

Site Transfer Agreement

between

Kosovo Energy Corporation, J.S.C.

and

ContourGlobal Terra 6 S.à r.l.

**HUNTON &
WILLIAMS**

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

- (1) 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; and
- (2) Kosovo Energy Corporation, J.S.C. (“**KEK Generation**”), 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.

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

RECITALS

- A. The Government of Kosovo 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**”);
- B. 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 KEK Generation acknowledges and consents to such assignment;
- C. In connection with the Kosovo e Re Project, GenCo is entering into the Power Purchase Agreement (as hereinafter defined) pursuant to which GenCo will sell electric energy and capacity to NKEC (as hereinafter defined);
- D. GOK (as such term is defined herein) and GenCo previously agreed on the Agreed €/MWh Target (as such term in 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.
- E. KEK Generation owns all of the right, title, and interest in the Plant Site (KRPP);
- F. KEK Generation desires to sell and transfer the Plant Site (KRPP) to GenCo in order for GenCo to develop, design, construct, finance, own, operate, and maintain the KRPP Facility, and GenCo desires to purchase the Plant Site (KRPP) from KEK Generation on the Transfer Date (as hereinafter defined);
- G. It is the intent of the Parties that the Transfer Date and the Financial Closing (as hereinafter defined) shall occur on the same date; and
- H. KEK Generation desires to grant certain additional rights in land to facilitate the performance by GenCo of its obligations under the 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:

“Additional Land” – The land included in the Additional Land Rights.

“Additional Land Rights” – Refers collectively to the additional rights in land granted by KEK Generation to GenCo as described in Section 3.2.

“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 15.15(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 KEK Generation) and GOK shall be an “Affiliate” of KEK Generation.

“Agreed €/MWh Target” – €80/MWh.

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

“Ammonia, Fuel Oil, and Limestone Tender Policy” – Has the meaning given thereto in the Power Purchase Agreement.

“Applicable Counterparty Cure Period” – Period applicable for cure of an event of default by KEK Generation under this Agreement, as set forth in this Agreement.

“Applicable IDA Standards” – The World Bank Performance Standards for Private Sector Projects Supported by IBRD/IDA (available at

<http://intranet.worldbank.org/WBSITE/INTRANET/UNITS/INTOPCS/INTSAFEPOL/0,,contentMDK:23252939~menuPK:8535813~pagePK:64168332~piPK:64168299~theSitePK:584402,00.html>); IFC EHS Standards (available at:

http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/ehsguidelines); General Conditions for IBRD and IDA Financing (available at: <http://www.worldbank.org/en/topic/lawjusticeanddevelopment/publication/general-conditions>); Procurement Policy in Investment Project Financing (IPF) and Other Operational Procurement Matters (available at:

<https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4002&ver=current>); The World Bank Procurement Regulations for the IPF Borrowers (July 2016) (available at

https://policies.worldbank.org/sites/ppf3/PPFDocuments/4005Procurement%20Regulations_Final%20for%20publishing.pdf); Procurement Directive (available at:

<https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4003&ver=current>); and the Procurement Procedure

(<https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4004&ver=current>).

“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.

“Archaeological Condition” – Has the meaning given thereto in the Power Purchase Agreement.

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

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

“Ash/Gypsum Slurry Pipeline Corridor” – The land on which the portion of the Ash/Gypsum Slurry Pipeline System between the Plant Site (KRPP) and the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill is, or will be, installed, as further defined in the Ash and Gypsum Disposal Agreement.

“Ash/Gypsum Slurry Pipeline System” – The pipeline(s) and associated equipment (including pumps (including recirculation pumps and pump houses), pipe racks, hangers, supports and fixtures, and power supply lines) used (i) to transport Ash from the KRPP Facility to the GenCo Exclusive Ash Landfill and to transport Gypsum from the KRPP Facility to the GenCo Exclusive Gypsum Landfill and (ii) to recirculate water from the GenCo Exclusive Ash Landfill and from the GenCo Exclusive Ash Landfill to the KRPP Facility or to the nearby Sitnica River or other point of discharge for water selected in accordance with GenCo Consents and Environmental Standards, for the purposes of enabling GenCo to dispose of excess water from the GenCo Exclusive Ash Landfill(s) and the GenCo Exclusive Gypsum Landfill(s) in accordance with the GenCo Consents and the Environmental Standards.

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

“Back-to-Back Power Purchase Agreement” – Has the meaning given thereto in the Power Purchase Agreement.

“Base Case Financial Model” – Has the meaning given thereto in the Power Purchase Agreement.

“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.

“Carbon Capture Area” – The real property adjacent to the Plant Site (KRPP) necessary to facilitate the construction of the KRPP Facility in accordance with the Project Agreements. The Carbon Capture Area is as indicated in Schedule 1.

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

“Change in Law” – Has the meaning given thereto in the Implementation Agreement.

“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.

“Closing” – Has the meaning given thereto in Section 4.1(a).

“Coal Yard (KRPP, Kosovo B)” – The coal yard or yards located near the Plant Site (KRPP) and used to supply the KRPP Facility and the Kosovo B Facility, and any additions or replacements thereof.

“Commercial Operations Date” – Has the meaning given thereto in the Power Purchase Agreement.

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

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

“Connection Agreement” – Has the meaning given thereto in the Implementation 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 HoldCos, the Ultimate Sponsor, and the GenCo Contractors with respect to the Kosovo e Re Project.

“Construction Lay-Down Area (KRPP)” – The real property adjacent to the Plant Site (KRPP) necessary to facilitate the construction of the KRPP Facility in accordance with the Project Agreements. The Construction Lay-Down Area (KRPP) is as indicated in Schedule 1.

“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 (as defined in the Power Purchase Agreement), collectively.

“Contract Lignite Quality” – Has the meaning given thereto in the Lignite Supply Agreement.

“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.

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

“Deemed GenCo Wind-Up Event” – Has the meaning given thereto in Section 5.4.2(c).

“Deemed GOK Wind-Up Event” – Has the meaning given thereto in Section 5.4.1(b).

“Delivery Point” – Has the meaning given thereto in the Lignite Supply Agreement.

“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.

“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 an ESIA (GenCo).

“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.

“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.

“Environmental/Archaeological Condition” – Has the meaning given thereto in the Power Purchase Agreement.

“Environmental Condition” – Has the meaning given thereto in the Power Purchase Agreement.

“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.

“EPC/LTM Bidder Consortium” – Has the meaning given thereto in the Power Purchase Agreement.

“EPC Contract” – Has the meaning given thereto in the Power Purchase Agreement.

“EPC Contractor” – Has the meaning given thereto in the Power Purchase Agreement.

“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.

“ESIA (Mine)” – An environmental and social impact assessment in relation to the Sibovc South Mine Field and Kosovo e Re Project performed by, or on behalf, of KEK Mining and/or GOK in accordance with the Laws of Kosovo, Applicable Standards, and/or the requirements of the Lenders.

“ESMPs-Admin” – Has the meaning given thereto in Schedule 20 of the Power Purchase Agreement.

“ESMPs-Enviro” – Has the meaning given thereto in Schedule 19 of the Power Purchase Agreement.

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

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

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

“ESMS-Admin” – Has the meaning given thereto in Schedule 20 of the Power Purchase Agreement.

“ESMS-Enviro” – Has the meaning given thereto in Schedule 19 of the Power Purchase Agreement.

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

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

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

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

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

“Financial Closing” – Has the meaning given thereto in the Power Purchase Agreement.

“Financing Documents” – Has the meaning given thereto in the Implementation Agreement.

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

“Fuel Oil” – Has the meaning given thereto in the Power Purchase Agreement.

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

“GenCo Connection Works EPC Contract” – Has the meaning given thereto in the Power Purchase Agreement.

“GenCo Connection Works EPC Contractor” – Has the meaning given thereto in the Power Purchase Agreement.

“GenCo Consents” – Has the meaning given thereto in the Power Purchase Agreement.

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

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

“GenCo Transfer Conditions Precedent” – Has the meaning given thereto in Section 5.1.1.

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

“Generator Pricing Rule” – The Rule on Regulated Generator Pricing (Generator Pricing Rule) 2011, adopted by ERO pursuant to the Law on Energy Regulator, No. 03/L-185.

“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.

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

“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.

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

“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 14.5(c).

“ICMM” –The Independent Commission for Mines and Minerals, and any successor or substitute regulatory agency with authority and jurisdiction over the mining sector in Kosovo.

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

“ICSID Convention” – Has the meaning given thereto in Section 14.5(a).

“ICSID Rules” – Has the meaning given thereto in Section 14.5(a).

“IDA Guarantee” – Has the meaning given thereto in Section 5.4.1(b)(iii).

“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/c8f524004a73daeca09afd998895a12/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 11.4.1(c).

“Indemnification Notice” – Has the meaning given thereto in Section 11.4.1(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 (*Appointment of the Independent E&S Consultant*) of the Implementation Agreement and with duties as set forth in Section 4.3 (*Duties of the Independent E&S Consultant*) of the Power Purchase Agreement.

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

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

“KEK Generation Reorganization or Privatization” – Any of:

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

“KEK Generation Transfer Conditions Precedent” – Has the meaning given thereto in Section 5.1.2.

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

“KEK Mining ESMPs” – Has the meaning given thereto in Annex I to Schedule 3.

“KEK Mining ESMS” – Has the meaning given thereto in Annex I to Schedule 3.

“KEK Mining Land” – Has the meaning given thereto in the Ash and Gypsum Disposal Agreement.

“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.

“Kosovo” – The Republic of Kosovo.

“Kosovo A Facility” – The existing 370 MW (net) lignite-fired electric generating facility in approximately three or more units located at Obiliq, Kosovo commonly known as “Kosovo A.”

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

“Kosovo Competition Authority” – The Kosovo Competition Authority established by the Law on Protection of Competition, 2010 (Law No. 03/L-229).

“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. The terms “TSMO” and “Grid Code” shall have the meanings given thereto in the Power Purchase Agreement.

“KRPP Facility” – The lignite-fired electric generating facility to be located at Obiliq, Kosovo, as more particularly described in the Power Purchase Agreement.

“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.

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

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

“Licensed KEK Generation Successor” – A Person that is licensed under the Laws of Kosovo to perform the generation capacity functions in the generation sector of Kosovo.

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

“Lignite Pricing Report” – 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.

“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.

“LTM Agreement” or “LTMA” – Has the meaning given thereto in the Power Purchase Agreement.

“LTM Contractor” – Has the meaning given thereto in the Power Purchase Agreement.

“Material GenCo Effect” – Has the meaning given thereto in the Power Purchase Agreement.

“MIGA” – Has the meaning given thereto in the Power Purchase Agreement.

“MIGA Policy on Social & Environmental Sustainability” – The Policy on Social & Environmental Sustainability published by the Multilateral Investment Guarantee Agency, 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.

“Mine Development Plan” – Has the meaning given thereto in the Lignite Supply Agreement.

“Mine Field Analysis” – Has the meaning given thereto in the Lignite Supply Agreement.

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

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

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

“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.

“NKEC” – Has the meaning given thereto in the Power Purchase Agreement.

“NKEC Party” – Has the meaning given thereto in the Power Purchase Agreement.

“No-Fault Conditions Precedent” – Has the meaning given thereto in Section 5.4.1(c).

“O&M Contract” – Has the meaning given thereto in the Power Purchase Agreement.

“O&M Contractor” – Has the meaning given thereto in the Power Purchase Agreement.

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

“Other Supplier” – Any Person (other than KESCO) who purchases energy produced by the KRPP Facility and acts as a supplier or eligible self-supplier of such energy to one or more end-use consumers.

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

“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 GenCo Effect;
- (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 GenCo Effect; 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 this Agreement nor constitute or are reasonably unlikely to have a Material GenCo Effect.

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

“Plant Site (KRPP)” – All of the real property, including all structures and improvements thereon and mineral and subterranean rights thereunder on which the KRPP Facility will be located and to which KEK Generation holds title, as more particularly described in Schedule 1.

“Power Purchase Agreement” – The agreement by that name between NKEC and GenCo dated on or about the Execution Date.

“Preliminary ESIA (GOK)” – Has the meaning given thereto in the Power Purchase Agreement.

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

“Prudent Utility Practices” – Has the meaning given thereto in the Power Purchase Agreement.

“Public Authority” – Any of the following with jurisdiction over GenCo, KEK Generation, 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, KEK Generation, 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).

“Rail Area Easement” – Has the meaning given thereto in Section 3.2(e).

“Required Transfer Date” – The date that is twenty-four (24) Months after the Effective Date, as such date may be extended pursuant to Section 5.4.4 or Section 7.1(a).

“Resettlement Policy Framework” – The resettlement policy framework related to the Kosovo e Re Project adopted by GOK in accordance with World Bank Group Operating Procedure/Bank Procedure 4.12 and the applicable IFC Environmental and Social Sustainability Standards and the applicable MIGA Policy on Social and Environmental Sustainability.

“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.

“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).

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

“Sibovc South Mine Field” – Has the meaning given thereto in the Lignite Supply Agreement.

“Site” – Has the meaning given thereto in the Power Purchase Agreement.

“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.

“Special GOK Notice of Default” – Has the meaning given thereto in Section 13.3.

“Specified Environmental Condition Remediation Contract” – Has the meaning given thereto in the Power Purchase Agreement.

“Specified Environmental Condition Remediation Contractor” – Has the meaning given thereto in the Power Purchase Agreement.

“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.

“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.

“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 Dispute” – A Dispute that relates to a technical, engineering, operational, 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.

“Tender (Plant)” – Has the meaning given thereto in the Power Purchase Agreement.

“Thermal Efficiency and BAT Study” – Has the meaning given thereto in the Power Purchase Agreement.

“Transfer Date” – Has the meaning given thereto in Section 4.1(a).

“Transfer Taxes” – Any transfer, conveyance, filing, recording, stamp, sales, use and similar Taxes (including any sales Tax or transfer Tax on the sale or purchase of the Plant Site (KRPP)).

“Transition Period” – The period commencing on the Effective Date and expiring on the Transfer Date.

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

“Ultimate Sponsor Party” – Has the meaning given thereto in the Power Purchase Agreement.

“Water Delivery Systems” – The pipes and other equipment, including the piping for return of the rejected water to the main canal, connecting the Water Supplier’s main canal to the KRPP Facility.

“Water Delivery Systems Corridor” – The real property underlying the Water Delivery Systems. The Water Delivery Systems Corridor is as indicated in Schedule 1.

“Water Management Plan” – A water management plan developed by the Water Supplier and/or GOK in accordance with Schedule 3 intended to enable sustainable water supply to the Water Supplier’s customers.

“Water Removal Corridor” – The land on which any portion of the Ash/Gypsum Slurry Pipeline System used to re-circulate water from the GenCo Exclusive Ash Landfill and from the GenCo Exclusive Ash Landfill to the point of discharge of the water (including the Sitnica River, if so permitted under the GenCo Consents and the Environmental Standards) is, or will be, installed. The Water Removal Corridor includes such portion of the KEK Mining Land as is reasonably necessary to construct, operate, and maintain the Ash/Gypsum Slurry Pipeline System on, over, and through the KEK Mining Land from the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill to the point of discharge of the water (including the Sitnica River, if so permitted under the GenCo Consents and the Environmental Standards). The Water Removal Corridor includes a corridor of land as is reasonably necessary to construct, operate, and maintain the Ash/Gypsum Slurry Pipeline System (i) on, over, and through the KEK Mining Land to the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill and (ii) on, over, and through a corridor of land between the KEK Mining Land to the point of discharge described above.

“Water Supplier” – HPE Ibër-Lepenc, J.S.C., a joint stock company organized under the laws of Kosovo, with its principal office at Bulevardi Bill Clinton No.13, Pristina, Kosovo, and business registration number 70465157.

“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.

“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).

“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) 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

2.1 Effectiveness

This Agreement shall commence and become effective on the later of (a) the Execution Date, and (b) the date on which the Power Purchase Agreement becomes effective in accordance with Section 2.1(b) (*Effectiveness; Term*) of the Power Purchase Agreement (such date of effectiveness being the “**Effective Date**”).

Article 3 Sale and Transfer of the Plant Site (KRPP)

3.1 Sale and Transfer of the Plant Site (KRPP)

Subject to the terms, conditions, and covenants of this Agreement, at Closing, KEK Generation shall sell, convey, assign, transfer, and deliver to GenCo, and GenCo shall purchase for the price of €10 and accept from KEK Generation, free and clear of any Encumbrances other than Permitted Encumbrances and on an “AS IS WHERE IS” basis, except as otherwise provided herein and in the Project Agreements, the Plant Site (KRPP).

3.2 KEK Generation’s Grant of Additional Easement Rights

- (a) KEK Generation hereby grants to GenCo an exclusive easement to, on, over, across, and within the Construction Lay-Down Area (KRPP) for use by GenCo, GenCo Contractors, and any Person authorized by GenCo with all equipment and machinery as may be necessary to construct the KRPP Facility in accordance with the Project Agreements and perform its other related obligations under the Project Agreements. Such easement shall be effective as of the Transfer Date and shall remain effective until the earlier of (i) the Final Draw Date (as defined in the Power Purchase Agreement), and (ii) the date of final completion (however defined) under the EPC Contract. In addition, KEK Generation shall grant to GenCo all such other necessary easements, servitudes, licenses, rights-of-way, and other real property rights reasonably necessary for such purpose.
- (b) KEK Generation hereby grants to GenCo an exclusive easement to, on, over, across, and within the Carbon Capture Area for use by GenCo, GenCo Contractors, and any Person authorized by GenCo for purposes of ensuring that suitable space on the Plant Site (KRPP) 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 to construct, operate, and maintain

all such capture and compression equipment to the extent GenCo undertakes such. Such easement shall be effective as of the Transfer Date and shall remain effective until six (6) Months following the later of the expiration or termination of the Generation License and any equivalent or replacement license, consent or other required grant of rights, the result of which is that GenCo is no longer permitted to operate the KRPP Facility. In addition, KEK Generation shall grant to GenCo all such other necessary easements, servitudes, licenses, rights-of-way, and other real property rights reasonably necessary for such purpose.

- (c) KEK Generation hereby grants to GenCo an exclusive easement to, on, over, across, and within the Water Removal Corridor for use by GenCo, GenCo Contractors, and any Person authorized by GenCo to construct, operate, and maintain any portion of the Ash/Gypsum Slurry Pipeline System connecting the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill to the nearby Sitnica River or such other point of discharge of the water selected in compliance with the GenCo Consents and Environmental Standards, for the purposes of enabling GenCo to dispose of excess water from the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill in accordance with the Project Agreements and as may be necessary for GenCo to perform its other related obligations under the Project Agreements to the extent permitted under the GenCo Consents and the Environmental Standards. Such easement shall be effective as of the Transfer Date and shall remain effective until six (6) Months following the later of the expiration or termination of the Generation License and any equivalent or replacement license, consent or other required grant of rights, the result of which is that GenCo is no longer permitted to operate the KRPP Facility. In addition, KEK Generation shall grant to GenCo all such other necessary easements, servitudes, licenses, rights-of-way, and other real property rights reasonably necessary for such purpose.
- (d) To the extent that the Water Delivery Systems Corridor is located on the KEK Generation land, KEK Generation hereby grants to GenCo an exclusive easement to, on, over, across, and within the Water Delivery Systems Corridor for use by GenCo, GenCo Contractors, and any Person authorized by GenCo with all equipment and machinery as may be necessary to construct, operate, and maintain the Water Delivery Systems in accordance with the Project Agreements and perform its other related obligations under the Project Agreements. Such easement shall be effective as of the Transfer Date and shall remain effective until six (6) Months following the later of the expiration or termination of the Generation License and any equivalent or replacement license, consent or other required grant of rights, the result of which is that GenCo is no longer permitted to operate the KRPP Facility. In addition, KEK Generation shall grant to GenCo all such other necessary easements, servitudes, licenses, rights-of-way, and other real property rights reasonably necessary for such purpose.
- (e) KEK Generation hereby grants to GenCo an easement (the “**Rail Area Easement**”) to, on, over, across, and within the existing KEK Generation rail facilities and KEK Generations area surrounding such rail facilities for use by GenCo, GenCo Contractors, and any Person authorized by GenCo as may be necessary for vehicular or pedestrian crossing of such KEK Generation rail facilities and KEK Generation area surrounding such rail facilities while moving from one portion of the Plant Site (KRPP) to another portion of the Plant Site (KRPP) or for moving between any portion of the Plant Site (KRPP) and the Carbon Capture Area and Construction Lay-Down Area (KRPP) in order to fulfill its obligations and perform work on the Plant Site (KRPP) under the Project Agreements. Such easement shall be effective as of the Transfer Date and shall remain effective until six (6) Months following the later of the expiration or termination of the Generation License and any equivalent or replacement license, consent, or other required grant of rights, the result of which is that GenCo is no longer permitted to operate the KRPP Facility. In addition, KEK Generation shall grant to GenCo all such other necessary easements,

servitudes, licenses, rights-of-way, and other real property rights reasonably necessary for such purpose.

- (f) Upon obtaining all necessary operating and maintenance permits from applicable authorities related to and continuing during the effectiveness of each applicable easement right set forth above, GenCo shall, at GenCo's cost and expense (it being acknowledged that GenCo shall be entitled to recover such costs pursuant to Schedule 1 of the Power Purchase Agreement), maintain the property for which an easement has been granted to GenCo in accordance with this Section 3.2 at all times in accordance with the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable), Prudent Utility Practices, the Laws of Kosovo, and the Environmental Standards.
- (g) GenCo shall use the easement rights set forth above in such a manner as to not disrupt operations of the Kosovo B Facility.

3.3 Dredging of Sitnica River

- (a) The Parties acknowledge that the riverbed of the Sitnica River will require dredging from time to time in order to ensure the proper operation of the KRPP Facility and the Kosovo B Facility and to prevent flooding thereof. With respect to the corrective and mitigation measures regarding flooding, KEK Generation shall rely on the Flood Risk Assessment Study (as defined in the Power Purchase Agreement) prepared by GOK-Appointed Independent Engineer pursuant to Section 3.8 (*Studies Required for Tender*) of the Power Purchase Agreement. KEK Generation shall be responsible for (i) preparing a dredging management plan, prior to commencement of the dredging activities, which plan will define the implementation details in terms of dredging and dredgers, disposal methods, assessment of disposal site options, mitigation measures to minimize impacts on water quality, and required monitoring and control measures; and (ii) conducting all such dredging activities and shall conduct such dredging for the benefit of the KRPP Facility and the Kosovo B Facility from time to time in accordance with Prudent Utility Practices. GenCo shall be responsible for fifty percent (50%) of the reasonable and prudently incurred costs of such dredging activities (it being acknowledged that GenCo shall be entitled to recover its costs pursuant to Schedule 1 of the Power Purchase Agreement); provided, however, that GenCo's portion shall not exceed three million Euros (€3,000,000) during the Construction Period and shall not exceed three million Euros (€3,000,000) during the period following the Commercial Operations Date (or six million Euros (€6,000,000) in the aggregate over all periods). GenCo shall make payment to KEK Generation of its share of such costs within thirty (30) Days of receipt of an invoice from KEK Generation evidencing such amount paid by KEK Generation for such dredging.
- (b) To the extent KEK Generation fails to satisfy its obligations in accordance with Section 3.3(a), GenCo shall provide KEK Generation with written notice of such failure and GenCo's intent to exercise its rights under this Section 3.3(b) if KEK Generation does not commence and thereafter diligently pursue satisfaction of its obligations under Section 3.3(a) within sixty (60) Days. Upon the expiration of such cure period, if KEK Generation has not commenced actions intended to satisfy its obligations under Section 3.3(a), then GenCo shall have the rights to conduct such dredging and to assess to KEK Generation fifty percent (50%) of the reasonable and prudently incurred costs of such dredging activities provided, however, that in no event shall GenCo's portion exceed three million Euros (€3,000,000) during the Construction Period or three million Euros (€3,000,000) during the period following the Commercial Operations Date (or six million Euros (€6,000,000) in the aggregate over all periods), it being agreed that all amounts in excess of such limits shall be borne by KEK Generation. KEK Generation shall make payment to GenCo of its share of such costs within thirty (30) Days of receipt of an invoice from GenCo evidencing such amount paid by GenCo for such dredging (it being acknowledged that GenCo shall be entitled to recover its costs pursuant to Schedule 1 of the Power Purchase Agreement).

- (c) KEK Generation shall provide GenCo with such rights of ingress and egress over KEK Generation's property for use by GenCo, GenCo Contractors, and all persons authorized by GenCo with all equipment and machinery as may be necessary to conduct such dredging activities under Section 3.3(b).
- (d) The Parties shall work in a coordinated manner and liaise periodically, to the extent necessary, to coordinate dredging activities so as not to unreasonably interfere, prevent or delay the construction, operation and maintenance activities of the Parties with respect to the KRPP Facility or Kosovo B Facility.
- (e) The Parties shall meet to review the state of the riverbed of the Sitnica River periodically, as mutually agreed, but in any event not less than once during any three (3) month period.

3.4 Update of Schedules; Knowledge Breach

From time to time up to the date of Closing, KEK Generation shall promptly supplement or amend Schedule 2 with respect to (a) any matter first existing or occurring following the date hereof that (i) if existing or occurring at or prior to the date hereof would have been reasonably set forth or described in Schedule 2 or (ii) is necessary to correct any information in Schedule 2 that has been rendered inaccurate thereby or (b) any matter that first is existing or occurring prior to the date of this Agreement that was not previously set forth in Schedule 2. With respect to matters contemplated by clause (a) in the preceding sentence, KEK Generation may supplement or amend Schedule 2 to disclose such matter or event, and such supplement or amendment shall in no event be the basis for any claim by GenCo that any representation or warranty is inaccurate or has been breached. With respect to matters contemplated by clause (b) in the first sentence of this Section 3.4, KEK Generation may supplement or amend Schedule 2 to disclose such matter or event, and, if GenCo elects to close the transaction notwithstanding disclosure of such matter or event, such supplement or amendment shall in no event be the basis for any claim by GenCo that any representation or warranty is inaccurate or has been breached. With respect to any supplement or amendment made under either clause (a) or clause (b) in the first sentence hereof, if such supplement or amendment reveals an event or condition which would result in the inability of KEK Generation to satisfy the conditions set forth in Section 5.1.1 or the inability of GenCo to satisfy the conditions set forth in Section 5.1.2, as applicable, or will have a Material GenCo Effect, then GenCo shall have the right to terminate this Agreement pursuant to Section 5.4.1(b) by giving written notice to KEK Generation, in which case such termination shall be treated as a termination for a Deemed GOK Wind-Up Event and neither party shall have any further rights or obligations hereunder except for those rights and obligations expressly stated herein to survive the termination hereof and the rights and obligations described in Section 20.9 (*Right to Terminate for Failure to Achieve the Transfer Date; Compensation*) of the Implementation Agreement.

Article 4 Closing; Deliverables

4.1 Closing

- (a) The purchase and sale of the Plant Site (KRPP) and grant of the Additional Land Rights provided for in this Agreement (the "**Closing**") shall take place on the date on which (i) all of the GenCo Transfer Conditions Precedent have been satisfied or waived, and (ii) all of the KEK Generation Transfer Conditions Precedent have been satisfied or waived (such date of Closing, the "**Transfer Date**"); provided, however, that if Closing does not occur on the date on which Financial Closing occurs, each Party shall in good faith seek to cause Closing to occur as soon as practicable, and the Transfer Date shall be deemed for all purposes to occur on the date of Financial Closing.
- (b) Closing shall take place at any place as may be mutually agreed upon by the Parties.

4.2 Deliverables

4.2.1 KEK Generation's Closing Deliverables

In addition to any other documents to be delivered under other provisions of this Agreement and the other Project Agreements, KEK Generation shall deliver to GenCo at Closing:

- (a) a recordable warranty deed or such other appropriate document or instrument of transfer of the Plant Site (KRPP) in form and substance reasonably satisfactory to GenCo and executed by KEK Generation;
- (b) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance of the Plant Site (KRPP) and of grant of the Additional Land Rights as may reasonably be requested by GenCo, each in form and substance reasonably satisfactory to GenCo and executed by KEK Generation;
- (c) a certificate executed by KEK Generation as to the accuracy of its representations and warranties as of the date of this Agreement, the Effective Date and as of Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before Closing; and
- (d) a certificate of the general manager (or other appropriate official) of KEK Generation certifying, as complete and accurate as of Closing, attached copies of the Charter Documents of KEK Generation, certifying and attaching all requisite resolutions or actions of KEK Generation's board of directors or shareholders approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and certifying to the incumbency and signatures of the officers of KEK Generation executing this Agreement and any other document relating to the transactions contemplated hereby.

4.2.2 GenCo's Closing Deliverables

In addition to any other documents to be delivered under other provisions of this Agreement, GenCo shall deliver to KEK Generation at Closing:

- (a) a certificate executed by GenCo as to the accuracy of its representations and warranties as of the date of this Agreement, the Effective Date and as of Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before Closing; and
- (b) a certificate of the secretary (or other appropriate official) of GenCo certifying, as complete and accurate as of Closing, attached copies of the Charter Documents of GenCo and certifying and attaching all requisite resolutions or actions of GenCo's board of directors approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and certifying to the incumbency and signatures of the officers of GenCo executing this Agreement and any other document relating to the transactions contemplated hereby.

Article 5 Conditions Precedent to Closing

5.1 Conditions Precedent to Closing

5.1.1 Conditions Precedent to GenCo's Obligation to Close

GenCo's obligation to purchase and accept from KEK Generation the Plant Site (KRPP) at Closing and accept the grant of the Additional Land Rights is subject to the satisfaction (or waiver by GenCo) at or

prior to Closing of each of the conditions precedent set forth in Parts 1 and 3 of Schedule 3 (each a “**GenCo Transfer Condition Precedent**”).

5.1.2 Conditions Precedent to KEK Generation’s Obligation to Close

KEK Generation’s obligation to sell, assign, or otherwise transfer to GenCo the Plant Site (KRPP) and to grant to GenCo the Additional Land Rights at Closing is subject to the satisfaction (or waiver by KEK Generation) at or prior to Closing of each of the conditions precedent set forth in Parts 2 and 3 of Schedule 3 (each a “**KEK Generation Transfer Condition Precedent**”).

5.2 Commercially Reasonable Efforts to Achieve Transfer Date

The Parties shall use commercially reasonable efforts to achieve the Transfer Date as soon as reasonably possible after the Effective Date.

5.3 Notice of Transfer Date

5.3.1 GenCo’s Notice of Transfer Date

GenCo shall give to KEK Generation:

- (a) one (1) Month’s notice of the date on which GenCo estimates in good faith that each of the GenCo Transfer Conditions Precedent will be satisfied; and
- (b) ten (10) Days’ notice of the date on which GenCo estimates in good faith that each of the GenCo Transfer Conditions Precedent will be satisfied.

5.3.2 KEK Generation’s Notice of Transfer Date

KEK Generation shall give to GenCo:

- (a) one (1) Month’s notice of the date on which KEK Generation estimates in good faith that each of the KEK Generation Transfer Conditions Precedent will be satisfied; and
- (b) ten (10) Days’ notice of the date on which KEK Generation estimates in good faith that each of the KEK Generation Transfer Conditions Precedent will be satisfied.

5.4 Termination for Failure to Satisfy Conditions Precedent

5.4.1 Termination by GenCo

- (a) If both (i) any one or more of the GenCo Transfer Conditions Precedent (including a No-Fault Condition Precedent) have not been satisfied or waived (including upon the occurrence of a Deemed GOK Wind-Up Event) and (ii) the Transfer Date has not occurred by the Required Transfer Date, then GenCo may terminate this Agreement pursuant to this Section 5.4.1(a) by notice to KEK Generation, so long as the failure to achieve such satisfaction is not due to the acts or omissions of GenCo.
- (b) A “**Deemed GOK Wind-Up Event**” occurs where the Transfer Date has not occurred by the Required Transfer Date and the failure to achieve such satisfaction is a result of either:
 - (i) the failure of KEK Generation, GOK, or any other Specified POE to satisfy one or more of the GenCo Transfer Conditions Precedent set forth in Part 1 of Schedule 3, which are deemed to be the responsibility of GOK, except to the extent caused by a GenCo Party; or

- (ii) the failure of KEK Generation, GOK, or any other Specified POE to use commercially reasonable efforts and to otherwise act in good faith and in accordance with the Project Agreements in connection with the satisfaction of any of the No-Fault Conditions Precedent; or
 - (iii) the World Bank declines to provide an IDA partial risk guarantee (or substantially similar instrument from the World Bank Group) with a face amount mutually agreed to in writing by the Parties (the “**IDA Guarantee**”); provided, however, that it shall not be a Deemed GOK Wind-Up Event if the World Bank declines to provide such IDA Guarantee as a result of:
 - (A) the failure by a GenCo Party to meet the World Bank’s established criteria necessary to qualify for such IDA Guarantee as set forth in Applicable IDA Standards;
 - (B) non-compliance by the Kosovo e Re Project (due to the actions of a GenCo Party) with the World Bank Group’s standards or guidelines applicable to the IDA Guarantee as set forth in the Applicable IDA Standards;
 - (C) a determination by the World Bank Group that the Kosovo e Re Project (due to the actions of a GenCo Party) fails to meet the World Bank Group’s efficiency and economy requirements applicable to the IDA Guarantee as set forth in the Applicable IDA Standards;
 - (D) any terms of the IDA Guarantee proposed by GenCo being inconsistent with the assumptions set out in Schedule 5; or
 - (E) the failure to meet the minimum efficiency and other technical standards set forth in Schedule 14 of the Power Purchase Agreement; or
 - (iv) the Lenders decline to provide financing as a result of the failure by GOK, KEK Mining or any other Specified POE to agree to, or comply with, some or all of the Applicable Standards.
- (c) A “**No-Fault Condition Precedent**” means any condition precedent set forth in Part 3 of Schedule 3.
 - (d) If GenCo terminates this Agreement pursuant to Section 5.4.1(a) or Section 5.4.3, then GenCo shall, to the extent that GenCo has such rights thereunder, terminate all of the Project Agreements to which it is a party in accordance with the terms thereof.

5.4.2 Termination by KEK Generation

- (a) If both (i) any one or more of the KEK Generation Transfer Conditions Precedent (including a No-Fault Condition Precedent) have not been satisfied or waived (or upon the occurrence of a Deemed GenCo Wind-Up Event) and (ii) the Transfer Date has not occurred by the Required Transfer Date, then KEK Generation may terminate this Agreement pursuant to this Section 5.4.2(a) by notice to GenCo, so long as the failure to achieve such satisfaction is not due to the acts or omissions of KEK Generation, GOK, or any other Specified POE.
- (b) If KEK Generation terminates this Agreement pursuant to Section 5.4.2(a) or Section 5.4.3, then KEK Generation shall, to the extent that KEK Generation has such rights thereunder, terminate all of the Project Agreements to which it is a party in accordance with the terms thereof.

- (c) A “**Deemed GenCo Wind-Up Event**” occurs where the Transfer Date has not occurred by the Required Transfer Date and the failure to achieve such satisfaction is a result of:
- (i) the failure of GenCo, the Sponsor HoldCo, or the Ultimate Sponsor to satisfy one or more of the KEK Generation Transfer Conditions Precedent set forth in Part 2 of Schedule 3, which are deemed to be the responsibility of GenCo, except to the extent caused by a KEK Generation Party, GOK, or a Specified POE; or
 - (ii) the failure of GenCo, the Sponsor HoldCo, or the Ultimate Sponsor to use commercially reasonable efforts and to otherwise act in good faith and in accordance with the Project Agreements in connection with the satisfaction of any of the No-Fault Conditions Precedent.

5.4.3 Termination for Occurrence of both Deemed GOK Wind-Up Event and Deemed GenCo Wind-Up Event

In the event that both (a) any one or more Deemed GenCo Wind-Up Events occur and (b) any one or more Deemed GOK Wind-Up Events occur, either Party may terminate this Agreement.

5.4.4 Extension of Required Transfer Date

The Required Transfer Date shall be extended on a Day-for-Day basis for each Day that the Transfer Date has not occurred as a direct result of:

- (a) a Force Majeure Event (as defined in the Implementation Agreement);
- (b) by reason of a failure by NKEC to conclude the studies under Section 3.8 (*Studies Required for Tender*) of the Power Purchase Agreement within six (6) Months of the Effective Date; or
- (c) a failure by NKEC and/or GOK to notify GenCo of its approval or non-objection, or any objection, as to the selection of a winning EPC/LTM Bidder Consortium under Section 3.9.6 (*Selection of Winning EPC/LTM Bidder Consortium*) of the Power Purchase Agreement within forty-five (45) Days of delivery by GenCo of the results; or
- (d) a failure by NKEC and/or GOK to notify GenCo of its approval or non-objection, or any objection, as to the financing terms under Section 3.13(f) of the Power Purchase Agreement within forty-five (45) Days of delivery by GenCo of notice thereof; or
- (e) the ERO’s failure to approve the transfer of assets contemplated by this Agreement;

provided that any extension for this reason shall not exceed ninety (90) Days.

5.5 Right to Compensation for Termination Prior to Financial Closing

If this Agreement is terminated prior to the Transfer Date, the payment obligations specified in Section 20.9 (*Right to Terminate for Failure to Achieve the Transfer Date; Compensation*) of the Implementation Agreement shall be applicable.

Article 6 Transition Period

6.1 Permitted GenCo Activities to Prepare for Transfer Date

During the Transition Period, GenCo may:

- (a) meet with appropriate employees or agents of KEK Generation at reasonable times and locations to discuss the transfer of the Plant Site (KRPP) and the grant of the Additional Land Rights

pursuant to this Agreement and matters relating thereto and to the transactions contemplated under the other Project Agreements; and

- (b) undertake any other such activity reasonably necessary to (i) ensure the smooth transfer of the Plant Site (KRPP) and grant of the Additional Land Rights from KEK Generation to GenCo on the Transfer Date, or (ii) provide for the transactions contemplated under the other Project Agreements including, conducting due diligence in respect of the Kosovo e Re Project, and completing the GenCo Transfer Conditions Precedent (including the E&S Management Plan, the ESIA (GenCo), ESMS-EPC (Plant), and the ESMPs-EPC (Plant)),

provided that such activities do not unreasonably interrupt or unreasonably interfere with KEK Generation's operations or activities on or related to the Plant Site (KRPP) or the Additional Land.

6.2 Provision of Access

During the Transition Period, KEK Generation shall provide GenCo and GenCo Contractors, employees and agents access to the Plant Site (KRPP) and the Additional Land for the purposes set forth in Section 6.1 promptly (and in any event within three (3) Business Days of a request by GenCo for such access) upon request; provided, however, that such access does not unreasonably interrupt or unreasonably interfere with KEK Generation's operations or activities related to the Plant Site (KRPP) and the Additional Land.

6.3 KEK Generation's Operation of the Plant Site (KRPP) and Additional Land

During the Transition Period, KEK Generation shall, subject to Section 6.4, operate and maintain the Plant Site (KRPP) and the Additional Land in accordance with the business practices customarily employed by KEK Generation in the operation of the Plant Site (KRPP) and the Additional Land (it being understood that KEK Generation shall not be required to improve the Plant Site (KRPP) or the Additional Land during the Transition Period, except in the ordinary course of KEK Generation's business).

6.4 Care by KEK Generation Prior to Closing

During the Transition Period, KEK Generation shall not without the prior written consent of GenCo:

- (a) sell, lease (as lessor), transfer, or otherwise dispose of, or permit the placement of any Encumbrance (other than Permitted Encumbrances) on the Plant Site (KRPP) or the Additional Land; or
- (b) commit in writing to any of the foregoing;
- (c) permit any altering of the surface or subsurface condition of the Plant Site (KRPP) or the Additional Land; or
- (d) conduct any additional activities or increase the intensity of activities currently conducted at the Plant Site (KRPP) or the Additional Land.

Article 7
Risk of Loss

7.1 Risk of Loss - Casualty

- (a) From the Effective Date through the Transfer Date, all risk of loss to the Plant Site (KRPP) or the Additional Land shall be borne by KEK Generation, other than as provided in relation to any indemnification by GenCo under Article 11. If, before the Transfer Date, all or any portion of the Plant Site (KRPP) or the Additional Land is materially impaired, damaged or destroyed by casualty, KEK Generation shall:
- (i) notify GenCo promptly in writing of such fact, and
 - (ii) deliver to GenCo all insurance proceeds or other indemnification, if any, received by KEK Generation for such loss, and GenCo shall use such proceeds or other indemnification to restore the Plant Site (KRPP) or the Additional Land (as applicable) to the same or better condition that the Plant Site (KRPP) or the Additional Land (as applicable) was in immediately prior to the loss (with KEK Generation having a right to inspect and observe such repairs) and GenCo shall be entitled to any reasonable adjournments of Closing and the Required Transfer Date as may be necessary in order to enable GenCo to complete a restoration.
- (b) Notwithstanding any restoration done or to be done under Section 7.1(a), if such loss results in an adverse effect exceeding an amount equal to € 1,000,000 on the assets to be acquired by GenCo or on GenCo's liabilities following the Closing, GenCo and KEK Generation shall negotiate to settle the resulting loss (and such negotiation shall include the negotiation of fair and equitable adjustments to the consideration payable under this Agreement and other provisions of this Agreement impacted by the resulting loss). GenCo shall reasonably consider all settlement offers. If no such settlement is reached within thirty (30) Days after KEK Generation has notified GenCo of such loss, then GenCo may terminate this Agreement by notice to KEK Generation and such termination shall be treated as a termination for a Deemed GOK Wind-Up Event unless GenCo has refused to agree to a reasonable settlement, in which case it shall be treated as a termination due to a No-Fault Condition Precedent having not been satisfied for the purposes of Schedule 3.

7.2 Risk of Loss – Pre-Existing Environmental/Archaeological Conditions

If the estimated costs to fully remediate all Specified Environmental/Archaeological Conditions (as defined in the Power Purchase Agreement) in the aggregate exceed an amount equal to €7,500,000, then KEK Generation may terminate this Agreement by notice to GenCo and such termination shall be treated as a termination for a Deemed GOK Wind-Up Event.

Article 8
Taxes

8.1 Transfer Taxes

GenCo shall pay all Transfer Taxes incurred in connection with this Agreement and the transactions contemplated hereby.

8.2 Property Taxes

- (a) As between the Parties:
- (i) KEK Generation shall be liable for all property Taxes assessed against the Plant Site (KRPP) and apportioned to the period prior to the Transfer Date; and
 - (ii) GenCo shall be liable for all property Taxes assessed against the Plant Site (KRPP) and apportioned to the period on and after the Transfer Date.
- (b) At or prior to Closing, KEK Generation shall pay any property Taxes assessed against the Plant Site (KRPP) which are then past due or have become due and payable in the ordinary course of business, together with any penalty or interest thereon. At Closing, all property Taxes that:
- (i) are applicable to the Plant Site (KRPP);
 - (ii) apply to a period that expires after the Transfer Date; and
 - (iii) have been paid by KEK Generation,

shall be pro-rated between KEK Generation and GenCo as of the Transfer Date and GenCo shall pay the portion of such Taxes that relates to the remainder of the period occurring after the Transfer Date to KEK Generation at Closing.

8.3 Income and Other Taxes

Except as provided in Section 8.1 and Section 8.2, each Party shall pay all present and future Taxes imposed upon it by a Public Authority or any subdivision, taxing authority, or agency thereof in connection with this Agreement and the transactions contemplated hereby.

Article 9 Maintenance of Insurance

9.1 Maintenance of Insurance

- (a) Liability Policy. KEK Generation shall maintain, or cause to be maintained, from the Transfer Date and throughout the Term in full force and effect commercial general liability insurance, including coverage for legal liability arising from bodily injury, personal injury, property damage, contractual liability (including coverage specifically applicable to the undertakings in this Agreement), product(s) and completed operations, and sudden/accidental pollution liability, including legal liability arising out of the acts of independent contractors. 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. The sum insured shall not be less than twenty five million Euros (€25,000,000) per occurrence and in the aggregate per Year. GenCo shall be added as an additional insured.
- (b) Pre-Existing Liability Policy. KEK Generation may, in its discretion, obtain a policy to cover any amount of the potential losses of KEK Generation arising as a result of liability for any Environmental/Archaeological Condition existing at or before the Transfer Date, for which KEK Generation opts not to self-insure. The additional insureds may include GOK and the Specified POEs. GenCo shall reasonably cooperate in relation to any claim by GOK under such policy.
- (c) Environmental Impairment Liability Policy. KEK Generation shall maintain, or cause to be maintained, from the Transfer Date and throughout the Term in full force and effect the

environmental impairment liability insurance including coverage for the entire site of the Kosovo B Facility and Additional Land with respect to Environmental Conditions first occurring on and after the Transfer Date. Each such coverage may be part of the policy (or a separate policy) or provided through an endorsement. The sum insured shall not be less than fifteen million Euros (€15,000,000) per claim and in the aggregate. GenCo shall be added as an additional insured. 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 Kosovo B Facility and Additional Land by any party other than KEK Generation, and including, but without limitation, the costs of environmental investigations, remediation, and monitoring associated with or arising from an Environmental Condition.

- (d) Each policy required to be maintained pursuant to this Section 9.1 shall be issued by an insurer (or reinsurer, to the extent reinsurance is obtained) of sound financial status. Insurers (or any reinsurers) with whom KEK Generation has policies of insurance shall be deemed to be “of sound financial status” if such insurers (or any reinsurers) have either a 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 (or any reinsurers) 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 14.
- (e) It is understood that KEK Generation shall not be in breach of its obligations under this Section 9.1 to the extent that and for so long as:
 - either:
 - (i) any particular insurance (or any required endorsement) is unavailable to KEK Generation under commercially reasonable terms for reasons other than any negligence or default by KEK Generation, provided that KEK Generation has delivered notice thereof to GenCo accompanied by a written report prepared by one (1) independent insurance consultant or insurance broker acting in an independent, non-self-interested 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 KEK Generation is permitted under the Laws of Kosovo to purchase policies in accordance with this Section 9.1, provided that KEK Generation has delivered notice thereof to GenCo accompanied by a written report prepared by one (1) independent insurance consultant or insurance broker acting in an independent, non-self-interested manner, in either case of recognized international standing certifying that such insurance is not available from insurers from whom KEK Generation is permitted under the Laws of Kosovo to purchase policies; and
 - (iii) KEK Generation 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 KEK Generation delivers a notice to GenCo of the terms of that insurance, 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 provides, to the maximum extent reasonably achievable, comparable protection against the risk to be insured by KEK Generation.

Article 10 Representations and Warranties

10.1 Representations and Warranties of GenCo

GenCo represents and warrants to KEK Generation 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 10.3, GenCo shall represent and warrant to KEK Generation 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.

10.2 Representations and Warranties of KEK Generation

KEK Generation represents and warrants to GenCo that as of the Execution Date:

- (a) KEK Generation is duly organized, validly existing, and in good standing under the Laws of Kosovo;
- (b) the execution, delivery, and performance of this Agreement by KEK Generation have been duly authorized by all requisite corporate action, and KEK Generation 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 KEK Generation, 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 KEK Generation or any valid order of any court, or any regulatory agency or other body having authority to which KEK Generation is subject;
- (e) KEK Generation 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;
- (f) there is no action, suit, proceeding, or investigation pending or, to KEK Generation's knowledge, threatened:
 - (i) for the dissolution of KEK Generation;
 - (ii) involving KEK Generation's non-payment of:
 - (A) Taxes to any Public Authority; or
 - (B) any debt to a Person that is:
 - (1) a citizen of or organized under the Laws of Kosovo; or
 - (2) controlled by GOK, KESCO, or a Specified POE; or
 - (iii) otherwise against KEK Generation

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;

- (g) none of the execution, delivery, or performance by KEK Generation 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 KEK Generation;
- (h) each consent of, or declaration, filing or registration with, any Public Authority that is required to be obtained or made, as applicable, by KEK Generation in connection with the execution, delivery and performance of this Agreement and the transaction documents to which it is a party, and the consummation of the transactions contemplated by this Agreement or the transaction documents, has been obtained or made prior to the Closing;
- (i) KEK Generation has good and valid title in and to the Plant Site (KRPP) and the Additional Land (as applicable), free and clear of all Encumbrances (except Permitted Encumbrances). Upon the sale, conveyance, transfer, assignment, and delivery of the Plant Site (KRPP) to GenCo pursuant to this Agreement, GenCo will acquire and receive good and valid title in and to the Plant Site (KRPP), free and clear of all Encumbrances (except Permitted Encumbrances);
- (j) KEK Generation has delivered to GenCo true and complete copies and results of the reports, studies, analyses, tests, or monitoring listed in Schedule 6 which, to the knowledge of the KRPP Project Implementation Unit Staff (under the Ministry of Economic Development) after due enquiry, or to the knowledge of KEK Generation without due enquiry, represent all of the reports and studies developed in or after 2016 pertaining to Environmental/Archaeological Conditions at,

in, on, or under the Sibovc South Mine Field, the Site and the Additional Land, or concerning compliance, by KEK Generation, KEK Mining, or any other Person for whose conduct it is or may be held responsible, with Applicable Standards;

- (k) no third party has a contractual or legal option to buy the Site and there are no rights of easement or other use established by law or contract in favor of third parties related to the Site, other than Permitted Encumbrances; and
- (l) no third party has the contractual or legal right of use or easement related to the Additional Land, other than Permitted Encumbrances.

10.3 Reaffirmation of Representations and Warranties

On the Effective Date, GenCo shall deliver a certificate to KEK confirming that the representations and warranties in Section 10.1 are true and accurate as at such date, and KEK shall deliver a certificate to GenCo confirming that the representations and warranties in Section 10.2 are true and accurate as at such date.

Article 11 Indemnification

11.1 Indemnification

11.1.1 KEK Generation's Indemnification

Except as specifically provided below or elsewhere in this Agreement or the Project Agreements, KEK Generation 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 KEK Generation or any KEK Generation 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 KEK Generation's violation of any Law of Kosovo;
- (c) in relation to any claim or action by a third party resulting from, arising out of, or related to KEK Generation's breach or default of any of its covenants or representations and warranties under this Agreement;
- (d) for any Tax obligations payable by KEK Generation under Article 8;
- (e) for any liabilities arising out of or in connection with any contracts to which KEK Generation is a party (other than any contracts to which GenCo is also a party) that relate to the ownership or maintenance of the Plant Site (KRPP) or the Additional Land prior to the Transfer Date;
- (f) resulting from, related to, or arising out of, any Environmental/Archaeological Condition in relation to the Plant Site (KRPP) or Additional Land existing at or before the Transfer Date, except to the extent that such liabilities:
 - (i) result from, relate to, or arise out of any action of GenCo or any Affiliate or Person under GenCo's control, including in relation to the commencement (including before the Transfer Date, if any) of GenCo's activities at the Plant Site (KRPP) or Additional Land; or

- (ii) are indemnified by GOK pursuant to Section 8.2 (*Indemnification for Environmental Standards*) of the Implementation Agreement or relate to costs or Losses that are payable or actually paid to GenCo in accordance with Article 15 (*Environmental Remediation*) of the Power Purchase Agreement; and
- (g) resulting from, related to, or arising out of, any Environmental/Archaeological Condition existing on the Plant Site (KRPP) or Additional Land after the Transfer Date, including any such conditions resulting from the action or inaction of KEK Generation or any other Specified POE or GOK, except to the extent that such liabilities result from or relate to any action of GenCo or any Person under GenCo's control or of a third party to the extent that GenCo, acting in accordance with Prudent Utility Practices, could have prevented the Environmental/Archaeological Condition caused by such third party.

11.1.2 GenCo's Indemnification

Except as specifically provided below or elsewhere in this Agreement or the Project Agreements, GenCo shall indemnify and defend KEK Generation and any KEK Generation 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, KEK Generation or any KEK Generation 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;
- (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;
- (d) for any Tax obligations payable by GenCo under Article 8; or
- (e) resulting from, related to, or arising out of, any Environmental/Archaeological Condition in relation to the Plant Site (KRPP) or Additional Land coming into existence after the Transfer Date (or, if GenCo acquires possession of any such site following the Transfer Date, the date GenCo acquires possession of such site), to the extent such Environmental/Archaeological Condition is caused by GenCo or any Person under GenCo's control or a third party to the extent that GenCo, acting in accordance with Prudent Utility Practices, could have prevented the Environmental/Archaeological Condition caused by such third party, and except to the extent that such liabilities result from any Environmental/Archaeological Condition that existed at or before the Transfer Date or result from or relate to any action or inaction of KEK Generation or any other Specified POE or GOK.

11.1.3 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 11 in proportion to its relative degree of fault.

11.1.4 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 11.1.4(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/Archaeological Condition regardless of the date on which any such condition is discovered.

11.2 Limitation on Indemnification

Notwithstanding any other provision of this Agreement, in no event shall KEK Generation or GenCo or any KEK Generation 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 KEK Generation or GenCo or any KEK Generation 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.

11.3 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 11, 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.

11.4 Defense of Claims

11.4.1 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 11 (an “**Indemnification Notice**”).
- (b) The delay or failure of such indemnified Party to provide an Indemnification Notice required pursuant to this Section 11.4 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**”).

11.4.2 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 11, 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 11 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.

11.4.3 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 11.4.3(a)(i), 11.4.3(a)(ii), 11.4.3(a)(iii), or 11.4.3(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 12 Limitation of Liability

12.1 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 12.1, except in relation to contracts (other than the O&M Contract and

Administrative Services Agreement (as defined in the Power Purchase Agreement) and any LTM Agreement approved by NKEC under Article 3 (*Pre-Construction Obligations*) of the Power Purchase Agreement) between GenCo and any Affiliates of Ultimate Sponsor (which shall be excluded by the foregoing provisions of this Section 12.1).

- (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 (i) to claim and recover any and all lost revenues explicitly provided for under Article 20 (*Rights and Obligations Upon Termination; Compensation*) 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 13 Termination

13.1 Termination

Except as provided in Section 3.4, 5.4, and 7.1, no Party may terminate this Agreement except in accordance with the Implementation Agreement and the Sponsor Support Agreement.

13.2 Effect of Termination or Breach

Except as otherwise provided in this Agreement, the Parties' sole and exclusive remedies for a termination or breach of this Agreement shall be those remedies set forth in the Implementation Agreement and the Sponsor Support Agreement.

13.3 Notice to GOK of KEK Generation Breach of This Agreement

In the event that a KEK Generation breach of this Agreement occurs, GenCo shall deliver a notice (a "**Special GOK Notice of Default**") of the occurrence of such KEK Generation breach of this Agreement 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 KEK Generation hereunder with the same effect as if such payment or act had been made or performed by KEK Generation.

13.4 Obligations under This Agreement and Other Project Agreements

- (a) 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 KEK Generation 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.
- (b) To the extent that any obligation of KEK Generation under this Agreement is also an obligation of KEK Generation under any other Project Agreement, then any cure, settlement, or waiver of, 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.

13.5 Obligations Following Termination of Implementation Agreement

In the event that the Implementation Agreement is terminated and GOK purchases the KRPP Facility pursuant to Article 20 (*Rights and Obligations Upon Termination; Compensation*) of the Implementation Agreement, to the extent provided under the Implementation Agreement, the Parties agree that KEK Generation shall execute, together with GOK and GenCo, all reasonable and customary agreements and documents necessary to implement the assignment and novation of this Agreement from and after the date of such termination.

Article 14 Dispute Resolution

14.1 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.

14.2 Dispute Resolution Procedures

14.2.1 Informal Dispute Resolution by Parties

Upon receipt by a Party of a notice from the other Party of a Dispute in accordance with Section 14.1 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 14.2.2.

14.2.2 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 14.2.1 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 14.3 (in the case of a Technical Dispute) or in accordance with Section 14.4 (in the case of a Payment Dispute), as the case may be, in each case subject to Section 14.2.2(f).
- (b) In the event that a Dispute may be considered both a Payment Dispute and a Technical Dispute, the Dispute shall be referred to Section 14.4 and the expert appointed thereunder shall determine, in accordance with Section 14.4(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 14.4 and the remaining portion (if any) shall be referred to and resolved pursuant to Section 14.3.
- (c) 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 14.3.
- (d) 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 14.5; provided, however, that if such Party has not referred the Dispute for resolution in accordance with the procedures described in Section 14.5 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 14.3(f) (in the case of a Technical Dispute) or Section 14.4(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 14.5.

- (e) In the event that the Parties are unable to resolve a Dispute by informal discussions in accordance with Section 14.2.1 and such Dispute is not a Technical Dispute or a Payment Dispute, then the Dispute shall be resolved in accordance with Section 14.5.
- (f) The Parties may, through mutual agreement, elect to resolve any Dispute (including a Technical Dispute and a Payment Dispute) in accordance with Section 14.5.

14.3 Technical Disputes

Any Technical Dispute subject to this Section 14.3 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 4 hereto. If the Parties are unable to appoint an expert from the list on Schedule 4 or cannot agree on an expert from the list on Schedule 4, or if the Technical Dispute involves issues that require an expert not listed on Schedule 4, 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 4, such person shall become the expert for 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 14.3(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 14.3. If the expert determines that the Dispute is not capable of such resolution, the Dispute shall be resolved pursuant to Section 14.5.
- (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 14.2.2(d) and Section 14.3(h).
- (h) Except as provided in Section 14.3(i) with respect to the payment of costs, the proceedings under this Section 14.3 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 14.5. The process under this Section 14.3 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.

14.4 Payment Disputes

Any Payment Dispute subject to this Section 14.4 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 4 hereto. If the Parties are unable to appoint an expert from the list on Schedule 4 or cannot agree on an expert from the list on Schedule 4, or if the Payment Dispute involves issues that require an expert not listed on Schedule 4, 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 4, such person shall become the expert for 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 14.4(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 14.4. If the expert determines that the Dispute is not capable of such resolution, the Dispute shall be resolved pursuant to Section 14.5; provided, however, that if the Dispute was referred to this Section 14.4 pursuant to Section 14.2.2(b), the Dispute shall be resolved pursuant to Section 14.3.
- (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 14.2.2(d) and Section 14.4(h).
- (h) Except as provided in Section 14.4(i) with respect to the payment of costs, the proceedings under this Section 14.4 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 14.5. The process under this Section 14.4 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.

14.5 Arbitration

- (a) Any Dispute subject to this Section 14.5 shall, subject to Section 14.5(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 KEK Generation is a national and resident of Kosovo, while either GenCo or KEK Generation, as the case may be, is controlled by nationals of another Contracting State (as such term is used in the ICSID Convention) GenCo or KEK Generation, 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 14.5, 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 of 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 14.5 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 20 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 14.5(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).

14.6 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 14.1, 14.3 and 14.4, the rights of the Parties to proceed with Dispute resolution under Section 14.1, 14.3 and 14.4 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 KEK Generation hereunder.

14.7 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.

14.8 Commercial Acts

KEK Generation unconditionally and irrevocably agrees that the execution, delivery, and performance by it of this Agreement constitute its private and commercial acts.

14.9 Sovereign Immunity; Jurisdiction

- (a) KEK Generation hereby irrevocably and unconditionally:
- (i) agrees that should any proceedings be brought against KEK Generation 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 KEK Generation 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 14.9(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 KEK Generation 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 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 14.9(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 15
Miscellaneous

15.1 Notices

(a) All notices and other communications required or permitted to be given by a Party (including any invoices 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 KEK Generation:

Kosovo Energy Corporation, J.S.C.
Nënë Tereza nr. 36,
Pristina, Kosovo
Attention: Arben Gjukaj
Tel: + 381-38-528-684
Fax: + 381-38-527-275
E-mail: arben.gjukaj@kek-energy.com

with a copy (which shall not constitute notice) to:

Government of Kosovo
Rr. Nene Tereza Nr. 36,
Pristina, Kosovo
Attention: Minister of Economic Development
Tel.: [_____]
Fax: [_____]
E-mail: [_____]

If to GenCo:

ContourGlobal Terra 6 S.à r.l.
35-37 Avenue de la Liberté
L-1931 Luxembourg, Grand Duchy of Luxembourg
Attention: The board of managers
Tel: + (352) 28 86 78 00
Fax: + (352) 24 52 73 26
E-mail: CGK_CEO@contourglobal.com and
CGK_GC@contourglobal.com

provided 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 15.1(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 15.1(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. Failure to deliver a translation of a notice or other communication in accordance with this Section 15.1(c) shall not affect the effectiveness of such notice or other communication as established pursuant to Section 15.1(b).
- (d) In the event that a notice delivered by GenCo to KEK Generation or GOK pursuant to this Agreement requires KEK Generation 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 KEK Generation or GOK, as applicable, to respond (including any deemed approval or non-objection).

15.2 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.

15.3 KEK Generation's Cooperation, Assistance, and Information

KEK Generation 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 KEK Generation and were set forth herein.

15.4 Survival

- (a) On the expiry 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 which arose prior to and remain undischarged at the date of expiry or termination, and those obligations and liabilities which expressly survive such expiry or termination pursuant to Section 15.4(b).
- (b) Notwithstanding anything contained in this Agreement to the contrary, the provisions of Article 1 (*Definitions; Interpretation*), Article 9 (*Maintenance of Insurance*), Article 11 (*Indemnification*),

Article 12 (*Limitation of Liability*), Article 14 (*Dispute Resolution*), and Article 15 (*Miscellaneous*) shall expressly survive any termination or expiry of this Agreement.

15.5 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.

15.6 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.

15.7 Relationship of the Parties

- (a) This Agreement does not and shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligations or similar liability upon either Party.
- (b) 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.

15.8 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.

15.9 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.

15.10 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.

15.11 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

15.12 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.

15.13 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 CG 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 15.13(a), this Agreement shall not be assigned by GenCo to any other party without the prior written consent of KEK Generation.
- (b) Subject to Section 15.13(c), this Agreement shall not be assigned by KEK Generation without the prior written consent of GenCo.
- (c) The Parties acknowledge and agree that GOK might privatize, or separate from KEK Generation, the generation capacity functions of KEK Generation. Notwithstanding Section 15.13(b), in the event a KEK Generation Reorganization or Privatization occurs, KEK Generation may assign all of its right, title, and interest in and to this Agreement to any Licensed KEK Generation Successor if (i) GOK without interruption guarantees the performance of the Licensed KEK Generation Successor on the same terms and conditions as the Government Guarantee or such other commercial security is provided for the obligation of the Licensed KEK Generation Successor that in the reasonable business judgment of GenCo provides an adequate alternative to the Government Guarantee, (ii) the Licensed KEK Generation Successor is reasonably capable of performing all KEK Generation 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 KEK Generation pursuant to this Section 15.13 shall not relieve KEK Generation of its obligations under any Project Agreement or any Financing Document existing as of the date of such novation, transfer, or assignment.
- (d) Notwithstanding Section 15.13(b), in the event that GOK acquires all of GenCo's rights, title, and interests in and to the KRPP Facility either (i) at the expiration of the term of the Implementation Agreement pursuant to Section 20.6 (*Expiry of the Term*) of the Implementation Agreement or (ii) pursuant to Article 20 (*Rights and Obligations Upon Termination; Compensation*) of the Implementation Agreement following the termination of the Implementation Agreement, GenCo shall, to the extent provided under the Implementation Agreement, without the need for any consent by KEK Generation, GOK or any other Person, assign all of its right, title, and interest in and to this Agreement to GOK (or GOK's designee, as selected in accordance with the terms of the Implementation Agreement), and the assigning party will be released from any and all liabilities or obligations under this Agreement arising after the date of such assignment. If GenCo so requests, KEK Generation shall execute, together with GOK and GenCo, all reasonable and customary agreements and documents necessary to implement the assignment and novation of this Agreement from and after the date of such termination. Should GOK or KEK Generation not reasonably comply with this Section 15.13(d), GenCo shall have the right to terminate this Agreement by delivering a notice to KEK Generation. The transfer or assignment of assets by GenCo pursuant to this Section 15.13(d) shall not relieve KEK Generation of its obligations

under any Project Agreement or Financing Document existing as of the date of such transfer or assignment.

- (e) This Agreement shall bind and inure to the benefit of the Parties and any successor or assignee acquiring an interest hereunder consistent with Section 15.13(a) and Section 15.13(b).
- (f) Any assignment in contravention of this Section 15.13 shall be null and void.

15.14 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. GenCo shall contractually require all GenCo 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.

15.15 Confidentiality

- (a) Subject to Section 15.15(d), this Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and, subject to Section 15.15(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 15.15(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 15.15;
 - (ii) to Persons professionally engaged by or on behalf of such Party (including its advisors, consultants, and insurers), provided 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 15.15; or

- (v) to any expert or arbitrator appointed pursuant to and under the terms of this Agreement.
- (d) Notwithstanding the provisions of Section 15.15(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 15.15 shall no longer apply to GenCo in respect of any such information released to the public.

15.16 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.

15.17 Equitable Relief

The Parties agree that to the fullest extent permitted under any applicable law, a Party shall be entitled to injunctive or other equitable relief under this Agreement.

15.18 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.

15.19 Further Assurances

The Parties shall each execute any and all reasonable documents necessary to effectuate the purposes of this Agreement.

15.20 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.

15.21 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.

Kosovo Energy Corporation, J.S.C.

By:  _____

Name: Arben Gjukaj

Title: CEO

ContourGlobal Signatory

By:  _____

Name: Joseph C. Brandt

Title: CEO, ContourGlobal

By: _____

Name: _____

Title: _____

[Notary]

Schedule 1
Description of the Plant Site (KRPP) and Additional Land

The “Plant Site (KRPP)” is the area indicated in red below and marked “Plant Site (KRPP),” exclusive of the Carbon Capture Area and the Construction Lay-Down Area (KRPP). The “Carbon Capture Area” is the area indicated in yellow below and marked “Carbon Capture Area and Construction Lay-Down Area (KRPP).” The “Construction Lay-Down Area (KRPP)” is the area indicated in orange below and marked “Construction Lay-Down Area (KRPP)” plus the Carbon Capture Area, and shall be exclusive of the Plant Site (KRPP). The area indicated with white lines below (including at the Kosovo B site and at existing transportation roads and rail lines) marks the property of KEK Generation.



The "Water Delivery Systems Corridor" is the green line indicated below.



Schedule 1 - 2

Schedule 2
Additional Permitted Encumbrances

The Permitted Encumbrances shall include:

1. None.

Schedule 3
Conditions Precedent to Closing

1. Deemed GOK Wind-Up Events

1.	All representations and warranties that GOK, KEK Generation or any other Specified POE gives in this Agreement or any of the other Project Agreements to which it is a party shall have been accurate in all material respects as of the Execution Date and/or Effective Date, to the extent then made, and shall be accurate in all material respects as of the time of Closing as if then made;
2.	All of the covenants and obligations that KEK Generation, GOK, or any other Specified POE is required to perform or to comply with pursuant to this Agreement or any of the other Project Agreements at or prior to Closing shall have been duly performed and complied with in all material respects;
3.	GenCo shall have received a resolution, in form and substance reasonably acceptable to GenCo, evidencing all requisite corporate or governmental (as applicable) approvals and authorizations for the GOK and each Specified POE, to undertake the execution, delivery, and performance of the Project Agreements to which each is a party;
4.	KEK Generation shall have paid all Taxes that it is required to pay under this Agreement;
5.	GenCo shall have received a copy of all then applicable site procedures issued by KEK Mining under the Ash and Gypsum Disposal Agreement;
6.	The Kosovo Competition Authority shall have granted to GenCo all Consents required under the Law on Protection of Competition, 2010, to the extent consistent with the Laws of Kosovo and the Project Agreements;
7.	KEK Mining and the Water Supplier shall have caused its insurers or agents to provide GenCo with evidence in form and substance reasonably acceptable to GenCo that KEK Mining and the Water Supplier have obtained all the insurance policies that each is required to obtain as of the Transfer Date under the Project Agreements;
8.	KEK Generation shall have delivered (or tendered subject only to Closing) to GenCo releases of all Encumbrances on the Plant Site (KRPP) or the Additional Land, other than Permitted Encumbrances;
9.	GOK shall have authorized any "State Guarantee" (as defined in the Law on Public Debt, 2009) issued to GenCo in connection with the Kosovo e Re Project, and the Assembly of the Republic of Kosovo shall have approved such "State Guarantee" as and to the extent required under the Laws of Kosovo, including the Law on Public Debt, 2009;
10.	As and to the extent required under the Laws of Kosovo, the Assembly of the Republic of Kosovo shall have given its sovereign approval to the Project Agreements;
11.	To the extent that Schedule 1 of the Implementation Agreement provides for any fiscal incentives or concessions, GOK has authorized the provision of such fiscal incentives or concessions to GenCo in connection with the Kosovo e Re Project, and the Assembly of the Republic of Kosovo shall have approved such fiscal incentives or concessions to the extent required under the Laws of Kosovo;

12.	GOK shall have executed and delivered to GenCo the Government Guarantee;
13.	GOK shall have selected and hired the GOK-Appointed Independent Engineer pursuant to the Implementation Agreement;
14.	An Independent E&S Consultant shall have been selected pursuant to the Implementation Agreement;
15.	NKEC and GOK shall have delivered to the Lenders a duly executed certificate in accordance with Section 3.9.7 (<i>Certification</i>) of the Power Purchase Agreement to the extent each has no knowledge of any matter that would reasonably preclude it from making such certification.
16.	KEK Mining shall have selected the point of the Coal Yard (KRPP, Kosovo B) on which the lignite Delivery Point shall be located;
17.	NKEC shall have approved the O&M Contract with the O&M Contractor and the Administrative Services Agreement with the Administrative Services Contractor (each as defined in the Power Purchase Agreement) that GenCo entered into on or before the Transfer Date to the extent that the O&M Contract and the Administrative Services Agreement (as defined in the Power Purchase Agreement) are consistent with the terms therefor set forth in the Power Purchase Agreement;
18.	The Kosovar ministry responsible for energy shall have not exercised any right under the Law on Energy, 2016 to require cogeneration in relation to the KRPP Facility;
19.	GOK shall have become the owner of all of the Initial Property (as defined in the Lease Agreement) to the extent so required as of the Transfer Date under the terms of the Project Agreements;
20.	The Resettlement Policy Framework shall have been adopted by GOK;
21.	No part of the Site shall, as of Closing, have been condemned, expropriated, or compulsorily acquired by a Public Authority or be the subject of any announced or active proceeding by a Public Authority to condemn, appropriate, or acquire the Site;
22.	ERO shall have issued to NKEC a license in respect of the KRPP Facility, including for the export of power;
23.	ERO shall have taken such steps as are required under the Laws of Kosovo, including the issuance of necessary rules and regulations, to permit and provide for the offtake of and payment for the capacity and energy of the KRPP Facility by KESCO and Other Suppliers;
24.	the Mining Consultant shall have determined reference prices as set forth in Schedule 1 of the Lignite Supply Agreement;
25.	The Mining Consultant shall have reviewed and confirmed whether the Index Adjustment Factor (as defined in the Lignite Supply Agreement) described in Schedule 1 of the Lignite Supply Agreement is appropriate for KEK Mining;

Schedule 3 - 2

26.	<p>The Mining Consultant shall have concluded its work as described in the Lignite Supply Agreement, including:</p> <ul style="list-style-type: none"> (i) issuing the Lignite Pricing Report; and (ii) concluding the Mine Field Analysis, (iii) and the Mining Consultant has reviewed the quality and quantity of the lignite in the Sibovc South Mine Field and commented on whether such is consistent with the Contract Lignite Quality;
27.	<p>The Mining Consultant shall have reviewed and commented on the ranges and reference levels for the Lignite calorific value, sulphur content in Lignite, ash content in Lignite, moisture content in Lignite, and xylite content in Lignite as set forth in the Project Agreements and shall have advised as to whether mechanisms to provide for the drying of Lignite prior to the Delivery Point are appropriate;</p>
28.	<p>The Mining Consultant shall have reviewed the insurance coverage described in Schedule 2 of the Lignite Supply Agreement and in the Ash and Gypsum Disposal Agreement and commented on whether such is appropriate for KEK Mining;</p>
29.	<p>The Mining Consultant shall have reviewed the Take or Pay Quantity (as defined in the Lignite Supply Agreement) provided under the Lignite Supply Agreement and commented on whether the quantity specified therein is:</p> <ul style="list-style-type: none"> (i) sufficient to fund KEK Mining’s operation of the Sibovc South Mine Field as required under the Lignite Supply Agreement; and (ii) is not more than is sufficient to fund KEK Mining’s operation of the Sibovc South Mine Field as required under the Lignite Supply Agreement;
30.	<p>The Mining Consultant shall have reviewed the Target Debt to Equity Ratio (as defined in the Lignite Supply Agreement) set forth in the Lignite Supply Agreement and commented on its reasonableness;</p>
31.	<p>KEK Mining shall have obtained all of the KEK Mining Consents required from the Transfer Date to develop the Sibovc South Mine Field and operate the Mining Assets, to the extent not otherwise specified in this Part 1;</p>

32.	<p>ICMM shall have:</p> <ul style="list-style-type: none"> (i) following approval by the Parties and to the extent required, approved the Selection of Site (as defined in the Ash and Gypsum Disposal Agreement) and any reclamation plan for disposal of Ash and Gypsum or reasonably determined that ICMM has no jurisdiction and authority with respect to matters related to the Selection of Site (as defined in the Ash & Gypsum Disposal Agreement) and any reclamation plan to the extent consistent with the Laws of Kosovo; (ii) reviewed and approved the Mine Development Plan for the Sibovc South Mine Field to the extent consistent with the Laws of Kosovo; (iii) following approval by the Parties and to the extent required, reviewed and approved the mine reclamation plan for the Sibovc South Mine Field to the extent consistent with the Laws of Kosovo; and (iv) issued to KEK Mining an amended Mining License, allowing for exploitation of the Sibovc South Mine Field (subject to any conditions in the Mining License), that: <ul style="list-style-type: none"> (A) is sized so that the Mining License includes a portion of the Sibovc South Mine Field that is sufficient to provide at least one hundred twenty percent (120%) of the expected Lignite requirements for the KRPP Facility, Kosovo A Facility, and Kosovo B Facility for the full terms of their respective lignite supply agreements; and (B) has a termination date that permits the supply of Lignite from the Sibovc South Mine Field through the termination of the Power Purchase Agreement; <p>to the extent consistent with the Laws of Kosovo;</p>
33.	<p>ERO shall have issued the Generation License and any licenses required for the sale (including by export, to the extent consistent with the Laws of Kosovo, the Applicable Standards, the Project Agreements, and Prudent Utility Practices and any approvals associated with the transfer of assets in relation to the Kosovo e Re Project) of power, materially consistent with the Project Agreements;</p>
34.	<p>ERO shall have issued a determination that ERO considers competition undertaken in connection with the Kosovo e Re Project in accordance with the Law on Public Private Partnerships to be an effective tendering process for purposes of Schedule 9 of the Generator Pricing Rule to the extent consistent with the Laws of Kosovo;</p>
35.	<p>GOK shall have received any necessary approvals in connection with the Kosovo e Re Project relating to competition matters under the Energy Community Treaty;</p>
36.	<p>NKEC shall have approved the Ammonia, Fuel Oil, and Limestone Tender Policy, to the extent consistent with the Project Agreements;</p>
37.	<p>An insurance advisor to GOK shall have advised GOK that the insurance coverage described in the Water Supply Agreement is appropriate for the Water Supplier or the Water Supply Agreement shall have been amended accordingly;</p>
38.	<p>To the extent the ESIA (GenCo) and the related E&S Management Plan is consistent with the Laws of Kosovo and the Applicable Standards, the Ministry of the Environment and Spatial Planning shall have approved the ESIA (GenCo) and the E&S Management Plan as of the Transfer Date;</p>

Schedule 3 - 4

39.	The GOK-Appointed Independent Engineer shall have issued the Thermal Efficiency and BAT Study, confirming that 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 as set forth in Section 1(b) (<i>Required Technical Specifications</i>) of Schedule 14 of the Power Purchase Agreement;
40.	The Back-to-Back Power Purchase Agreement shall be in full force and effect, and all conditions precedent to the obligations of the parties thereto shall have been satisfied;
41.	GOK shall have in relation to Connection Area (as defined in the Implementation Agreement) developed and approved the Resettlement Action Plan (as defined in the Implementation Agreement)(including a livelihood restoration plan) as required under the Implementation Agreement;
42.	There shall not have been a PPP Partner Selection Process Suit (as defined in the Implementation Agreement) (excluding PPP Partner Selection Process Suits (as defined in the Implementation Agreement) (i) that have been dismissed and are not subject to appeal, (ii) finally resolved or settled on terms reasonably acceptable to the parties, (iii) brought by GenCo or (iv) materially resulting from or substantially contributed to by any failure on the part of the Ultimate Sponsor, Sponsor HoldCo, GenCo, or their Affiliates to satisfy or comply with the terms of the RFQ or RFP issued in connection with the Kosovo e Re Project related to the positing of any bid bond and/or performance security under the Project Agreements);
43.	There shall not be a successful, pending or threatened proceeding before a court of competent jurisdiction in Kosovo against any party to a Project Agreement, a Construction/Maintenance Contract or the Back-to-Back Power Purchase Agreement, or in respect of the Site(other than a PPP Partner Selection Process Suit (as defined in the Implementation Agreement), a proceeding brought by GenCo or a GenCo Party, or any proceeding directed specifically against GenCo or a GenCo Party by one of its direct or indirect owners or shareholders): <ul style="list-style-type: none"> (i) involving any challenge to, or seeking damages or other relief in connection with, any of the transactions contemplated by this Agreement or any of the other Project Agreements, Construction/Maintenance Contracts or the Back-to-Back Power Purchase Agreement; or (ii) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on, or otherwise interfering with any of the transactions contemplated by this Agreement or any of the other Project Agreements or the Back-to-Back Power Purchase Agreement;
44.	All conditions precedent to Financial Closing that are within the sole control of GOK or any Specified POE (and are customary for project financings of this type) shall have been satisfied or waived;
45.	Schedule 2 of this Agreement shall not have been amended or updated in a manner that would reasonably entitle GenCo to terminate this Agreement pursuant to Section 3.4 hereof;
46.	RESERVED;
47.	Neither GOK nor any Specified POE is a Restricted Party;

48.	<p>Each of:</p> <ul style="list-style-type: none"> (i) to the extent required, the B&M Mines/Sibovc South Mine Field Reclamation Plan shall have been updated by KEK Mining; (ii) the ESIA (Mine) shall have been prepared by KEK Mining in accordance with the Applicable Standards and in a manner acceptable to the World Bank; (iii) the KEK Mining ESMS and KEK Mining ESMPs shall have been prepared by KEK Mining as set forth in Annex I to this Schedule 3 in a manner acceptable to the World Bank; and (iv) KEK Mining shall have developed and approved a Resettlement Action Plan (as defined in the Implementation Agreement) in relation to the Mining Assets in a manner acceptable to the World Bank;
49.	<p>Each of:</p> <ul style="list-style-type: none"> (i) the Water Management Plan, including a grievance mechanism, shall have been prepared by Water Supplier in a manner acceptable to the World Bank; and (ii) an emergency preparedness and response plan as set forth in Annex II to this Schedule 3 shall have been prepared by Water Supplier in a manner acceptable to the World Bank;
50.	<p>NKEC and GOK shall have approved the proposed Project Budget submitted to NKEC and GOK in accordance with Section 3.16 (<i>Agreement on the Project Budget</i>) of the Power Purchase Agreement if it has been approved by Lenders (without taking into consideration any approval by any Affiliated Lender) and results in a levelized price per MWh in an amount no greater than the Agreed €/MWh Target in accordance with the Base Case Financial Model based on such proposed Project Budget (with the understanding that GenCo in good faith shall consider reasonable comments of NKEC or GOK on the proposed Project Budget).</p>

2. Deemed GenCo Wind-Up Events

1.	<p>All of GenCo's representations and warranties in this Agreement and any of the other Project Agreements shall have been accurate in all material respects as of the Execution Date and/or Effective Date, to the extent then made and shall be accurate in all material respects as of the time of Closing as if then made;</p>
2.	<p>All of the covenants and obligations that GenCo, Sponsor HoldCo, or the Ultimate Sponsor is required to perform or to comply with pursuant to this Agreement or any of the other Project Agreements at or prior to Closing shall have been duly performed and complied with in all material respects;</p>
3.	<p>KEK Generation shall have received a resolution, in form and substance reasonably acceptable to KEK Generation, evidencing all requisite corporate approvals and authorizations for GenCo, the Sponsor HoldCo, and the Ultimate Sponsor to undertake the execution, delivery, and performance of the Project Agreements to which each is a party;</p>
4.	<p>GenCo shall have paid all Taxes that it is required to pay under this Agreement;</p>

5.	To the extent (i) the Tender (Plant) (as defined in the Power Purchase Agreement) for the EPC Contract and the LTM Agreement has been successful, (ii) GenCo has agreed on a final EPC Contract and LTM Agreement with the winning bidder, as applicable, (iii) NKEC and GOK has each delivered to the Lenders the certificate referred to in Section 3.9.7 (<i>Certification</i>) of the Power Purchase Agreement, (iv) if GenCo elects to separately procure the Specified Environmental Condition Remediation Contractor in accordance with Sections 3.9.5(g) (<i>Requirements for EPC/LTM Bidder Consortia</i>) and 15.2(a) (<i>Environmental Remediation to Abate a Specified Environmental/Archaeological Condition</i>) of the Power Purchase Agreement, the Tender (Environmental) (as defined in the Power Purchase Agreement) for the Specified Environmental Condition Remediation Contractor has been successful, and (v) GenCo has agreed on a final Specified Environmental Condition Remediation Contract with the winning bidder, then GenCo shall have executed the EPC Contract, the LTM Agreement, and the Specified Environmental Condition Remediation Contract, each in accordance with the requirements of the Power Purchase Agreement;
6.	GenCo shall have established proper tender procedure for Kosovar goods, materials, and services taking into account Kosovar local market conditions and enabling Kosovar Persons to bid to supply such goods and services in accordance with the Implementation Agreement;
7.	The Community Development Fund shall have been established and partially funded in the amount of €1.5 million in accordance with the terms of the Sponsor Support Agreement and the Implementation Agreement;
8.	GenCo shall have delivered a copy of all then applicable site procedures issued by GenCo under the Power Purchase Agreement;
9.	GenCo shall have applied for, in accordance with the Project Agreements, the Generation License and any licenses then required for the sale, including by export, of power, materially consistent with the Project Agreements and any approvals associated with the transfer of assets in relation to the Kosovo e Re Project;
10.	GenCo shall have applied to the Kosovo Competition Authority for all Consents required under the Law on Protection of Competition, 2010;
11.	GenCo shall have prepared the Ammonia, Fuel Oil, and Limestone Tender Policy consistent with the requirements of the Project Agreements;
12.	GenCo or the EPC Contractor shall present the ESMS-EPC (Plant) in form and content reasonably acceptable to the Independent E&S Consultant;
13.	GenCo or the EPC Contractor shall present the ESMPs-EPC (Plant) in form and content reasonably acceptable to the Independent E&S Consultant;
14.	If GenCo elects to separately procure the Specified Environmental Condition Remediation Contractor in accordance with Sections 3.9.5(g) (<i>Requirements for EPC/LTM Bidder Consortia</i>) and 15.2(a) (<i>Environmental Remediation to Abate a Specified Environmental/Archaeological Condition</i>) of the Power Purchase Agreement, GenCo or the Specified Environmental Condition Remediation Contractor shall present the ESMS-Enviro in form and content reasonably acceptable to the Independent E&S Consultant;
15.	If GenCo elects to separately procure the Specified Environmental Condition Remediation Contractor in accordance with Sections 3.9.5(g) (<i>Requirements for EPC/LTM Bidder Consortia</i>) and 15.2(a) (<i>Environmental Remediation to Abate a Specified Environmental/Archaeological Condition</i>) of the Power Purchase Agreement, GenCo or the Specified Environmental Condition Remediation Contractor shall present the ESMPs-Enviro in form and content reasonably acceptable to the Independent E&S Consultant;
16.	GenCo shall have caused 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;
17.	GenCo shall have caused its insurers or agents to provide the applicable counterparty under the Project Agreements, as applicable, with evidence in form and substance reasonably acceptable to such counterparty (including a final copy of the insurance report produced by a reputable insurance consultant) that GenCo has obtained all the insurance policies that it is required to obtain as of the Transfer Date under the Project Agreements;

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18.	<p>GOK shall have received evidence in form and substance reasonably acceptable to GOK that:</p> <ul style="list-style-type: none"> (i) the board of directors of GenCo has pre-approved the sale of all or substantially all of the assets of GenCo as contemplated in Article 20 (<i>Rights and Obligations Upon Termination; Compensation</i>) of the Implementation Agreement; and (ii) Sponsor HoldCo has as sole shareholder of GenCo pre-approved the sale of all or substantially all of the assets of GenCo as contemplated in Article 20 (<i>Rights and Obligations Upon Termination; Compensation</i>) of the Implementation Agreement;
19.	The ESIA (GenCo) shall have been prepared in accordance with the Laws of Kosovo, the Applicable Standards and the requirements of the Lenders;
20.	The Sponsor HoldCo shall have delivered to GOK the Financing Security (as defined in the Sponsor Support Agreement) as required by the Sponsor Support Agreement, and such shall have been in full force and effect through the Transfer Date;
21.	GenCo shall have delivered to GOK the Construction Security (as defined in the Power Purchase Agreement) as required by the Power Purchase Agreement;
22.	GenCo shall have submitted to the Kosovar ministry responsible for energy an analysis of the potential for cogeneration at the KRPP Facility in accordance with Article 17 of the Law on Energy, 2016;
23.	GenCo shall have entered into the O&M Contract with the O&M Contractor on or before the Transfer Date and provided such O&M Contract to NKEC for NKEC's review and approval;
24.	GenCo shall have entered into the Administrative Service Agreement with the Administrative Services Contractor on or before the Transfer Date and provided such Administrative Services Agreement to NKEC for NKEC's review and approval;
25.	GenCo shall have delivered to GOK the Land Acquisition Report (as defined in the Implementation Agreement);
26.	The system impact study and facility study required to identify the appropriate connection assets shall have been undertaken by GenCo in accordance with the Connection Agreement;
27.	To the extent that the Financing Documents and Construction/Maintenance Contracts have been executed, GenCo shall have delivered to KEK Generation a copy of each Financing Document and Construction/Maintenance Contract to which GenCo is a party, duly executed by GenCo;
28.	All conditions precedent to Financial Closing that are within the sole control of GenCo or a GenCo Affiliate (and are customary for project financings of this type) shall have been satisfied or waived;
29.	None of GenCo nor any GenCo Party is a Restricted Party;
30.	<p>There shall not be a successful, pending or threatened a proceeding brought by GenCo or a GenCo Party, or any proceeding directed specifically against GenCo or a GenCo Party by one of its direct or indirect owners or shareholders before a court of competent jurisdiction</p> <ul style="list-style-type: none"> (i) involving any challenge to, or seeking damages or other relief in connection with, any of the transactions contemplated by this Agreement or any of the other Project Agreements, Construction/Maintenance Contracts or the Back-to-Back Power Purchase Agreement; or (ii) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on, or otherwise interfering with any of the transactions contemplated by this Agreement or any of the other Project Agreements or the Back-to-Back Power Purchase Agreement; and

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3. No-Fault Events

1.	Neither the consummation nor the performance of any of the transactions contemplated by this Agreement or any of the other Project Agreements will, directly or indirectly (with or without notice or lapse of time), contravene or conflict with or result in a violation of or cause GenCo to suffer any adverse consequence under any applicable Law of Kosovo;
2.	KEK Mining and GenCo shall have agreed on the site selected for GenCo Exclusive Ash Landfill and GenCo Exclusive Gypsum Landfill;
3.	Each of: <ul style="list-style-type: none"> (i) the Lenders shall have not objected to the ESIA (GenCo) and E&S Management Plan as of the Transfer Date; and (ii) the Independent E&S Consultant shall have reviewed and reasonably approved the ESIA (GenCo);
4.	Each of: <ul style="list-style-type: none"> (i) KOSTT has not reasonably objected to the findings of the system impact study and facility study; and (ii) the Connection Agreement shall have been amended to include a detailed specification of all land assets, connection assets, and metering assets required in connection with the connection of the KRPP Facility pursuant to the terms of the Connection Agreement;
5.	The first five-year binding budget for the O&M Contractor shall have been set pursuant to Section 3.14(f) (<i>O&M Contract</i>) of the Power Purchase Agreement;
6.	The first annual budget for Administrative Services (as defined in the Power Purchase Agreement) shall have been set pursuant to Section 3.15 (<i>Administrative Services Agreement</i>) of the Power Purchase Agreement;
7.	NKEC and GenCo shall have agreed on the Contracted Operating Characteristics (as defined in the Power Purchase Agreement) to be agreed following specification thereof by the EPC Contractor as set forth in Schedule 2 of the Power Purchase Agreement and have agreed on the Operating Characteristics Liquidated Damages (as defined in the Power Purchase Agreement) as set forth in Schedule 1 of the Power Purchase Agreement;
8.	GenCo shall have successfully conducted the Tender (Plant) (as defined in the Power Purchase Agreement) for the EPC Contract and the LTM Agreement;
9.	Each of the Project Agreements shall be in full force and effect;
10.	GenCo and GOK shall have agreed upon the Community Development Procedures under the Implementation Agreement;
11.	The Parties have agreed on the land to be part of the Ash/Gypsum Slurry Pipeline Corridor;
12.	The Parties have agreed on the land to be part of the Water Removal Corridor;

13.	The Base Case Financial Model shall reflect a levelized price per MWh in an amount no greater than the Agreed €/MWh Target;
14.	Financing for the Kosovo e Re Project shall have been arranged consistent with Section 3.13 (<i>Arrangement of Financing</i>) of the Power Purchase Agreement, including that the Financing Documents shall permit reimbursement from loan or equity proceeds to GenCo of its Development Costs (as defined under the Implementation Agreement), the Permitted GOK Advisor Fees (as defined under the Implementation Agreement), and Pre-Financing Fees (as defined under the Power Purchase Agreement) in each case, incurred to date, in a lump sum at Financial Closing (excluding conditions to Financial Closing detailed above);
15.	The Lenders shall have approved the Project Budget (as defined in the Power Purchase Agreement);
16.	Except for the occurrence of the Transfer Date, all conditions precedent to Financial Closing that are not otherwise specified in any other part of this Schedule shall have been satisfied or waived (or will be satisfied or waived contemporaneously with occurrence of the Transfer Date hereunder);
17.	To the extent required, the Parties shall have reviewed and approved the B&M Mines/Sibovc South Mine Field Reclamation Plan;
18.	NKEC and GenCo shall have agreed on any changes to Schedules 2 and 4 of the Power Purchase Agreement reasonably necessary to reflect the characteristics of the KRPP Facility proposed by the winning EPC/LTM Bidder Consortium in accordance with the Tender (Plant) Evaluation Criteria (as defined in the Power Purchase Agreement) and the Operating Characteristics (as defined in the Power Purchase Agreement) agreed by the Parties and shall have reasonably agreed to amend Schedules 2 and 4 of the Power Purchase Agreement accordingly, in all cases in accordance with Sections 3.9.8(a) (<i>Incorporation of the Tendered PPA Inputs</i>) and 9.1.1(b) (<i>Testing Program Schedule</i>) of the Power Purchase Agreement;
19.	The Parties shall have amended the Project Agreements as set forth in (i) Section 10.2 (<i>Mine Development Plan</i>) of the Lignite Supply Agreement, (ii) Sections 3.9.8 (<i>Incorporation of the Tendered PPA Inputs</i>) and 9.1.1(b) (<i>Testing Program Schedule</i>) of the Power Purchase Agreement, and (iii) Section 4.5 of the Ash and Gypsum Disposal Agreement; and
20.	Except as otherwise specified in any other part of this Schedule 3, the proposed Project Budget submitted to NKEC and GOK in accordance with Section 3.16 (<i>Agreement on the Project Budget</i>) of the Power Purchase Agreement is not agreed by the Parties.
21.	If GenCo has opted to separately procure the Specified Environmental Condition Remediation Contractor in accordance with Sections 3.9.5(g) (<i>Requirements for EPC/LTM Bidder Consortia</i>) and 15.2(a) (<i>Environmental Remediation to Abate a Specified Environmental/Archaeological Condition</i>) of the Power Purchase Agreement, GenCo shall have successfully conducted the Tender (Environmental) (as defined in the Power Purchase Agreement) for the Specified Environmental Condition Remediation Contract.

Annex I
KEK Mining ESMS and ESMPs

The KEK Mining ESMS shall include the following:

- 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 Laws of Kosovo and Applicable Standards; and
- organizational capacity and competency to implement the KEK Mining ESMS. In particular, KEK Mining 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 KEK Mining ESMS, KEK Mining will develop the detailed environmental, social, health, and safety management plans enabling it to identify, assess, and manage project construction environmental, social, health, and safety impacts and risks on an ongoing basis, and that at a minimum should include the components described in Table 1 (“**KEK Mining ESMS**”). The KEK Mining ESMS shall consist of documented combination of operational procedures, practices, plans, and relevant supporting documents. The KEK Mining ESMS will submit the ESMPs (“**KEK Mining ESMPs**”) 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 KEK Mining ESMPs to the Applicable Standards within the timeline defined by the Independent E&S Consultant.

Table 1. KEK Mining ESMPs

	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 KEK Mining Contractors), including: <ul style="list-style-type: none"> • Relevant KEK Mining ESMS requirements in contracts/subcontracts; • Clear assignment of KEK Mining environmental and social and health and safety responsibilities; • KEK Mining reports sufficient to allow GenCo to allow evaluation of need for corrective actions; • Verification of training and/or proper credentials for KEK Mining 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

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	- Stakeholder Engagement/External Grievance Mechanism
2.	Occupational Health and Safety (OHS) Plan, which shall be based on an OHS risk assessment undertaken by KEK Mining for all working positions in Sibovc South Mine Field. The OHS risk assessment shall be conducted in accordance with the Laws of Kosovo and Applicable Standards. KEK Mining shall prepare the specific OHS Management Plan. At a minimum, the Occupational Health and Safety Plan shall include: <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.	Site Security Risk Assessment and Management Plan, which shall be based on KEK Mining’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 KEK Mining and/or KEK Mining Contractors 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.
4.	Labor Grievance Mechanism for KEK Mining and subcontractor employees

- KEK Mining 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.
- KEK Mining 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 KEK Mining is taking or plans to take

to address those impacts; and shall keep GenCo informed of the on-going implementation of those measures.

- KEK Mining shall provide full access to the Site to the Independent E&S Consultant at all times.

Annex II

Water Supplier Emergency Preparedness and Response Plan

Water Supplier shall establish and maintain an emergency preparedness and response plan so that Water Supplier, in collaboration with appropriate and relevant third parties, shall be prepared to respond to accidental and emergency situations associated with the project in a manner appropriate to prevent and mitigate any harm to people and/or the environment. This preparation shall include the identification of areas where accidents and emergency situations may occur, communities and individuals that may be impacted, response procedures, provision of equipment and resources, designation of responsibilities, communication, including that with potentially affected communities and periodic training to ensure effective response. The emergency preparedness and response activities shall be periodically reviewed and revised, as necessary, to reflect changing conditions.

Where applicable, Water Supplier shall also assist and collaborate with the potentially affected communities (see Performance Standard 4 in the IFC Environmental and Social Sustainability Standards) and the local government agencies in their preparations to respond effectively to emergency situations, especially when their participation and collaboration are necessary to ensure effective response. If local government agencies have little or no capacity to respond effectively, Water Supplier shall play an active role in preparing for and responding to emergencies associated with the Kosovo e Re Project. Water Supplier shall document its emergency preparedness and response activities, resources, and responsibilities, and shall provide appropriate information to potentially affected community and relevant government agencies.

Schedule 4
List of Experts

1. Technical Dispute Experts:

As may be agreed by the Parties from time to time.

2. Payment Dispute Experts:

As may be agreed by the Parties from time to time.

Schedule 5
Assumptions for Proposed IDA Guarantee Coverage

1.	Structure	<p>GenCo will enter into an IDA Guarantee Agreement with a member of the World Bank Group (“IDA”) under which IDA will guarantee GOK’s payment obligations under the Implementation Agreement and the Government Guarantee, up to the amount of cover set forth in the IDA Guarantee which would be in an amount mutually agreed to in writing by the Parties. IDA will have the right to suspend or terminate the IDA Guarantee if certain breaches of representations, warranties or covenants were to occur (including in respect of compliance with applicable environmental laws, World Bank Performance Standards requirements and IDA requirements relating to sanctionable practices).</p> <p>Certain agreements will be required to be executed with IDA under which relevant Project information and reports will be required and certain representations, warranties and undertakings (including in respect of compliance with applicable environmental laws, World Bank Performance Standards requirements relating to sanctionable practices) will be required.</p> <p>GenCo will agree to pay certain guarantee fees; all such costs incurred by GenCo in relation to IDA Guarantee will be recoverable under Schedule 1 of the PPA.</p> <p>GOK will enter into an Indemnity Agreement with IDA. Under the Indemnity Agreement, GOK will undertake to indemnify IDA on demand, or as IDA may otherwise direct, for any payments made by IDA under the terms of the IDA Guarantee. The failure by GOK to fulfill its payment obligations under this agreement will trigger cross-acceleration of all other facilities between IDA/IBRD and GOK.</p> <p>In the alternative, an appropriately structured L/C mechanism may be used for liquidity purposes.</p> <p>Each of the Project Agreements will provide for resolution of payment disputes (other than termination related matters) in an expedited fashion by an expert. An expert determination as to liability for a given amount under the Implementation Agreement or the Government Guarantee will require payment consistent with such award (pending resolution of potential full arbitration proceedings), but in the interim IDA would make payment on such award in the event GOK fails to pay.</p>
2.	Timing	To be issued on or before Financial Closing.
3.	Scope of Covered Risks	Will support GOK’s ongoing payment obligations under the Implementation Agreement and the Government Guarantee (including, for example NKEC’s obligation to pay monthly invoices under the PPA).

4.	Drawing Conditions	In making a payment, IDA will adhere to the dispute resolution provisions of the underlying/guaranteed contract.
5.	Term of Cover	20 years from Financial Closing

Schedule 6
Environmental/Archaeological Conditions Studies

1. Preliminary ESIA (GOK);
2. Soil and Water Sampling and Analysis Program;
3. January 2016 Monthly KEK Environmental Report;
4. February 2016 Monthly KEK Environmental Report;
5. March 2016 Monthly KEK Environmental Report;
6. April 2016 Monthly KEK Environmental Report;
7. May 2016 Monthly KEK Environmental Report;
8. June 2016 Monthly KEK Environmental Report;
9. July 2016 Monthly KEK Environmental Report;
10. August 2016 Monthly KEK Environmental Report;
11. September 2016 Monthly KEK Environmental Report;
12. October 2016 Monthly KEK Environmental Report;
13. November 2016 Monthly KEK Environmental Report;
14. December 2016 Monthly KEK Environmental Report;
15. January 2017 Monthly KEK Environmental Report;
16. February 2017 Monthly KEK Environmental Report;
17. March 2017 Monthly KEK Environmental Report;
18. April 2017 Monthly KEK Environmental Report;
19. May 2017 Monthly KEK Environmental Report;
20. June 2017 Monthly KEK Environmental Report;
21. July 2017 Monthly KEK Environmental Report;
22. August 2017 Monthly KEK Environmental Report;
23. September 2017 Monthly KEK Environmental Report;
24. October 2017 Monthly KEK Environmental Report;
25. November 2017 Monthly KEK Environmental Report;

26. 2016 Annual KEK Environmental Report;
27. 2017 Draft Meteorological Study; and
28. 2017 Draft Flood Risk Assessment Study.