPC/LTM Bidder Consortium plans to implement construction safety at the work site; and
 - (C) EPC/LTM Bidder Consortium's procedures for recording site safety statistics including those of its sub-contractors, details of its site safety records for the previous three years and methods used to compile this information;
 - (v) *slagging*: position paper to describe aspects of boiler design that will prevent the accumulation of slagging deposits on the furnace walls;
 - (vi) *layout*: an indicative site layout to show the arrangement of the KRPP Facility, laydown areas, and land take during the construction and operation of the plant, also showing adequate segregation of electrical equipment; The plant layout should be arranged so as to:
 - (A) Ensure safety and efficiency of operation and maintenance;
 - (B) Minimise on-site traffic;
 - (C) Take into account the direction of the prevailing winds in terms of dust impact from coal handling yard on sensitive equipment and buildings; hot air circulation from cooling towers, drift and plume; and provision of clean air intake for buildings, for current and future equipment.
 - (D) Optimise potential synergies with the existing Kosovo B power station via shared services;
 - (E) Facilitate response by emergency teams such as fire fighting;
 - (F) No impact on Kosovo B operation and maintenance activities;
 - (G) No impact to Air Traffic (chimney); and,
 - (H) KRPP connection to the heat exchanger located on or near Kosovo B site,
 - (vii) *main system diagrams*: diagrams showing all main systems, including but not limited to steam / condensate systems, air and flue gas systems, fuel oil systems, lignite preparation, handling and conditioning, electrical systems, compressed air, fire fighting, lubricating oil, water supply and treatment, main and auxiliary cooling water systems, auxiliary boiler, ash handling, flue-gas desulphurisation (if required), NO_x control (if required), and drainage systems;

(viii) *redundancy description*: a description of the levels of redundancy for the power plant in order to show how the required availability, maintainability and reliability of the KRPP Facility; to be provided for all key equipment;

(ix) *key equipment description*: a list of the following:

(A) **Electrostatic precipitator or fabric filters**

Item	Parameter	Value
1	Manufacturer	

(B) **Selective catalytic reduction (“SCR”) or selective non catalytic reduction (“SNCR”) (If required)**

Item	Parameter	Value
1	Manufacturer	

(C) **Draught plant (fans)**

Item	Parameter	Value
1	Manufacturer	

(D) **Boiler feed pumps**

Item	Parameter	Value
1	Manufacturer	

(E) **Auxiliary boiler**

Item	Parameter	Value
1	Manufacturer	

(F) **Steam turbines**

Item	Parameter	Value
1	Manufacturer	
2	Design type	

(G) **Condenser**

Item	Parameter	Value
1	Manufacturer	

(H) **Main cooling water pumps**

Item	Parameter	Value
1	Manufacturer	

(I) **Cooling tower**

Item	Parameter	Value
1	Manufacturer	
2	Type of cooling tower	

(J) **Pre-treatment and demineralised water treatment plant**

Item	Parameter	Value
	Pre-treatment plant	
1	Manufacturer	

(K) **Condensate polishing plant**

Item	Parameter	Value
1	Manufacturer	

(L) **Generator**

Item	Parameter	Value
1	Manufacturer	
2	Type	

(M) **Generator step-up transformer**

Item	Parameter	Value
1	Manufacturer	

(N) **Station auxiliary transformer**

Item	Parameter	Value
1	Manufacturer	

(O) **Ash & Gypsum Production and Transportation**

Item	Parameter	Value
1	Manufacturer	

(P) **Chimney if CFB**

Item	Parameter	Value
1	Manufacturer	

(Q) **Main connections and neutral earthing equipment**

Item	Parameter	Value
	Main Connections	
1	Manufacturer	

(R) **Switchgear**

Item	Parameter	Value
1	Manufacturer	

(S) **Control and instrumentation system**

Item	Parameter	Value
1	Manufacturer	

(T) **Station earthing system**

Item	Parameter	Value
1	Manufacturer	

(U) **Wastewater treatment plant**

Item	Parameter	Value
1	Manufacturers	

(V) **Power distribution - generator**

Item	Parameter	Value
1	Manufacturers	

(W) **Power distribution – MV (medium voltage)**

Item	Parameter	Value
1	Manufacturers	

(X) **Power distribution – LV (low voltage)**

Item	Parameter	Value
1	Manufacturers	

(Y) **Emergency power supply and distribution**

Item	Parameter	Value
1	Manufacturers	

(Z) **Blackout power supply and distribution**

Item	Parameter	Value
1	Manufacturers	

(AA) **Interrupted power supply and distribution**

Item	Parameter	Value
1	Manufacturers	

(BB) **Raw water supply system**

Item	Parameter	Value
1	Manufacturers	

(CC) **Coal supply system**

Item	Parameter	Value
1	Manufacturers	

(DD) **Training equipment**

Item	Parameter	Value
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Item	Parameter	Value
1	Manufacturers	

(EE) **Boiler**

Item	Parameter	Value
1	Manufacturer	

(FF) **Firing System**

Item	Parameter	Value
1	Manufacturer	

(h) Other. Other items agreed by GenCo and GOK and NKEC.

Schedule 15
EPC Terms and Conditions

The form of EPC Contract included as part of the Tender (Plant) shall provide for the following:

- the EPC Contract shall not require the EPC Contractor to perform any Administrative Services.
- shall require that the KRPP Facility be designed and constructed to be consistent with the description of the KRPP Facility set forth in the Technical Specifications, but in any case not less than the Tender (Plant) Technical Specifications;
- shall provide for a scope of services and terms that are customary in the industry for EPC contracts including, inter alia, the design, engineering, procurement, construction, completion, testing, and Commissioning of the KRPP Facility;
- shall provide that the EPC Contractor shall only be eligible for Change Orders on the basis of conditions that are customary in the industry for EPC contracts;
- shall provide for milestone payments in specified amounts, each of which shall be subject to a retainage of five percent (5%) to ten percent (10%) payable on substantial completion, with such amount as more specifically set forth in the Tender (Plant); provided, however, to the extent that the EPC Contractor causes to be issued to GenCo a letter of credit (i) from a Qualified Bank, (ii) on terms and conditions reasonably acceptable to GenCo, and (iii) in an aggregate Euro amount available for draw thereunder by sight demand equal to the amount of the retainage amount in lieu of which the EPC Contractor seeks to have such letter of credit held thereunder, then the retainage to be held by GenCo hereunder shall be reduced (but not below zero) by the amount of the letter of credit so available for draw by GenCo (or its assignees);
- shall, notwithstanding the retainage requirement described above, include a performance bond valued at 15% of the contract price;
- shall require the EPC Contractor to undertake a hazard and operability study;
- EPC Contractor shall provide for one set of training equipment within the KRPP Facility related to all relevant operational processes;
- shall include a two (2) year warranty period for all work performed under the EPC Contract;
- shall provide for delay liquidated damages for failure to timely achieve substantial completion (at the rate applicable under this Agreement) and for contract capacity liquidated damages consistent with Article 4 of the Agreement;
- shall provide that, should the EPC Contractor require additional amounts of any of Water, Limestone, Ammonia, Lignite, Fuel Oil, or electricity during the construction and commissioning phase than provided in Paragraph (j) of the EPC/LTM Bid Submission Form, the costs associated with such additional amounts of those commodities shall be payable by the EPC Contractor to GenCo under the EPC Contract;
- shall supply a spare autotransformer, to the extent a spare autotransformer is required under the terms of the Tender (Plant);
- shall include the following environmental and social requirements:
 1. The EPC Contractor shall comply, and cause its stockholders, directors, employees, agents, subcontractors (the “**EPC Contractor Parties**”), and all visitors on the Site to comply, with the requirements of Applicable Standards (EPC/O&M/Enviro/Admin).

2. At least sixty (60) Days prior to the commencement of the construction, the EPC Contractor shall develop a detailed construction environmental and social management system (“**ESMS-EPC (Plant)**”) in line with GenCo’s environmental and social policies and procedures and in compliance with the Applicable Standards (EPC/O&M/Enviro/Admin) and present such ESMS-EPC (Plant) in form and content to the Independent E&S Consultant appointed pursuant to the Implementation Agreement and GenCo. GenCo shall notify GOK in writing of such ESMS-EPC (Plant) development.
3. The ESMS-EPC (Plant) shall include:
 - a. an overarching policy that states the principles guiding the achievement of sound environmental and social performances and confirms the commitment to performing in accordance with the Applicable Standards (EPC/O&M/Enviro/Admin); and
 - b. organizational capacity and competency to implement the ESMS-EPC (Plant). In particular, the EPC Contractor shall define the key environmental and social roles and responsibilities, assign them to staff with appropriate skills and expertise, and train staff on management of environmental and social risks and impacts.
4. As part of the ESMS-EPC (Plant), the EPC Contractor will develop the detailed environmental, social and health, and safety management plans, enabling it to identify, assess, and manage project construction environmental, social and health, and safety impacts and risks on an ongoing basis, and that at a minimum should include the components described in Table 1 (“**ESMPs-EPC (Plant)**”). The ESMPs-EPC (Plant) shall consist of documented combination of operational procedures, practices, plans, and relevant supporting documents. The EPC Contractor will submit the ESMPs-EPC (Plant) for a review by the Independent E&S Consultant and will integrate the Independent E&S Consultant’s recommendations and take any action necessary to conform the ESMPs-EPC (Plant) to the Applicable Standards (EPC/O&M/Enviro/Admin) within the timeline defined by the Independent E&S Consultant prior to commencement of work.

Table 1. ESMPs-EPC (Plant)

	Environmental and Social Management Plans
1	<p>Construction Environmental and Social Management Plan, including but not limited to:</p> <ul style="list-style-type: none"> - Subcontractor Management Plan (to manage EHS planning and performance of the EPC Contractor and EPC Contractor Parties), including: <ul style="list-style-type: none"> • Relevant ESMS-EPC (Plant) requirements in contracts/subcontracts; • Clear assignment of EPC Contractor environmental and social and health and safety responsibilities; • EPC Contractor reports sufficient to allow GenCo to allow evaluation of need for corrective actions; • Verification of training and/or proper credentials for the EPC Contractor and EPC Contractor Parties staff/managers responsible for environmental and social and health and safety management; • Community Health and Safety Management Plan; and • Complaints Logging System and Response. - Workers Accommodations and Camp Accommodation Plan, meeting the standards presented in the IFC guidance note on <i>Worker’s Accommodation: Processes and Standards</i> (2009) - Traffic Management Plan - Emergency Preparedness and Response Waste Management Plan

	<ul style="list-style-type: none"> - Wastewater Management Plan - Water Quality Management Plan - Spoil Disposal Management Plan - Solid and Hazardous Waste Management Plan - Air Emissions/Air Quality and Noise Management Plan - Hazardous Materials Management Plan - Spill Prevention and Response Plan Framework - Stakeholder Engagement/External Grievance Mechanism
2.	<p>Occupational Health and Safety (OHS) Plan, which shall be based on an OHS risk assessment undertaken by the EPC Contractor, and the EPC Contractor Parties where applicable, for all working positions in construction phase. The OHS risk assessment shall be conducted in accordance with Applicable Standards, international environmental and social standards, and where the activities are under the EPC Contractor Parties' responsibility, the EPC Contractor Parties shall prepare the specific OHS Management Plan which shall be part of the EPC Contractor's plan and ESMS-EPC (Plant). The OHS Management Plan shall guide all activities on the Kosovo e Re Project site during construction. At a minimum, the Occupational Health and Safety Plan shall include:</p> <ul style="list-style-type: none"> - job and task-specific hazard analysis and controls for all activities; - provision of personal protection equipment (PPE), requirements for use of PPE, and enforcement of PPE use; - induction and ongoing safety training for all personnel in their language, covering hazards and safety protocols of their jobs; - special training for specific hazards: working at heights, in confined spaces, in excavations, and with electricity; - arrangements in place to manage OHS incidents, including the process for incident management, first aid arrangements, emergency response plans, and systems for reporting and acting on "near misses"; - provision for emergency medical treatment; and - recording mechanism for incident statistics, including total work hours, lost time incidents, major injuries, fatalities, etc.
3.	<p>Site Security Risk Assessment and Management Plan, which shall be based on the EPC Contractor's assessment of the risks posed by its security arrangements to the workers, the public, and the affected communities, and which shall include a code of conduct for security personnel in line with applicable environmental and safety standards and GIIP. The code of conduct shall be consistent with the Voluntary Principles on Security and Human Rights available at http://www.voluntarvprinciples.org/ and aim to ensure that security personnel are screened for implication in past abuses and adequately trained in human rights principles, the use of force, and appropriate conduct toward communities, the public, and workers. Further, the Site Security Risk Assessment and Management Plan shall include a mechanism to raise grievances related to the conduct of security personnel, assurance that any incidents will be properly investigated, and that the EPC Contractor and/or EPC Contractor Parties do not sanction use of force in relation to the Kosovo e Re Project except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.</p>
4.	Labor Grievance Mechanism for EPC Contractor and subcontractor employees
5.	Chance find procedure, shall be developed and implemented in accordance with

Applicable Standards (EPC/O&M/Enviro/Admin), to apply in the event that cultural heritage is discovered. The procedure shall include record keeping and expert verification procedures, chain of custody instructions for movable finds, clear criteria for potential temporary work stoppages that could be required for rapid disposition of issues related to the finds, and outline of the roles and responsibilities and the response times required from Kosovo e Re Project staff and any relevant heritage authority, as well as any agreed consultation procedures.
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5. EPC Contractor and the EPC Contractor Parties shall provide workers with documented information that is clear and understandable, regarding their rights under national labor and employment law and any applicable collective agreements, including their rights related to hours of work, wages, overtime, compensation, and benefits upon beginning the working relationship and when any material changes occur.
6. The EPC Contractor will while performing any work under the EPC Contract including the warranty periods demonstrate compliance with the Applicable Standards (EPC/O&M/Enviro/Admin), including but not limited to its ESMS-EPC (Plant) and ESMPs-EPC (Plant) through a permanent supervision and monitoring program that shall include, at a minimum, the submission of a Quarterly E&S Monitoring Report to GenCo within ten (10) Business Days after the end of each calendar quarter.
7. The EPC Contractor shall verbally inform GenCo’s representative immediately, or at least within two (2) hours of actual or suspected fatality, lost time injury, or environmental incidents within the project site, which has or may reasonably be expected to have an adverse effect on the environment, employees, or the surrounding communities, including, but not limited to, explosions, spills, or workplace accidents which result in death, serious or multiple injury, or major pollution, specifying, in each case, the nature of the incident or accident, the on-site and off-site impacts arising or likely to arise, and the measures the EPC Contractor is taking or plans to take to address those impacts; and shall keep GenCo informed of the on-going implementation of those measures. The EPC Contractor shall provide an initial incident fact sheet to GenCo’s representative within eight (8) hours and issue a preliminary report within seventy-two (72) hours to enable GenCo to comply with GenCo’s statutory obligations. The EPC Contractor shall prepare and provide a comprehensive incident investigation report to GenCo’s representative within five (5) Business Days after the incident. Furthermore, the EPC Contractor shall take such actions as may be reasonable, necessary and/or advisable to prevent, avoid or mitigate further injury, damage or loss, and reoccurrence of the same.
8. The EPC Contractor shall provide full access to the Site to the Independent E&S Consultant at all times.
9. The EPC Contractor shall comply with and cause the EPC Contractor Parties and all visitors on the Site to comply with the provisions of the ESMS-EPC (Plant). The EPC Contractor will establish a management unit to effectively establish, maintain, monitor, report on, and enforce the ESMS-EPC (Plant) and the ESMPs-EPC (Plant). The unit shall at a minimum include a qualified EHS Manager, with an adequate on-site team of environmental, social, occupational health and safety professionals to be responsible for environmental performance, and Labor and Community Engagement Manager to be responsible for engagement with local communities, and occupational health and safety.
10. In interpreting the foregoing, the following defined terms shall apply:
“Applicable Standards (EPC/O&M/ Enviro/Admin)” - Collectively,
(a) the Environmental Standards;

- (b) the Health & Safety Standards;
- (c) the Social Standards; and
- (d) to the extent not described above, any other Laws of Kosovo and any Consents setting standards concerning environmental, social, labor, health and safety, or security risks of the type contemplated by the IFC Environmental and Social Sustainability Standards or imposing liability for the breach thereof;

“ESMPs-EPC (Plant)” – Has the meaning given thereto in this Schedule 15. The ESMPs-EPC (Plant) shall define mitigation and performance improvement measures and actions applicable to the EPC Contractor that address the project identified environmental and social risks and impacts and define detailed timelines for implementation of specific measures to mitigate the identified issues

“ESMS-EPC (Plant)” – Has the meaning given thereto in this Schedule 15.

“Quarterly E&S Monitoring Reports” – Quarterly reports reporting key progress/activities/incidents/accidents regarding environment, health and safety, labor, and social aspects for current period and significant targets/milestones/objectives for the next period. The reports shall cover at minimum:

- (a) non-compliances with Applicable Standards (EPC/O&M/Enviro/Admin);
- (b) occupational health and safety and labor matters, including:
 - i. numbers of direct employees, of female direct employees, of employees terminated, of employees hired, of core sub-contractor employees;
 - ii. details of all accidents and incidents including near-misses, serious injuries, and/or fatalities. This shall include indicators for direct and sub-contracted employees such as: total man-hours worked in the period, total number of (non-fatal) lost time occupational injuries, total number of lost workdays due to injuries, number of new occupational disease cases, and number of vehicle collisions resulting in injuries; and details for the injuries including corrective measures;
 - iii. main changes implemented in terms of occupational health and safety, e.g. identification of hazards, substitution of chemicals, new controls, etc.
- (c) environmental incidents (spills/noise/damage);
- (d) raised/ known community concerns;
- (e) details of claims and or actions relating environmental, social and health aspects;
- (f) any other material items (including, without limitation, training provided);
- (g) progress on the implementation of the environmental and social management programs and results of the monitoring activities identified in such plans, including details of location and results of monitoring.

Schedule 16
LTM Terms and Conditions

The form of the LTM Agreement included as part of the Tender (Plant) shall provide for the following:

- the LTM Contractor shall not provide Administrative Services;
- provide for:
 1. a fixed monthly fee in connection with all scheduled maintenance, subject only to inflation (i.e., the same across all the Agreement Years, except in relation to the Index Adjustment Factor), and without advances or initial fees;
 2. variable fees based on charges payable in connection with operations of the KRPP Facility (whether for any operations or for operations above a specified allowable threshold);
 3. a charge for cold starts, warm starts, and/or hot starts (whether based on the number of starts or the ratio of starts/operating hours).
- provide for LTMA Reliability Bonuses and LTMA Availability LDs;
- provide for LDs for deterioration or other failure to meet the bid heat rates and other guarantees in relation to commodity consumption, as incorporated into the Technical Correction Factor Methodology;
- include covenants, restrictions, other requirements such that scheduled maintenance will occur within selected scheduled maintenance periods;
- the LTM Agreement, in accordance with the original equipment manufacturer instructions and manuals, shall include a detailed maintenance program for each system of the KRPP Facility, and outline the required maintenance activities, resource availability, estimated necessary man-hours and resources and recommend frequency for performing such activities for each component;
- a scope of services and terms that are customary in the industry for long-term maintenance contracts;
- environmental and social requirements substantially similar to those described in Schedule 15;
- shall include warranties for all new parts and equipment installed and workmanship warranties for all work performed;
- while the LTM Contractor is responsible for various maintenance works under the Project Agreements, the O&M Contractor shall be responsible for normal day-to-day wear and tear and routine maintenance, and in the event that the O&M Contractor requires spares, then the O&M Contractor will be required to contract such goods and services. Such may be procured in conjunction with the LTM services.

LTM Scope A

- 5-year initial term, with an extension right for GenCo at the 5th, 10th and 15th anniversaries of the LTM Agreement, for the scope set forth in the table below:

Equipment scope in area of responsibility	<ul style="list-style-type: none"> • Main transformers (generator step-up and auxiliary power); • Power plant main control system and other main I&C; and • All 10kV or higher powered equipment.
Typical activities	➤ All Preventive Maintenance activities,

	necessary inspections, and activities required by Public Authorities during a Scheduled Outage as per original equipment manufacturer instructions and manuals.
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LTM Scope B

- 20-year term, with a termination right for GenCo at the conclusion of the first Major Overhaul, for the scope set forth in the table below:

Equipment scope in area of responsibility	<ul style="list-style-type: none"> • Steam turbine and turbine island consisting of main steam valves and feedwater pumps; and • Electric generator (including its cooling system).
Typical activities	➤ All Preventive Maintenance activities, necessary inspections, and activities required by Public Authorities during a Scheduled Outage as per original equipment manufacturer instructions and manuals.

LTM Scope C

- For each item in the scope set forth in the table below, GenCo shall obtain quotes from the LTM Contractor for the inclusion of such item (a) directly within its scope for a 5-year term and (b) indirectly within its scope on an annual basis, during which the LTM Contractor would supervise the O&M Contractor in the O&M Contractor's performance of the necessary maintenance services related to such item as if such item were included in Schedule 17. GenCo shall review such quotes and, taking into consideration the O&M Contractor's quote to provide the necessary maintenance service related to such item, select the lowest cost option. Should GenCo choose to include such item directly within the LTM Contractor's scope for a 5-year term, upon the expiration of such term or its earlier termination by GenCo due to it ceasing to be the lowest cost option, such item shall revert to being an O&M Contractor maintenance item that is supervised by the LTM Contractor.

Equipment scope in area of responsibility	<ul style="list-style-type: none"> • boiler (mills, burners, main fans, high pressure parts, SCR, dust capturing equipment (fabric filter or electrostatic precipitator); • air heater; • SCR (if needed); • flue gas recycle ducts; • Flue gas desulphurization plant main equipment including rubber lining; • limestone, coal, and ash and gypsum handling equipment on Site; and • condensate pumps, low and high pressure heaters, main and auxiliary ejectors, condenser, oil system.
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Typical activities	<ul style="list-style-type: none"> ➤ All Preventive Maintenance activities, necessary inspections, and activities required by Public Authorities during a Scheduled Outage as per original equipment manufacturer instructions and manuals.
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As used in this Schedule 16, “Preventive Maintenance” refers to actions performed on a time, or machine-run-based schedule that detect, preclude, or mitigate degradation of a component or system with the aim of sustaining or extending its useful life through controlling degradation to an acceptable level.

Schedule 17
O&M Terms and Conditions

The form of O&M Contract shall provide for the following:

- The O&M Contractor shall not provide Administrative Services.
- The O&M Contract shall provide for the maintenance of the KRPP Facility and the GenCo Connection Assets.
- The O&M Contractor is responsible for the maintenance strategy for the components, systems, and other KRPP Facility facilities.
- The O&M Contract shall provide for the following operation and maintenance services, without limitation:

	O&M Contractor
Equipment scope in area of responsibility	Balance of plant and non-major equipment including especially, but not limited to: <ul style="list-style-type: none"> • Boiler (ductwork, structural steel works, stairs, platforms) • cooling tower and systems excl. main cooling water pumps; • water treatment facilities; • sewage treatment facilities; • mills – wear and tear parts; • coal handling; • brickwork and refractory; • valves and fittings; • coal conveyors and transfer points; • ash and gypsum handling equipment outside of Site boundaries; • LV, MV electrical switchgears; • HVAC systems; • Emergency diesel gen-sets; • Fire protection systems; • Elevators; • Civil works; • Testing of the protection of the facilities; • Regular testing of the equipment; • boiler cleaning; • scaffolding; • ammonia supply system (if needed); • external cleaning of the site and waste removal; • all required equipment such as crane and lifting devices; • buildings (including HVAC), roads, constructions; • balance of the KRPP Facility; • cooling tower; • auxiliary boiler; • water treatment and wastewater treatment facility; • internal coal handling equipment; • fire indication and protection systems; lightning protection system; • maintenance (update) of as-built documentation and other related

	<p>documentation;</p> <ul style="list-style-type: none"> • local I&C; and • all less-than-10 kV powered equipment. <p>Additionally, to the extent not included directly in the scope of the LTM Agreement in accordance with Schedule 16, the following equipment scope:</p> <ul style="list-style-type: none"> • boiler (mills, burners, main fans, high pressure parts, SCR, dust capturing equipment (fabric filter or electrostatic precipitator); • air heater; • SCR (if needed); • flue gas recycle ducts; • Flue gas desulphurization plant main equipment including rubber lining; • limestone, coal, and ash and gypsum handling equipment on Site; and • condensate pumps, low and high pressure heaters, main and auxiliary ejectors, condenser, oil system.
Typical activities	<ul style="list-style-type: none"> ➤ Routine Maintenance during the operation of the KRPP Facility including: <ul style="list-style-type: none"> • replacement of rapidly wearing parts; • replacements of lubricants; • cleaning; • painting; • Predictive Maintenance related activities (i.e. replacement of bearings, field C&I equipment etc.); • repair works to restart the KRPP Facility following a trip attributable to non-major equipment failure that are not covered under warranty.

As used in this Schedule 17, “Routine Maintenance “ refers to simple, small-scale activities associated with regular (daily, weekly, monthly, etc.) and general upkeep of any building, equipment, machine, plant, or system against normal wear and tear, whereas “Predictive Maintenance” refers to measurements that detect the onset of system degradation (lower functional state), thereby allowing causal stressors to be eliminated or controlled prior to any significant deterioration in the component physical state.

The O&M Contractor shall include the following environmental and social requirements:

- The O&M Contractor shall comply, and cause its stockholders, directors, employees, agents, subcontractors (the “**O&M Contractor Parties**”), and all visitors on the Site to comply, with the requirements of the Applicable Standards (EPC/O&M/Enviro/Admin).
- At least sixty (60) Days prior to the scheduled completion of the construction, the O&M Contractor shall develop a detailed operational environmental and social management system (“**ESMS-O&M**”) in line with GenCo’s environmental and social policies and procedures and in compliance with the Applicable Standards (EPC/O&M/Enviro/Admin) and present such ESMS-O&M) in form and content to the Independent E&S Consultant appointed pursuant to the Implementation Agreement and GenCo. GenCo shall notify GOK in writing of such ESMS-O&M development.
- The ESMS-O&M shall include:
 - an overarching policy that states the principles guiding the achievement of sound environmental and social performances and confirms the commitment to performing in accordance with the Applicable Standards (EPC/O&M/Enviro/Admin); and
 - organizational capacity and competency to implement the ESMS-O&M. In particular, the O&M Contractor shall define the key environmental and social roles and responsibilities, assign them to staff with appropriate skills and expertise, and train staff on management of environmental and social risks and impacts.

- As part of the ESMS-O&M, the O&M Contractor will develop the detailed environmental, social and health, and safety management plans, enabling it to identify, assess, and manage project construction environmental, social and health, and safety impacts and risks on an ongoing basis, and that at a minimum should include the components described in Table 1 (“ESMPs-O&M”). The ESMPs-O&M shall consist of documented combination of operational procedures, practices, plans, and relevant supporting documents. The O&M Contractor will submit the ESMPs-O&M for a review by the Independent E&S Consultant and will integrate the Independent E&S Consultant’s recommendations and take any action necessary to conform the ESMPs-O&M to the Applicable Standards (EPC/O&M/Enviro/Admin) within the timeline defined by the Independent E&S Consultant prior to commencement of work.

Table 1. ESMPs-O&M

Environmental and Social Management Plans	
1	<p>Operational Environmental and Social Management Plan, including but not limited to:</p> <ul style="list-style-type: none"> - Subcontractor Management Plan (to manage EHS planning and performance of the O&M Contractor and O&M Contractor Parties), including: <ul style="list-style-type: none"> • Relevant ESMS-O&M requirements in contracts/subcontracts; • Clear assignment of O&M Contractor environmental and social and health and safety responsibilities; • O&M Contractor reports sufficient to allow GenCo to allow evaluation of need for corrective actions; • Verification of training and/or proper credentials for the O&M Contractor and O&M Contractor Parties staff/managers responsible for environmental and social and health and safety management; • Community Health and Safety Management Plan; and • Complaints Logging System and Response. - Traffic Management Plan - Emergency Preparedness and Response Waste Management Plan - Wastewater Management Plan - Water Quality Management Plan - Spoil Disposal Management Plan - Solid and Hazardous Waste Management Plan - Ash management plan (quantitative balance of ash generation, disposal, utilization, size of ash disposal site, ash transportation arrangement) - Air Emissions/Air Quality and Noise Management Plan - Hazardous Materials Management Plan - Spill Prevention and Response Plan Framework - Stakeholder Engagement/External Grievance Mechanism
2.	<p>Occupational Health and Safety (OHS) Plan, which shall be based on an OHS risk assessment undertaken by the O&M Contractor for all working positions in operational phase. The OHS risk assessment shall be conducted in accordance with Applicable Standards and international environmental and social standards, the O&M Contractor Parties shall prepare the specific OHS Management Plan which shall be part of the O&M Contractor's plan and ESMS-O&M. The OHS Management Plan shall guide all activities on the Kosovo e Re Project site during operation. At a minimum, the Occupational Health and Safety Plan shall include:</p> <ul style="list-style-type: none"> - job and task-specific hazard analysis and controls for all activities; - provision of personal protection equipment (PPE), requirements for use of PPE, and enforcement of PPE use;

	<ul style="list-style-type: none"> - induction and ongoing safety training for all personnel in their language, covering hazards and safety protocols of their jobs; - special training for specific hazards: working at heights, in confined spaces, in excavations, and with electricity; - arrangements in place to manage OHS incidents, including the process for incident management, first aid arrangements, emergency response plans, and systems for reporting and acting on “near misses”; - provision for emergency medical treatment; and - recording mechanism for incident statistics, including total work hours, lost time incidents, major injuries, fatalities, etc.
3.	<p>Site Security Risk Assessment and Management Plan, which shall be based on the O&M Contractor's assessment of the risks posed by its security arrangements to the workers, the public, and the affected communities, and which shall include a code of conduct for security personnel in line with applicable environmental and safety standards and GIIP. The code of conduct shall be consistent with the Voluntary Principles on Security and Human Rights available at http://www.voluntaryprinciples.org/ and aim to ensure that security personnel are screened for implication in past abuses and adequately trained in human rights principles, the use of force, and appropriate conduct toward communities, the public, and workers. Further, the Site Security Risk Assessment and Management Plan shall include a mechanism to raise grievances related to the conduct of security personnel, assurance that any incidents will be properly investigated, and that the O&M Contractor and/or O&M Contractor Parties do not sanction use of force in relation to the Kosovo e Re Project except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.</p>
4.	Labor Grievance Mechanism for O&M Contractor and subcontractor employees

- O&M Contractor and the O&M Contractor Parties shall provide workers with documented information that is clear and understandable, regarding their rights under national labor and employment law and any applicable collective agreements, including their rights related to hours of work, wages, overtime, compensation, and benefits upon beginning the working relationship and when any material changes occur.
- The O&M Contractor will while performing any work under the O&M Contract including the warranty periods to demonstrate compliance with the Applicable Standards (EPC/O&M/Enviro/Admin), including but not limited to its ESMS-O&M and ESMPs-O&M through a permanent supervision and monitoring program that shall include, at a minimum, the submission of a Quarterly E&S Monitoring Report to GenCo within ten (10) Business Days after the end of each calendar quarter.
- The O&M Contractor shall verbally inform GenCo’s representative immediately, or at least within two (2) hours of actual or suspected fatality, lost time injury, or environmental incidents within the project site, which has or may reasonably be expected to have an adverse effect on the environment, employees, or the surrounding communities, including, but not limited to, explosions, spills, or workplace accidents which result in death, serious or multiple injury, or major pollution, specifying, in each case, the nature of the incident or accident, the on-site and off-site impacts arising or likely to arise, and the measures the O&M Contractor is taking or plans to take to address those impacts; and shall keep GenCo informed of the on-going implementation of those measures. The O&M Contractor shall provide an initial incident fact sheet to GenCo’s representative within eight (8) hours and issue a preliminary report within seventy-two (72) hours to enable GenCo to comply with GenCo’s statutory obligations. The O&M Contractor shall prepare and provide a comprehensive incident investigation report to GenCo’s representative within five (5) Business Days after the

incident. Furthermore, the O&M Contractor shall take such actions as may be reasonable, necessary and/or advisable to prevent, avoid or mitigate further injury, damage or loss, and reoccurrence of the same.

- The O&M Contractor shall provide full access to the Site to the Independent E&S Consultant at all times.
- The O&M Contractor shall comply with and cause the O&M Contractor Parties and all visitors on the Site to comply with the provisions of the ESMS-O&M. The O&M Contractor will establish a management unit to effectively establish, maintain, monitor, report on, and enforce the ESMS-O&M and the ESMPs-O&M. The unit shall at a minimum include a qualified EHS Manager, with an adequate on-site team of environmental, social, occupational health and safety professionals to be responsible for environmental performance, and Labor and Community Engagement Manager to be responsible for engagement with local communities, and occupational health and safety.
- In interpreting the foregoing, the following defined terms shall apply:

“Applicable Standards (EPC/O&M/Enviro/Admin)” - Has the meaning given thereto in Schedule 15.

“ESMPs-O&M” – Has the meaning given thereto in this Schedule 17. The ESMPs-O&M shall define mitigation and performance improvement measures and actions applicable to the O&M Contractor that address the project identified environmental and social risks and impacts and define detailed timelines for implementation of specific measures to mitigate the identified issues

“ESMS-O&M” – Has the meaning given thereto in this Schedule 17.

“Quarterly E&S Monitoring Reports” – Has the meaning given thereto in Schedule 15.

Schedule 18
GenCo Connection Works EPC Terms and Conditions

The form of the GenCo Connection Works EPC Contract included as part of the Tender (Connection) shall provide for the following:

- the GenCo Connection Works EPC Contract shall not require the GenCo Connection Works EPC Contractor to perform any Administrative Services;
- shall require that the GenCo Connection Asset be designed and constructed to be consistent with the description of the GenCo Connection Asset set forth in the co connection study performed under Section 13.1 of the Connection Agreement;
- shall provide for a scope of services and terms that are customary in the industry for EPC contracts including, inter alia, the design, engineering, procurement, construction, completion, testing, and commissioning of the GenCo Connection Asset;
- shall provide that the GenCo Connection Works EPC Contractor shall only be eligible for Change Orders on the basis of conditions that are customary in the industry for EPC contracts;
- shall provide for milestone payments in specified amounts, each of which shall be subject to a retainage of five percent (5%) to ten percent (10%) payable on substantial completion, with such amount as more specifically set forth in the Tender (Connection);
- shall include a performance bond valued at 15% of the contract price;
- the following environmental and social requirements:
 1. At least sixty (60) Days prior to the commencement of the construction, the GenCo Connection Works EPC Contractor shall comply, and cause its stockholders, directors, employees, agents, subcontractors (the “**GenCo Connection Works EPC Contractor Parties**”), and all visitors on the Site to comply, with the requirements of the Applicable Standards (EPC/O&M/Enviro/Admin) and present such ESMS-EPC (Connection) in form and content to the Independent E&S Consultant appointed pursuant to the Implementation Agreement and GenCo. GenCo shall notify GOK in writing of such ESMS-EPC (Connection) development.
 2. The ESMS-EPC (Connection) shall include:
 - a. an overarching policy that states the principles guiding the achievement of sound environmental and social performances and confirms the commitment to performing in accordance with the Applicable Standards (EPC/O&M/Enviro/Admin); and
 - b. organizational capacity and competency to implement the ESMS-EPC (Connection). In particular, the GenCo Connection Works EPC Contractor shall define the key environmental and social roles and responsibilities, assign them to staff with appropriate skills and expertise, and train staff on management of environmental and social risks and impacts.
 3. The GenCo Connection Works EPC Contractor shall develop a detailed construction environmental and social management system (“**ESMS-EPC (Connection)**”) in line with GenCo’s environmental and social policies and procedures and in compliance with the Applicable Standards (EPC/O&M/Enviro/Admin).
 4. As part of the ESMS-EPC (Connection), the GenCo Connection Works EPC Contractor will develop the detailed environmental, social and health, and safety management plans, enabling it to identify, assess, and manage project construction environmental, social and health and safety impacts and risks on an ongoing basis, and that at a minimum should include the components described in Table 1 (“**ESMPs-EPC (Connection)**”). The ESMPs-EPC (Connection) shall

consist of documented combination of operational procedures, practices, plans, and relevant supporting documents. The GenCo Connection Works EPC Contractor will submit the ESMPs-EPC (Connection) for a review by the Independent E&S Consultant and will integrate the Independent E&S Consultant’s recommendations and take any action necessary to conform the ESMPs-EPC (Connection) to the Applicable Standards (EPC/O&M/Enviro/Admin) within the timeline defined by the Independent E&S Consultant prior to commencement of work.

Table 1. ESMPs-EPC (Connection)

	Environmental and Social Management Plans
1	<p>Construction Environmental and Social Management Plan, including but not limited to:</p> <ul style="list-style-type: none"> - Subcontractor Management Plan (to manage EHS planning and performance of the GenCo Connection Works EPC Contractor and GenCo Connection Works EPC Contractor Parties), including: <ul style="list-style-type: none"> • Relevant ESMS-EPC (Connection) requirements in contracts/subcontracts; • Clear assignment of GenCo Connection Works EPC Contractor environmental and social and health and safety responsibilities; • GenCo Connection Works EPC Contractor reports sufficient to allow GenCo to allow evaluation of need for corrective actions; • Verification of training and/or proper credentials for the GenCo Connection Works EPC Contractor and GenCo Connection Works EPC Contractor Parties staff/managers responsible for environmental and social and health and safety management; • Community Health and Safety Management Plan; and • Complaints Logging System and Response. - Workers Accommodations and Camp Accommodation Plan, meeting the standards presented in the IFC guidance note on <i>Worker’s Accommodation: Processes and Standards</i> (2009) - Traffic Management Plan - Emergency Preparedness and Response Waste Management Plan - Wastewater Management Plan - Water Quality Management Plan - Spoil Disposal Management Plan - Solid and Hazardous Waste Management Plan - Air Emissions/Air Quality and Noise Management Plan - Hazardous Materials Management Plan - Spill Prevention and Response Plan Framework - Stakeholder Engagement/External Grievance Mechanism
2.	<p>Occupational Health and Safety (OHS) Plan, which shall be based on an OHS risk assessment undertaken by the GenCo Connection Works EPC Contractor, and the GenCo Connection Works EPC Contractor Parties where applicable, for all working positions in construction phase. The OHS risk assessment shall be conducted in accordance with Applicable Standards, international environmental and social standards, and where the activities are under the GenCo Connection Works EPC Contractor Parties’ responsibility, the GenCo Connection Works EPC Contractor Parties shall prepare the specific OHS Management Plan which shall be part of the GenCo Connection Works EPC Contractor’s plan and ESMS-EPC (Connection). The OHS Management Plan shall guide all activities on the Kosovo e Re Project site during construction. At a minimum, the Occupational Health and Safety Plan shall include:</p>

	<ul style="list-style-type: none"> - job and task-specific hazard analysis and controls for all activities; - provision of personal protection equipment (PPE), requirements for use of PPE, and enforcement of PPE use; - induction and ongoing safety training for all personnel in their language, covering hazards and safety protocols of their jobs; - special training for specific hazards: working at heights, in confined spaces, in excavations, and with electricity; - arrangements in place to manage OHS incidents, including the process for incident management, first aid arrangements, emergency response plans, and systems for reporting and acting on “near misses”; - provision for emergency medical treatment; and - recording mechanism for incident statistics, including total work hours, lost time incidents, major injuries, fatalities, etc.
3.	<p>Site Security Risk Assessment and Management Plan, which shall be based on the GenCo Connection Works EPC Contractor's assessment of the risks posed by its security arrangements to the workers, the public, and the affected communities, and which shall include a code of conduct for security personnel in line with applicable environmental and safety standards and GIIP. The code of conduct shall be consistent with the Voluntary Principles on Security and Human Rights available at http://www.voluntarvprinciples.org/ and aim to ensure that security personnel are screened for implication in past abuses and adequately trained in human rights principles, the use of force, and appropriate conduct toward communities, the public, and workers. Further, the Site Security Risk Assessment and Management Plan shall include a mechanism to raise grievances related to the conduct of security personnel, assurance that any incidents will be properly investigated, and that the GenCo Connection Works EPC Contractor and/or GenCo Connection Works EPC Contractor Parties do not sanction use of force in relation to the Kosovo e Re Project except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.</p>
4.	<p>Labor Grievance Mechanism for EPC Contractor and subcontractor employees</p>
5.	<p>Chance find procedure, shall be developed and implemented in accordance with Applicable Standards (EPC/O&M/Enviro/Admin), to apply in the event that cultural heritage is discovered. The procedure shall include record keeping and expert verification procedures, chain of custody instructions for movable finds, clear criteria for potential temporary work stoppages that could be required for rapid disposition of issues related to the finds, and outline of the roles and responsibilities and the response times required from Kosovo e Re Project staff and any relevant heritage authority, as well as any agreed consultation procedures.</p>

5. GenCo Connection Works EPC Contractor and the GenCo Connection Works EPC Contractor Parties shall provide workers with documented information that is clear and understandable, regarding their rights under national labor and employment law and any applicable collective agreements, including their rights related to hours of work, wages, overtime, compensation, and benefits upon beginning the working relationship and when any material changes occur.
6. The GenCo Connection Works EPC Contractor will while performing any work under the GenCo Connection Works EPC Contract including the warranty periods to demonstrate compliance with the Applicable Standards (EPC/O&M/Enviro/Admin), including but not limited to its ESMS-EPC (Connection) and ESMPs-EPC (Connection) through a permanent supervision and monitoring program that shall include, at a minimum, the submission of a Quarterly E&S Monitoring Report to GenCo within ten (10) Business Days after the end of each calendar quarter.

7. The GenCo Connection Works EPC Contractor shall verbally inform GenCo's representative immediately, or at least within two (2) hours of actual or suspected fatality, lost time injury, or environmental incidents within the project site, which has or may reasonably be expected to have an adverse effect on the environment, employees, or the surrounding communities, including, but not limited to, explosions, spills, or workplace accidents which result in death, serious or multiple injury, or major pollution, specifying, in each case, the nature of the incident or accident, the on-site and off-site impacts arising or likely to arise, and the measures the GenCo Connection Works EPC Contractor is taking or plans to take to address those impacts; and shall keep GenCo informed of the on-going implementation of those measures. The GenCo Connection Works EPC Contractor shall provide an initial incident fact sheet to GenCo's representative within eight (8) hours and issue a preliminary report within seventy-two (72) hours to enable GenCo to comply with GenCo's statutory obligations. The GenCo Connection Works EPC Contractor shall prepare and provide a comprehensive incident investigation report to GenCo's representative within five (5) Business Days after the incident. Furthermore, the GenCo Connection Works EPC Contractor shall take such actions as may be reasonable, necessary and/or advisable to prevent, avoid or mitigate further injury, damage or loss, and reoccurrence of the same.
8. The GenCo Connection EPC Contractor shall provide full access to the Connection Area and/or Site to the Independent E&S Consultant at all times.
9. The GenCo Connection Works EPC Contractor shall comply with and cause the GenCo Connection Works EPC Contractor Parties and all visitors on the Site to comply with the provisions of the ESMS-EPC (Connection). The GenCo Connection Works EPC Contractor will establish a management unit to effectively establish, maintain, monitor, report on, and enforce the ESMS-EPC (Connection) and the ESMPs-EPC (Connection). The unit shall at a minimum include a qualified EHS Manager, with an adequate on-site team of environmental, social, occupational health and safety professionals to be responsible for environmental performance, and Labor and Community Engagement Manager to be responsible for engagement with local communities, and occupational health and safety.
10. In interpreting the foregoing, the following defined terms shall apply:
 - “Applicable Standards (EPC/O&M/Enviro/Admin)” – Has the meaning given thereto in Schedule 15.
 - “ESMPs-EPC (Connection)” – Has the meaning given thereto in this Schedule 18. The ESMPs-EPC (Connection) shall define mitigation and performance improvement measures and actions applicable to the GenCo Connection Works EPC Contractor that address the project identified environmental and social risks and impacts and define detailed timelines for implementation of specific measures to mitigate the identified issues
 - “ESMS-EPC (Connection)” – Has the meaning given thereto in this Schedule 18.
 - “Quarterly E&S Monitoring Reports” – Has the meaning given thereto in Schedule 15.

Schedule 19
Specified Environmental Condition Remediation Contract Terms and Conditions

The form of Specified Environmental Condition Remediation Contract shall provide for the following:

- The Specified Environmental Condition Remediation Contractor shall not provide Administrative Services.
- The Specified Environmental Condition Remediation Contract shall provide for the evaluation, control, address, remediation, and removal of the Specified Environmental/Archaeological Conditions.

The Specified Environmental Condition Remediation Contract shall include environmental and social requirements substantially similar to those set forth for the O&M Contractor in Schedule 17, including development of the ESMPs-Enviro and ESMS-Enviro.

In interpreting the foregoing, the following defined terms shall apply:

“ESMPs-Enviro” – Has the meaning substantially similar to the meaning given to the term ESMPs-O&M as applied to the O&M Contractor and as set forth in Schedule 17. The ESMPs-Enviro shall define mitigation and performance improvement measures and actions applicable to the Specified Environmental Condition Remediation Contractor that that address the project identified environmental and social risks and impacts and define detailed timelines for implementation of specific measures to mitigate the identified issues

“ESMS-Enviro” – Has the meaning substantially similar to the meaning given to the term ESMS-O&M as applied to the O&M Contractor and as set forth in Schedule 17.

Schedule 20
Administrative Services Agreement Terms and Conditions

The form of Administrative Services Agreement shall provide for the following:

- The Administrative Services Contractor shall provide Administrative Services.
- The Administrative Services Agreement shall not provide for services to be provided by the O&M Contractor.

The Administrative Services Agreement shall include environmental and social requirements substantially similar to those set forth for the O&M Contractor in Schedule 17, including development of the ESMPs-Admin and ESMS-Admin.

In interpreting the foregoing, the following defined terms shall apply:

“ESMPs-Admin” – Has the meaning substantially similar to the meaning given to the term ESMPs-O&M as applied to the O&M Contractor and as set forth in Schedule 17. The ESMPs-Admin shall define mitigation and performance improvement measures and actions applicable to the Administrative Services Contractor that address the project identified environmental and social risks and impacts and define detailed timelines for implementation of specific measures to mitigate the identified issues

“ESMS-Admin” – Has the meaning substantially similar to the meaning given to the term ESMS-O&M as applied to the O&M Contractor and as set forth in Schedule 17.

Schedule 21
Potential Tax Credits

That:

1. the purchase line purchased under the EPC Contract shall constitute a “production line” for the purposes of Article 17 of the Law on Corporate Income Tax, 2015 (no. 05/L-029) and shall be entitled to a special allowance of ten percent (10%) of the EPC Contract value, which shall be allowed in the year during which the Commercial Operations Date occurs.
2. GenCo shall enjoy all additional tax benefits which may be granted by a sub-legal implementing Article 7, paragraph 4 of the Law on Corporate Income Tax, 2015 (no. 05/L-029), regardless when GenCo is incorporated in Kosovo.
3. for so long as GenCo and the O&M Contractor are affiliated companies, GenCo and the O&M Contractor shall be treated as a single “[Company]” and enjoy the same benefits, including those provided in this Schedule 21 and all other benefits which may arise from a sub-legal act implementing Article 7, paragraph 4 of the Law on Corporate Income Tax, 2015 (no. 05/L-029).
4. under Section 20 of Administrative Instruction Nr. 15 /2010 on Implementation of the Law No 03/L-222 on Tax Administration and Procedures, as amended and supplemented from time to time (“**Invoicing Regulation**”), an invoice with VAT, also known as tax invoice, is required to be issued by all taxpayers who are liable to pay VAT for each transaction in which a supply of goods or services to another taxable person (a person who is registered for VAT, or is required to be registered for VAT) is involved, and such tax invoice must contain the items prescribed in such Invoicing Regulation. GenCo shall not be denied payment under any of the Project Agreements based on a claim that an invoice is not compliant with the Invoicing Regulation requirements and shall therefore be exempt from the Invoicing Regulations with respect to the invoices issued and received under all Project Agreements.

Schedule 22
List of Experts

1. Remediation Experts:
As may be agreed by the Parties from time to time.

2. Technical Dispute Experts:
As may be agreed by the Parties from time to time.

3. Payment Dispute Experts:
As may be agreed by the Parties from time to time.

Schedule 23
Conditions Precedent

1. The select committee of Kosovo Energy Corporation, J.S.C. (as specified in the Law on Publicly Owned Enterprises) has approved the Site Transfer Agreement and the transactions contemplated therein, and the KRPP Project Steering Committee has issued its final approval (on or after the assignment of the Project Agreements to CG Kosovo as described below) with respect to the Project Agreements and the transactions contemplated therein.
2. The Board of Directors of the Ultimate Sponsor has approved the Project Agreements and the transactions contemplated therein, and the Ultimate Sponsor has issued the Ultimate Sponsor Guarantee (as defined in the Implementation Agreement) in the form attached to the Sponsor Support Agreement.
3. Sponsor HoldCo has provided the Financing Security.
4. All requirements related to notices of contract award and applicable waiting periods provided under the Laws of Kosovo shall have been satisfied; provided, however, that such condition shall be deemed waived if not completed within ten (10) Business Days following the Execution Date.
5. NKEC has assigned all of its rights, title and interest in and to, and delegated its obligations under this Agreement to the New Kosovo Electric Company.
6. GenCo has assigned all of its rights, title and interest in and to, and delegated its obligations under, this Agreement to CG Kosovo.

Schedule 24
Rejection Point Raw Water Quality Standards

Specification	Rejection Limit
Total Dissolved Solids	Max [as specified in the Tender (Plant)] (avg measured over time [as specified in the Tender (Plant)])
pH value	Amount [as specified in the Tender (Plant)] (avg measured over time [as specified in the Tender (Plant)])
CSB	Max [as specified in the Tender (Plant)] (avg measured over time [as specified in the Tender (Plant)])
Iron, total	Max [as specified in the Tender (Plant)] (avg measured over time [as specified in the Tender (Plant)])