

**Ash and Gypsum Disposal Agreement**

between

**Kosovo Energy Corporation, J.S.C.**

and

**ContourGlobal Terra 6 S.à r.l.**

**HUNTON &  
WILLIAMS**

John J. Beardsworth, Jr.  
951 E. Byrd St.  
Richmond, VA 23219  
Phone: +1 804 788 8637  
jbeardsworth@hunton.com

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## Table of Contents

<b>Article 1</b>	<b>Definitions; Interpretation .....</b>	<b>1</b>
1.1.	Definitions .....	1
1.2.	Interpretation .....	12
<b>Article 2</b>	<b>Execution Date; Term.....</b>	<b>14</b>
2.1.	Effectiveness; Term.....	14
<b>Article 3</b>	<b>Updating of the B&amp;M Mines/Sibovc South Mine Field Reclamation Plan and Finalization of the Site .....</b>	<b>14</b>
3.1.	Selection of Site and Finalization of the Selection of Site .....	14
3.2.	Obligation to Update Reclamation Plan .....	15
3.3.	ICMM Approval.....	15
<b>Article 4</b>	<b>Disposal of Ash; Disposal of Gypsum.....</b>	<b>16</b>
4.1.	Disposal of Ash .....	16
4.2.	Disposal of Gypsum .....	17
4.3.	Grant of Necessary Property Rights .....	18
4.4.	Acknowledgement of Other Site Uses.....	18
4.5.	KEK Mining Land.....	19
<b>Article 5</b>	<b>Responsibility for the GenCo Exclusive Ash Landfill, GenCo Exclusive Gypsum Landfill, and Ash/Gypsum Slurry Pipeline System.....</b>	<b>19</b>
5.1.	Transfer of Custody and Control .....	19
5.2.	Operational Responsibilities.....	19
5.3.	Protection of the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, and the Ash/Gypsum Slurry Pipeline System.....	20
<b>Article 6</b>	<b>GenCo Exclusive Ash Landfill and GenCo Exclusive Gypsum Landfill Coordination.....</b>	<b>20</b>
6.1.	GenCo Exclusive Ash Landfill and GenCo Exclusive Gypsum Landfill Coordination .....	20
6.2.	KEK Mining Site Procedures .....	21
6.3.	GenCo Regulations.....	21
<b>Article 7</b>	<b>Reclamation of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill .....</b>	<b>21</b>
7.1.	Reclamation of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill.....	21
<b>Article 8</b>	<b>Environmental Protection, Health, and Safety.....</b>	<b>22</b>
8.1.	Environmental Protection, Health, and Safety .....	22

<b>Article 9</b>		
	<b>Expansion of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill .....</b>	<b>23</b>
9.1.	Expansion of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill.....	23
<b>Article 10</b>		
	<b>Title and Risk of Loss .....</b>	<b>23</b>
10.1.	Title and Risk of Loss of Ash.....	23
10.2.	Title and Risk of Loss of Gypsum.....	23
<b>Article 11</b>		
	<b>Fees.....</b>	<b>23</b>
11.1.	No Fees.....	23
<b>Article 12</b>		
	<b>Taxes.....</b>	<b>23</b>
12.1.	Taxes Applicable to KEK Mining.....	23
12.2.	Taxes Applicable to GenCo.....	24
<b>Article 13</b>		
	<b>Insurance .....</b>	<b>24</b>
13.1.	Maintenance of Insurance -- GenCo.....	24
13.2.	Maintenance of Insurance – KEK Mining.....	24
<b>Article 14</b>		
	<b>Representations and Warranties .....</b>	<b>25</b>
14.1.	Representations and Warranties of GenCo.....	25
14.2.	Representations and Warranties of KEK Mining.....	26
14.3.	Reaffirmation of Representations and Warranties.....	27
<b>Article 15</b>		
	<b>Indemnification .....</b>	<b>27</b>
15.1.	Indemnification.....	27
15.2.	Limitation on Indemnification.....	29
15.3.	Assertion of Claims to Exceed Minimum Indemnification Amount.....	29
15.4.	Defense of Claims .....	29
<b>Article 16</b>		
	<b>Limitation of Liability .....</b>	<b>31</b>
16.1.	Limitation of Liability .....	31
<b>Article 17</b>		
	<b>Default; Termination .....</b>	<b>32</b>
17.1.	GenCo Events of Default.....	32
17.2.	KEK Mining Events of Default .....	33
17.3.	Notice to GOK of KEK Mining Event of Default.....	34
17.4.	Termination Notice.....	34
17.5.	Obligations Following Termination Notice.....	35
17.6.	Other Remedies .....	35
17.7.	Obligations Following Termination of Implementation Agreement.....	35

17.8.	Right to Terminate for Failure to Achieve the Transfer Date.....	35
<b>Article 18</b>		
	<b>Force Majeure .....</b>	<b>36</b>
18.1.	Force Majeure.....	36
18.2.	Notification Obligations .....	37
18.3.	Duty to Mitigate .....	38
18.4.	Failure or Delays Caused by Force Majeure .....	38
18.5.	Right to Terminate Following a Political Force Majeure Event or Change in Law .....	39
<b>Article 19</b>		
	<b>Dispute Resolution .....</b>	<b>39</b>
19.1.	Notice of Dispute.....	39
19.2.	Dispute Resolution Procedures.....	39
19.3.	Technical Disputes .....	40
19.4.	Payment Disputes .....	41
19.5.	Arbitration .....	42
19.6.	Related Disputes .....	44
19.7.	Obligations Continue.....	44
19.8.	Commercial Acts .....	44
19.9.	Sovereign Immunity; Jurisdiction .....	44
<b>Article 20</b>		
	<b>Miscellaneous.....</b>	<b>45</b>
20.1.	Notices.....	45
20.2.	Amendment .....	47
20.3.	KEK Mining’s Cooperation, Assistance, and Information.....	47
20.4.	Survival.....	47
20.5.	Third Party Beneficiaries.....	47
20.6.	No Waiver .....	47
20.7.	Relationship of the Parties.....	47
20.8.	Expenses of the Parties .....	47
20.9.	Consent .....	48
20.10.	Language .....	48
20.11.	Governing Law .....	48
20.12.	Entirety .....	48
20.13.	Assignment .....	48
20.14.	Contracting .....	49
20.15.	Confidentiality.....	49
20.16.	No Liability for Review.....	50
20.17.	Counterparts .....	51
20.18.	Further Assurances .....	51
20.19.	Severability.....	51
20.20.	Partial Invalidity .....	51
<b>Schedule 1 Description of the B&amp;M Mines, 1</b>		
<b>Schedule 2 List of Experts, 1</b>		
<b>Schedule 3 KEK Mining Land, 2</b>		

**THIS ASH AND GYPSUM DISPOSAL 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 Mining**”), 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.

Each of GenCo and KEK Mining 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. KEK Mining owns the GenCo Exclusive Ash Landfill (as hereinafter defined) and the GenCo Exclusive Gypsum Landfill (as hereinafter defined) located at the location selected pursuant to Section 3.1;
- C. GenCo intends to form a new entity organized under the Laws of Kosovo (“**CG Kosovo**”), and following the formation of CG Kosovo, GenCo intends to assign all of its right, title and interest in and to, and delegate its obligations under, this Agreement to CG Kosovo and KEK Mining acknowledges and consents to such assignment;
- D. In connection with the Kosovo e Re Project, GenCo desires to deliver to KEK Mining at the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill and KEK Mining desires to accept from GenCo certain Ash (as hereinafter defined) and Gypsum (as hereinafter defined) generated by the operation of the KRPP Facility pursuant to the terms and conditions hereinafter set forth; and
- E. GenCo desires to and KEK Mining desires for GenCo to operate and maintain the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill.

**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:

“**Abandonment (GenCo)**” – The voluntary cessation for a period of 30 consecutive Days of operation of the GenCo Exclusive Ash Landfill or the GenCo Exclusive Gypsum Landfill for reasons other than:

- (a) a breach or default by KEK Mining under this Agreement;

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

“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 20.15(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 Mining) and GOK shall be an “Affiliate” of KEK Mining.

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

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

“Applicable Standards” – Collectively,

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

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

“Ash” – The substance composed of the remains of burned lignite generated from the combustion of lignite by the KRPP Facility, including the mixture of such substance with water or other non-Hazardous Materials to facilitate transportation thereof. Ash as used in this Agreement includes all coal combustion residuals ordinarily produced from the burning of coal in coal-fired power plants, including: fly ash, bottom ash, boiler slag, and flue gas desulfurization material.

“Ash/Gypsum Slurry Pipeline Corridor” – The land on which the portion of the Ash/Gypsum Slurry Pipeline System between the Site and the location selected pursuant to Section 3.1 is, or will be, installed. The Ash/Gypsum Slurry Pipeline System 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 a corridor of land between the Plant Site (KRPP) and the KEK Mining Land, and (ii) on, over, and through the KEK Mining Land to the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill.

“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 Gypsum Landfill to the KRPP Facility or, if permitted under the GenCo Consents and the Environmental Standards, to the

nearby Sitnica River (or another nearby waterway reasonably acceptable to GenCo in connection with a Selection of Site) 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 GenCo Consents and the Environmental Standards.

“B&M Mines” – The mine pits commonly known as the “Bardh and Mirash Mines,” as more particularly described in Schedule 1.

“B&M Mines/Sibovc South Mine Field Reclamation Plan” – Means,

- (a) if KEK Mining selects B&M Mines as the site for GenCo Exclusive Ash Landfill or GenCo Exclusive Gypsum Landfill in accordance with Selection of Site, the reclamation plan relating to the B&M Mines contained in the Complementary Mine Plan for the Sibovc Southwest Mine prepared by the STEAG Consortium dated May 2006 and approved by ICMM, as updated by KEK Mining in accordance with this Agreement and subsequently approved by ICMM; or
- (b) if KEK Mining selects Sibovc South Mine Field as the site for GenCo Exclusive Ash Landfill or GenCo Exclusive Gypsum Landfill in accordance with Selection of Site, any existing reclamation plan relating to the Sibovc South Mine Field.

“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.

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

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

“Change in Raw Water Quality” -- Has the meaning given thereto in the Power Purchase 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.

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

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

“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 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.

“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 the 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.

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

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

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

“Environmental 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 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.

“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 Power Purchase Agreement.

“Force Majeure Event” – Has the meaning given thereto in Section 18.1.1.

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

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

“GenCo Connection 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 Implementation Agreement.

“GenCo Contractor” – The EPC Contractor, the LTM Contractor, the O&M Contractor, the GenCo Connection Works EPC Contractor, the Specified Environmental Condition Remediation Contractor (as defined in the Power Purchase Agreement), 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 Event of Default” – Has the meaning given thereto in Section 17.1.

“GenCo Exclusive Ash Landfill” – Any one or more portions of the location selected pursuant to Section 3.1 into which Ash can be disposed of that is consistent with the B&M Mines/Sibovc South Mine Field Reclamation Plan (as applicable) and the Environmental Standards. For the avoidance of doubt, nothing herein shall preclude the GenCo Exclusive Ash Landfill from being a pond or from being a single site for mixed Ash and Gypsum disposal purposes, if so provided under the terms of the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable) and the Applicable Standards. The GenCo Exclusive

Ash Landfill shall include a location for the disposal of Hazardous Material separate and apart from the Ash to the extent required by Environmental Standards.

“GenCo Exclusive Gypsum Landfill” – Any one or more portions of the location selected pursuant to Section 3.1 into which Gypsum can be disposed of that is consistent with the B&M Mines/Sibovc South Mine Field Reclamation Plan (as applicable) and the Environmental Standards. For the avoidance of doubt, nothing herein shall preclude the GenCo Exclusive Gypsum Landfill from being a pond or from being a single site for mixed Ash and Gypsum disposal purposes, if so provided under the terms of the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable) and the Applicable Standards.

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

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

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

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

“Gypsum” – Gypsum, including impurities that are not Hazardous Materials (exclusive of trace materials inherent within lignite), generated at the KRPP Facility.

“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.

“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 19.5(c).

“ICMM” - The Independent Commission for Mines and Minerals in Kosovo.

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

“ICSID Convention” - Has the meaning given thereto in Section 19.5(a).

“ICSID Rules” - Has the meaning given thereto in Section 19.5(a).

“IFC Environmental and Social Sustainability Standards” – The IFC Performance Standards on Environmental and Social Sustainability published by the International Finance Corporation, available as at the Execution Date (subject to future relocation) at [http://www1.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC\\_Performance\\_Standards.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES) or such later version 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 15.4.1(c).

“Indemnification Notice” – Has the meaning given thereto in Section 15.4.1(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 Parties and any Specified POEs or its related Parties, an amount of Losses equal to €250,000 as a combined amount applicable to all such parties in relation to all Project Agreements.

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

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

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

“KEK Mining Event of Default” – Has the meaning given thereto in Section 17.2.

“KEK Mining Land” – Any real property owned by KEK Mining that is contiguous to or proximate to the location selected pursuant to Section 3.1, which shall be depicted and described by the Parties in Schedule 3 to this Agreement reasonably promptly after the Selection of Site process has concluded.

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

“KEK Mining Reorganization or Privatization” – Any of:

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

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

“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.

“Lapse of Consent” – Has the meaning given thereto in the Implementation 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.

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

“Licensed KEK Mining Successor” – A Person that is licensed under the Laws of Kosovo to perform the lignite mining functions in the mining sector of Kosovo.

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

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

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

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

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

“Memorandum of Understanding” – The memorandum of understanding between GOK and the Ultimate Sponsor dated on 18 December 2015.

“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/enviro\\_social\\_review\\_021507.pdf](http://www.miga.org/documents/enviro_social_review_021507.pdf) or such later version to be met by any Lender under the Financing Documents.

“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.

“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.

“Other Force Majeure Event” – Has the meaning given thereto in Section 18.1.2(d).

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

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

“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.

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

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

“Political Force Majeure Event” – Has the meaning given thereto in Section 18.1.2(a).

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

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

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

“Prudent Mining Practices” – Those practices, methods, and procedures conforming to safety and legal requirements that are attained by exercising that degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from a skilled and experienced mining company engaged in the same or a similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in Kosovo and satisfying the health, safety, and environmental standards of reputable international mining companies. Prudent Mining Practices are not limited to optimum practices, methods, or acts to the exclusion of all others, but rather are a spectrum of possible practices, methods, and acts that could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety.

“Prudent Utility Practices” – Those practices, methods, and procedures conforming to safety and legal requirements that are attained by exercising that degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from a skilled and experienced generator of electricity engaged in the same or a similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in Kosovo and satisfying the health, safety, and environmental

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

“Public Authority” – Any of the following with jurisdiction over GenCo, KEK Mining, 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 (a) above;
- (c) courts and tribunals in Kosovo;
- (d) any independent regulatory agency having jurisdiction over GenCo, KEK Mining, 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).

“Raw Water Force Majeure Event” -- Has the meaning given thereto in the Power Purchase Agreement.

“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.

“Selection of Site” – Has the meaning given thereto in Section 3.1.1.

“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.

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

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

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

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

“Special GOK Notice of Default” – Has the meaning given thereto in Section 17.3.

“Specified Environmental Condition Remediation Contract” – 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.

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

“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, or accounting issue or matter related to this Agreement that, in any case, is the type of issue or matter that is reasonably susceptible to consideration and resolution by an expert in the relevant field or fields.

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

“Termination Notice” – Has the meaning given thereto in Section 17.4.

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

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

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

“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 Gypsum Landfill to the nearby Sitnica River (or another nearby waterway reasonably acceptable to GenCo in connection with a Selection of Site) is, or will be, installed, as further defined in the Site Transfer Agreement, but only to the extent permitted under the GenCo Consents and the Environmental Standards.

“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” – A stockholder, director, officer, employee, Contractor, representative, agent, member, manager, or Affiliate of the Water Supplier.

“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 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 to be met by any Lender under the Financing Documents, including the applicable sections of the: (i) Environmental, Health and Safety Guidelines on 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).

“World Bank Group EHS Guidelines for Waste Management Facilities” – The World Bank Group’s Environmental, Health and Safety Guidelines on Waste Management Facilities, available as at the Execution Date (subject to future relocation) at <http://www.ifc.org/wps/wcm/connect/1cd72a00488557cfbdf4ff6a6515bb18/Final+-+Waste+Management+Facilities.pdf?MOD=AJPERES> or such later version to be met by any Lender under the Financing Documents.

“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**

### **Execution Date; Term**

#### **2.1. Effectiveness; Term**

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

- (a) 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; and
- (b) six (6) Months following the delivery of a notice from GenCo to KEK Mining that, as of the end of such period, GenCo will no longer require the right to:
  - (i) dispose of Ash in the GenCo Exclusive Ash Landfill; and
  - (ii) dispose of Gypsum in the GenCo Exclusive Gypsum Landfill,

(such period, the “**Term**”).

## **Article 3**

### **Updating of the B&M Mines/Sibovc South Mine Field Reclamation Plan and Finalization of the Site**

#### **3.1. Selection of Site and Finalization of the Selection of Site**

##### **3.1.1 Selection of Site**

KEK Mining shall, within thirty (30) Days of the Effective Date, select the site(s) for the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill from one of the following options (the “**Selection of Site**”):

- (a) B&M Mines;
- (b) Sibovc South Mine Field; or
- (c) other KEK Mining property; provided, however, that such property shall be in proximity to the KRPP Facility comparable to that of the B&M Mines or the Sibovc South Mine Field and provided, further, that KEK Mining shall own the real property surrounding the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill;

provided, however,

- (d) in each such case the Selection of Site shall:

- (i) provide sufficient space for the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill to provide for at least twenty-one (21) years of operation, plus an additional amount of space equal in quantity to the anticipated area times twenty percent (20%) of the projected total amount of space required by GenCo for disposal of Ash and Gypsum during such 21-year period for the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill;
- (ii) provide for the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill to be located reasonably far away from property used by any other active user of the surrounding areas so as to avoid contamination of or by other users;
- (iii) clearly designate an exclusive space for Ash disposal and Gypsum disposal from the KRPP Facility, separate and apart from any Ash disposal and Gypsum disposal from any other generating facility;
- (iv) subject to Section 17.2, be conducted in accordance with:
  - (A) the Applicable Standards; and
  - (B) the World Bank Group EHS Guidelines for Waste Management Facilities; and
- (v) not interfere with GenCo's ability to comply with the Applicable Standards, or otherwise create a Material GenCo Effect; and
- (e) KEK Mining will keep GenCo informed of its research and discussions relating to any Selection of Site, and will allow GenCo to provide comments and to participate in discussions relating to Selection of Site.

### **3.1.2 Finalization of the Selection of Site**

GenCo shall, within thirty (30) Days of its receipt of the proposed selection, either approve of such selection or provide written comments to KEK Mining on such selection. Thereafter, the Parties shall negotiate in good faith with the objective of selecting the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill within ninety (90) Days of the Effective Date.

### **3.2. Obligation to Update Reclamation Plan**

In the event that KEK Mining selects and GenCo approves the B&M Mines or the Sibovc South Mine Field as the location for the GenCo Exclusive Ash Landfill or the GenCo Exclusive Gypsum Landfill, KEK Mining shall, within thirty (30) Days of such selection, propose to GenCo an update to the B&M Mines/Sibovc South Mine Field Reclamation Plan in accordance with Prudent Mining Practices, the Laws of Kosovo, and this Agreement so that the B&M Mines/Sibovc South Mine Field Reclamation Plan shall be consistent with the requirements of the Kosovo e Re Project. To the extent that anything contained in the B&M Mines/Sibovc South Mine Field Reclamation Plan will create an obligation or responsibility for GenCo, GenCo shall have a right to review and approve the B&M Mines/Sibovc South Mine Field Reclamation Plan.

### **3.3. ICMM Approval**

- (a) As soon as practicable, but in any event not later than ten (10) Business Days after the Parties have agreed on the Selection of Site and any applicable reclamation plan, KEK Mining shall submit such Selection of Site and reclamation plan to ICMM for approval.
- (b) If ICMM approves the Selection of Site and any reclamation plan or ICMM reasonably determines that ICMM has no jurisdiction and authority with respect to matters related to such Selection of Site and reclamation plan, then KEK Mining shall so notify GenCo within five (5) Business Days of receipt by KEK Mining of such approval or determination and the Selection of Site shall be final.

- (c) If ICMM rejects the Selection of Site or reclamation plan, then the provisions of Section 3.1.2 shall apply again as if the Selection of Site had not yet been completed, starting from the date on which ICMM issues the rejection.

## **Article 4**

### **Disposal of Ash; Disposal of Gypsum**

#### **4.1. Disposal of Ash**

##### **4.1.1 Right to Dispose of Ash**

KEK Mining hereby grants to GenCo from the Transfer Date and throughout the Term the exclusive right to discharge Ash into the GenCo Exclusive Ash Landfill via the Ash/Gypsum Slurry Pipeline System, or otherwise, subject to the following conditions:

- (a) GenCo shall:
- (i) design and construct GenCo Exclusive Ash Landfill in accordance with Applicable Standards, including with respect to the environmental controls such as run on/run off controls, liners, leachate collection system, groundwater monitoring, and closure controls;
  - (ii) discharge Ash in accordance with Prudent Utility Practices, the Laws of Kosovo, the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable), and the Applicable Standards;
  - (iii) without limiting the foregoing, ensure that Ash is discharged into separate compartments sized to hold approximately two (2) Years' worth of Ash, with each compartment being lined (including a geotechnical lining) and having water drainage systems in accordance with the requirements of this Agreement; and
  - (iv) comply with all site procedures issued by KEK Mining pursuant to Section 6.2; and
- (b) GenCo shall not deliver, and KEK Mining shall not be required to accept, for disposal at the GenCo Exclusive Ash Landfill:
- (i) any substance other than Ash;
  - (ii) any substance that is not in conformance with the Laws of Kosovo or the Environmental Standards; or
  - (iii) any Hazardous Materials that would, if accepted for disposal, create an Environmental/Archaeological Condition (exclusive of trace materials inherent within the lignite disposed of in accordance with the Project Agreements and the Environmental Standards; for purposes of this Section 4.1.1, Hazardous Materials shall not include Ash delivered for disposal at the GenCo Exclusive Ash Landfill in conformance with the Laws of Kosovo and the Environmental Standards),

provided that nothing in this Section 4.1.1 shall limit KEK Mining's obligations under the Lignite Supply Agreement nor limit KEK Mining's obligations under Section 15.1.1(d).

##### **4.1.2 Rights of Inspection and Rejection**

- (a) KEK Mining and the Independent E&S Consultant shall have the right to inspect or analyze, or cause to be inspected or analyzed, Ash provided at the GenCo Exclusive Ash Landfill at any time during normal operating hours to ensure that GenCo is discharging Ash at the GenCo Exclusive Ash Landfill in accordance with this Section 4.1 and is otherwise carrying out its obligations under this Agreement. KEK Mining and the Independent E&S Consultant shall provide GenCo

with at least two (2) Business Days' prior written notice of such inspection and analysis and GenCo shall be entitled to have a GenCo representative witness such inspection or analysis.

- (b) Except as provided in this Agreement, including for the avoidance of doubt, Article 15, KEK Mining assumes no obligation with respect to any waste other than Ash at the GenCo Exclusive Ash Landfill.

#### **4.1.3 Transportation**

- (a) GenCo shall be responsible for, at GenCo's own cost and expense (it being acknowledged that GenCo shall be entitled to recover such costs pursuant to Schedule 1 of the Power Purchase Agreement), transporting Ash (via the Ash/Gypsum Slurry Pipeline System, or otherwise) to the GenCo Exclusive Ash Landfill, and shall do so in accordance with Prudent Utility Practices, the Laws of Kosovo, and the Environmental Standards.
- (b) GenCo shall be responsible for installation of appropriate technology (including water recirculation and treatment) to ensure that water is appropriately treated prior to discharge in the Sitnica River, to the extent that such discharge is in accordance with the Applicable Standards.

### **4.2. Disposal of Gypsum**

#### **4.2.1 Right to Dispose of Gypsum**

KEK Mining hereby grants to GenCo from the Transfer Date and throughout the Term the exclusive right to discharge Gypsum into the GenCo Exclusive Gypsum Landfill, subject to the following conditions:

- (a) GenCo shall:
  - (i) design and construct GenCo Exclusive Gypsum Landfill in accordance with Applicable Standards, including with respect to the environmental controls such as run on/run off controls, liners, leachate collection system, groundwater monitoring, and closure controls;
  - (ii) discharge Gypsum in accordance with Prudent Utility Practices, the Laws of Kosovo, the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable), and the Applicable Standards; and
  - (iii) comply with all site procedures issued by KEK Mining pursuant to Section 6.2; and
- (b) GenCo shall not deliver, and KEK Mining shall not be required to accept, for disposal at the GenCo Exclusive Gypsum Landfill:
  - (i) any substance other than Gypsum;
  - (ii) any substance that is not in conformance with the Laws of Kosovo or the Environmental Standards; or
  - (iii) any Hazardous Materials that would, if accepted for disposal, create an Environmental/Archaeological Condition (exclusive of trace materials inherent within the lignite disposed of in accordance with the Project Agreements and the Environmental Standards; for purposes of this Section 4.2.1, Hazardous Materials shall not include Gypsum delivered for disposal at the GenCo Exclusive Gypsum Landfill in conformance with the Laws of Kosovo and the Environmental Standards),

provided that nothing in this Section 4.2.1 shall limit KEK Mining's obligations under the Lignite Supply Agreement nor limit KEK Mining's obligations under Section 15.1.1(d).

#### **4.2.2 *Rights of Inspection and Rejection***

- (a) KEK Mining and the Independent E&S Consultant shall have the right to inspect or analyze, or cause to be inspected or analyzed, Gypsum provided at the GenCo Exclusive Gypsum Landfill at any time during normal operating hours to ensure that GenCo is storing and discharging Gypsum at the GenCo Exclusive Gypsum Landfill in accordance with this Section 4.2 and is otherwise carrying out its obligations under this Agreement. KEK Mining or the Independent E&S Consultant, as applicable, shall provide GenCo with at least two (2) Business Days' prior written notice of such inspection and analysis and GenCo shall be entitled to have a GenCo representative witness such inspection or analysis.
- (b) Except as provided in this Agreement, including, for the avoidance of doubt, Article 15, KEK Mining assumes no obligation with respect to any waste other than Gypsum at the GenCo Exclusive Gypsum Landfill.

#### **4.2.3 *Transportation***

GenCo shall be responsible for, at GenCo's own cost and expense (it being acknowledged that GenCo shall be entitled to recover such costs pursuant to Schedule 1 of the Power Purchase Agreement), transporting Gypsum via the Ash/Gypsum Slurry Pipeline System, or otherwise, to the GenCo Exclusive Gypsum Landfill, and shall do so in accordance with Prudent Utility Practices, the Laws of Kosovo, and the Environmental Standards.

#### **4.3. *Grant of Necessary Property Rights***

- (a) KEK Mining hereby grants to GenCo an exclusive easement to, on, over, across, and within the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill for use by GenCo, GenCo Contractors, and any Person authorized by GenCo with all equipment and machinery as may be reasonably necessary to exercise its rights and perform its obligations under this Agreement. Such easement shall be effective as of the Transfer Date and shall remain effective throughout the Term. In addition, KEK Mining shall grant to GenCo and shall execute and file, as necessary, all such other necessary easements, servitudes, licenses, rights-of-way, and other real property rights reasonably necessary for such purpose. KEK Mining hereby grants to GenCo a non-exclusive easement to, on, over, across, and within the KEK Mining Land for use by GenCo, GenCo Contractors, and any Person authorized by GenCo with all equipment and machinery as may be reasonably necessary to exercise its rights and perform its obligations under this Agreement. Such easement shall be effective as of the Transfer Date and shall remain effective throughout the Term. In addition, KEK Mining shall grant to GenCo and shall execute and file, as necessary, all such other necessary easements, servitudes, licenses, rights-of-way, and other real property rights reasonably necessary for such purpose.
- (b) KEK Mining hereby grants to GenCo an exclusive easement to, on, over, across, and within the Ash/Gypsum Slurry Pipeline Corridor, for use by GenCo, GenCo Contractors, and any Person authorized by GenCo with all equipment and machinery as may be reasonably necessary to exercise its rights and perform its obligations under this Agreement. Such easement shall be effective as of the Transfer Date and shall remain effective throughout the Term. 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.

#### **4.4. *Acknowledgement of Other Site Uses***

- (a) GenCo acknowledges that KEK Mining may use the KEK Mining Land (other than the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, the Ash/Gypsum Slurry Pipeline Corridor, and the Water Removal Corridor) for any lawful purpose, including the uses set forth in the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable), provided that such

other uses do not materially interfere with the rights and obligations of GenCo or any GenCo Party under any Project Agreement, and provided, further, that KEK Mining shall not, and shall cause the GOK, the Specified POEs, and all its and their subcontractors and third parties at the KEK Mining Land, not to, deposit any substance in the GenCo Exclusive Ash Landfill or the GenCo Exclusive Gypsum Landfill, including for the avoidance of doubt any substance from the Kosovo A Facility or the Kosovo B Facility. In connection therewith, GenCo specifically acknowledges the use of the KEK Mining Land (other than the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, the Ash/Gypsum Slurry Pipeline Corridor, and the Water Removal Corridor) as a municipal waste site, as provided or to be provided in a separate agreement between KEK Mining and the party responsible for the municipal waste, and as an overburden landfill. KEK Mining acknowledges and agrees that it shall indemnify GenCo in respect of such other site uses as provided in Article 15.

- (b) GenCo shall not unreasonably interfere with the other uses of the KEK Mining Land.
- (c) GenCo shall not be responsible for any activities, including operation and maintenance, on the KEK Mining Land (other than as required under this Agreement and the other Project Agreements for the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, the Ash/Gypsum Slurry Pipeline Corridor, and the Water Removal Corridor).
- (d) KEK Mining shall use commercially reasonable efforts to ensure that no third party unreasonably interferes with GenCo's use of the KEK Mining Land.

#### **4.5. KEK Mining Land**

- (a) Sixty (60) Days after the Selection of Site, the Parties shall develop a depiction of the KEK Mining Land intended to show the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, the Ash/Gypsum Slurry Pipeline Corridor, and the KEK Mining Land surrounding such.
- (b) Promptly following the development of a depiction of the KEK Mining Land, but in no event later than the Transfer Date, the Parties shall amend this Agreement to add a depiction of the KEK Mining Land as Schedule 3 to this Agreement.

### **Article 5**

#### **Responsibility for the GenCo Exclusive Ash Landfill, GenCo Exclusive Gypsum Landfill, and Ash/Gypsum Slurry Pipeline System**

##### **5.1. Transfer of Custody and Control**

- (a) KEK Mining shall continue to own the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill.
- (b) GenCo shall own the Ash/Gypsum Slurry Pipeline System.

##### **5.2. Operational Responsibilities**

- (a) GenCo shall, at GenCo's own cost and expense (it being acknowledged that GenCo shall be entitled to recover such costs pursuant to Schedule 1 of the Power Purchase Agreement), and upon obtaining necessary operating and maintenance permits from applicable authorities, operate and maintain the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, and the Ash/Gypsum Slurry Pipeline System 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, including by:
  - (i) securing the Ash that it deposits at the GenCo Exclusive Ash Landfill;
  - (ii) securing the Gypsum it deposits at the GenCo Exclusive Gypsum Landfill; and

- (iii) pumping water into or out of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill as necessary for the safe and reliable operation and maintenance of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill subject to Section 4.1.3(b).
- (b) Notwithstanding Section 5.2(a), any fines or other penalties incurred by KEK Mining or any KEK Mining Party, in relation to the KEK Mining Land (other than the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, or the Ash/Gypsum Slurry Pipeline System) or GenCo or any GenCo Party for non-compliance with the applicable Laws of Kosovo, shall be the sole responsibility of the non-complying Person and shall not be reimbursed by the other Party, unless they result directly from an act or omission of the other Party, in which case, the Party that incurs such liability shall be reimbursed by the other Party.
- (c) 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), and upon obtaining necessary operating and maintenance permits from applicable authorities, operate and maintain the Water Removal Corridor 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.

**5.3. Protection of the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, and the Ash/Gypsum Slurry Pipeline System**

- (a) GenCo shall, at GenCo's own cost and expense (it being acknowledged that GenCo shall be entitled to recover such costs pursuant to Schedule 1 of the Power Purchase Agreement), take such reasonable actions as appropriate to prevent conditions that would have a material adverse effect on the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, and the Ash/Gypsum Slurry Pipeline System in accordance with Prudent Utility Practices.
- (b) KEK Mining may take any reasonable action necessary to prevent conditions that would have a material adverse effect on the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, or the Ash/Gypsum Slurry Pipeline System, or other property or Person, in accordance with Prudent Mining Practices that GenCo fails to take in accordance with Section 5.3(a), provided, however, that, except in case of an emergency, KEK Mining shall not take any such action unless and until such failure continues for a period of thirty (30) Days following notice from KEK Mining that it intends to take such action. GenCo shall reimburse KEK Mining for its reasonable and documented out-of-pocket costs of taking action under this Section 5.3(b).

**Article 6**

**GenCo Exclusive Ash Landfill and GenCo Exclusive Gypsum Landfill Coordination**

**6.1. GenCo Exclusive Ash Landfill and GenCo Exclusive Gypsum Landfill Coordination**

GenCo and KEK Mining shall:

- (a) meet periodically to review the state and maintenance of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill, as mutually agreed; and
- (b) work in a coordinated manner, to the extent necessary, to coordinate operational and maintenance activities in relation to the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, the Ash/Gypsum Slurry Pipeline System, and the KEK Mining Land and not to interfere, prevent, or delay the reclamation, operation, and maintenance activities of, in GenCo's case, the KEK Mining Land and, in KEK Mining's case, the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, and the Ash/Gypsum Slurry Pipeline System.



## **6.2. KEK Mining Site Procedures**

KEK Mining may issue reasonable site procedures for the operation and maintenance of the KEK Mining Land and rules in relation to access through and over the KEK Mining Land according to Prudent Mining Practices, the Laws of Kosovo, the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable), and the Applicable Standards, provided such procedures are consistent with the Applicable Standards, and provided, further, that these procedures shall be applicable to any party using the KEK Mining Land. Such procedures may change from time to time. Notwithstanding the foregoing, GenCo shall have the right to propose reasonable adjustments to the procedures above, and KEK Mining shall reasonably consider such proposed adjustments.

## **6.3. GenCo Regulations**

GenCo shall issue, implement, and maintain safety regulations for the operation and maintenance of the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, and the Ash/Gypsum Slurry Pipeline System according to Prudent Utility Practices, the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable), the Laws of Kosovo, and the Applicable Standards. GenCo shall inform its employees and GenCo Contractors of such regulations and procedures and train its employees and GenCo Contractors in the same and ensure that they comply with such regulations and procedures in performing their duties hereunder. GenCo shall provide KEK Mining with a copy of such regulations and procedures and amendments thereto. In the event that GenCo undertakes work in relation to any property belonging to KEK Mining that is not part of the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, and the Ash/Gypsum Slurry Pipeline System, GenCo shall comply with reasonable safety regulations and procedures stipulated by KEK Mining (including adhering to the conditions of any issued permits) to the extent that KEK Mining provides written notice (and a copy) of such regulations and procedures to GenCo in advance of any such work.

### **Article 7**

#### **Reclamation of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill**

##### **7.1. Reclamation of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill**

- (a) As of the last Day of the Term, GenCo shall have:
- (i) undertaken all actions required to be undertaken on or before such date to the Ash/Gypsum Slurry Pipeline Corridor and the Water Removal Corridor pursuant to this Agreement in accordance with the Environmental Standards;
  - (ii) undertaken all actions required to be undertaken on or before such date to the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill pursuant to the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable); and
  - (iii) except to the extent that GOK provides one hundred eighty (180) Days' prior written notice to KEK Mining and GenCo informing KEK Mining and GenCo that the GenCo Exclusive Ash Landfill and/or the GenCo Exclusive Gypsum Landfill will remain in operation following the end of the Term or otherwise requests, removed all of its equipment from the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill with the intent of decommissioning and closing the GenCo Exclusive Ash Landfill and/or the GenCo Exclusive Gypsum Landfill in accordance with the Applicable Standards,

each in accordance with Prudent Utility Practices, the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable), the Laws of Kosovo, the Health & Safety Standards, and the Environmental Standards.

(b) Except to the extent that GOK provides one hundred eighty (180) Days' prior written notice to KEK Mining and GenCo in writing that the GenCo Exclusive Ash Landfill will remain in operation following the end of the Term or otherwise requests, commencing after the last Day of the Term, GenCo shall, at GenCo's own cost and expense (for reimbursement of all reasonable and prudent costs by KEK Mining following the conclusion of the capping and stabilization work described herein, it being acknowledged that GenCo shall be entitled to recover such costs as "Amounts Outstanding" (as such term is used in Section 2.1 of Schedule 3 of the Implementation Agreement) under the Buy-Out Price (as such term is defined in the Implementation Agreement) to the extent they are reasonably and prudently incurred):

- (i) cap the GenCo Exclusive Ash Landfill with clay; and
- (ii) undertake all actions required to stabilize all of the Ash deposited into the GenCo Exclusive Ash Landfill and the Gypsum deposited into the GenCo Exclusive Gypsum Landfill,

each in accordance with Prudent Utility Practices, the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable), the Laws of Kosovo, the Health & Safety Standards, and the Environmental Standards.

(c) To the extent that GOK provides one hundred eighty (180) Days' prior written notice to KEK Mining and GenCo in writing that the GenCo Exclusive Ash Landfill will remain in operation following the end of the Term or otherwise requests, commencing after the last Day of the Term, KEK Mining shall be responsible for:

- (i) capping the GenCo Exclusive Ash Landfill with clay; and
- (ii) undertaking all actions required to stabilize all of the Ash deposited into the GenCo Exclusive Ash Landfill and the Gypsum deposited into the GenCo Exclusive Gypsum Landfill,

each in accordance with Prudent Utility Practices, the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable), the Laws of Kosovo, the Health & Safety Standards, and the Environmental Standards.

## **Article 8**

### **Environmental Protection, Health, and Safety**

#### **8.1. Environmental Protection, Health, and Safety**

- (a) In relation to the disposal of Ash or Gypsum by GenCo at each of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill, GenCo shall, and shall use commercially reasonable efforts to cause the GenCo Contractors to, take necessary and adequate steps in accordance with Prudent Utility Practices and Prudent Mining Practices to comply in all material respects with Applicable Standards and to prevent Environmental/Archaeological Conditions within such Party's reasonable control.
- (b) If a Party causes an Environmental/Archaeological Condition as described in Section 8.1(a), such Party shall promptly take all remedial action as required by the Environmental Standards.
- (c) GenCo shall, as soon as reasonably practicable (but in no event more than four (4) hours verbally after GenCo or O&M Contractor personnel become aware of a material accident or emergency) notify the relevant Public Authority of such material environmental accident or emergency or material accident related to the health and safety of workers, and shall as soon as reasonably practicable (but in no event more than four (4) Business Days after GenCo or O&M Contractor personnel become aware of a material accident or emergency) provide a written report of the cause and outcomes of the event and the measures undertaken to date, and the planned actions, to

remediate such material accident or emergency, and shall report periodically, but in no event less frequently than Monthly until completion of any required remediation following such material environmental accident or emergency, on remediation programs and emergency response plans for Environmental/Archaeological Conditions related to the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, and the Ash/Gypsum Slurry Pipeline System.

**Article 9**  
**Expansion of the GenCo Exclusive Ash Landfill**  
**and the GenCo Exclusive Gypsum Landfill**

**9.1. Expansion of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill**

Upon request by GenCo, KEK Mining shall make all reasonable efforts to accommodate an expansion or other appropriate modification to the size and precise location of the GenCo Exclusive Ash Landfill or the GenCo Exclusive Gypsum Landfill. GenCo and KEK Mining hereby agree that the design and construction of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill and any expansion or modification thereof will be mutually agreed by the Parties to provide the most suitable, reliable, and economic GenCo Exclusive Ash Landfill and GenCo Exclusive Gypsum Landfill for the benefit of GenCo, without any interruption in its availability for the disposal of Ash and Gypsum by GenCo. The Parties shall negotiate in good faith such amendments to this Agreement as may be reasonably necessary to account for an expansion or other appropriate modification to the size and precise location of the GenCo Exclusive Ash Landfill or the GenCo Exclusive Gypsum Landfill. Any expansion of the GenCo Exclusive Ash Landfill or the GenCo Exclusive Gypsum Landfill shall be done consistent with Prudent Utility Practices, Prudent Mining Practices, the Laws of Kosovo, the B&M Mines/Sibovc South Mine Field Reclamation Plan (if applicable), and the Applicable Standards.

**Article 10**  
**Title and Risk of Loss**

**10.1. Title and Risk of Loss of Ash**

GenCo shall keep title and all risk of loss with respect to the Ash prior to and following delivery of such Ash by GenCo at the GenCo Exclusive Ash Landfill until the expiration or termination of this Agreement, at which time title and risk of loss shall automatically pass to KEK Mining.

**10.2. Title and Risk of Loss of Gypsum**

GenCo shall keep title and all risk of loss with respect to the Gypsum prior to and following delivery of such Gypsum by GenCo at the GenCo Exclusive Gypsum Landfill until the expiration or termination of this Agreement, at which time title and risk of loss shall automatically pass to KEK Mining.

**Article 11**  
**Fees**

**11.1. No Fees**

No tipping fee, reclamation fee, or other fee for the disposal of Ash or Gypsum under this Agreement shall be payable.

**Article 12**  
**Taxes**

**12.1. Taxes Applicable to KEK Mining**

All present and future central, municipal, or other lawful Taxes applicable to KEK Mining arising from or in connection with its rights and obligations under this Agreement shall be paid by KEK Mining as and when required under the Laws of Kosovo.

## 12.2. Taxes Applicable to GenCo

All present and future central, municipal, or other lawful Taxes applicable to GenCo arising from or in connection with its rights and obligations under this Agreement shall be paid by GenCo as and when required under the Laws of Kosovo, and the amount of such Taxes shall be included in the tariff provided for in Schedule 1 of the Power Purchase Agreement.

## Article 13 Insurance

### 13.1. Maintenance of Insurance -- GenCo

- (a) GenCo shall obtain and maintain insurance in accordance with the Power Purchase Agreement. If and to the extent that KEK Mining can be named as an additional insured on any fire, perils, casualty, and liability insurance policies required under such Project Agreements, KEK Mining shall be so named by GenCo.
- (b) Copies of any filed claims or notice of the receipt of any insurance proceeds with respect to the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill shall be provided to KEK Mining within seven (7) Business Days of such filing or receipt of proceeds by GenCo.

### 13.2. Maintenance of Insurance – KEK Mining

- (a) Liability Policy. KEK Mining will maintain, or cause to be maintained, from 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) Environmental Impairment Liability Policy. KEK Mining will maintain, or cause to be maintained, from the Transfer Date and throughout the Term in full force and effect environmental impairment liability insurance including coverage for the entire KEK Mining 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 KEK Mining Land by any party other than KEK Mining, and including, but without limitation, the costs of environmental investigations, remediation, and monitoring associated with or arising from an Environmental Condition.
- (c) Exceptions to Insurance Requirements. It is understood that KEK Mining shall not be in breach of its obligations under this Section 13.2 to the extent and for so long as:
  - (i) either:
    - (A) any particular insurance (or any required endorsement) is unavailable to KEK Mining under commercially reasonable terms for reasons other

than any negligence or default by KEK Mining, provided that KEK Mining 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

- (B) any particular insurance (or any required endorsement) is unavailable to it from insurers from whom KEK Mining is permitted under the Laws of Kosovo to purchase policies in accordance with Section 13.2(a) or (b), provided that KEK Mining 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 Mining is permitted under the Laws of Kosovo to purchase policies; and
- (ii) KEK Mining 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 Mining 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 Mining.

#### **Article 14 Representations and Warranties**

##### **14.1. Representations and Warranties of GenCo**

GenCo represents and warrants to KEK Mining 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 14.3, GenCo shall represent and warrant to KEK Mining 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 law relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;
- (d) the execution and delivery of this Agreement do 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.

#### **14.2. Representations and Warranties of KEK Mining**

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

- (a) KEK Mining 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 Mining have been duly authorized by all requisite corporate action, and KEK Mining 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 Mining, enforceable against it in accordance with the terms hereof, subject, as to enforceability of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium, or other similar applicable law relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;
- (d) the execution and delivery of this Agreement do not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on KEK Mining or any valid order of any court, or any regulatory agency or other body having authority to which KEK Mining is subject;
- (e) KEK Mining 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 Mining's knowledge, threatened:
  - (i) for the dissolution of KEK Mining;
  - (ii) involving KEK Mining'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 Miningthat, 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; and
- (g) none of the execution, delivery, or performance by KEK Mining 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 Mining.

### **14.3. Reaffirmation of Representations and Warranties**

On the Effective Date, GenCo shall deliver a certificate to KEK Mining confirming that the representations and warranties in Section 14.1 are true and accurate as at such date, and KEK Mining shall deliver a certificate to GenCo confirming that the representations and warranties in Section 14.2 are true and accurate as at such date.

## **Article 15 Indemnification**

### **15.1. Indemnification**

#### ***15.1.1 KEK Mining's Indemnification***

Except as specifically provided below or elsewhere in this Agreement or the Project Agreements, KEK Mining 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 Mining or any KEK Mining 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 Mining'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 Mining's breach or default of any of its covenants or representations and warranties under this Agreement;
- (d) resulting from, related to, or arising out of, any Environmental/Archaeological Condition in relation to the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill or the KEK Mining 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 GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill or the KEK Mining 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 of the Power Purchase Agreement; and
- (e) resulting from, related to, or arising out of, any Environmental/Archaeological Condition existing on the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, or the KEK Mining Land after the Transfer Date, including any such conditions resulting from the action or inaction of KEK Mining, any KEK Mining Party, 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.

### ***15.1.2 GenCo's Indemnification***

Except as specifically provided below or elsewhere in this Agreement or the Project Agreements, GenCo shall indemnify and defend KEK Mining and any KEK Mining 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 Mining or any KEK Mining 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; and
- (d) resulting from, related to, or arising out of, any Environmental/Archaeological Condition in relation to the GenCo Exclusive Ash Landfill, the GenCo Exclusive Gypsum Landfill, or the KEK Mining 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 Mining, any KEK Mining Party, or any other Specified POE or GOK.

### ***15.1.3 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 15 in proportion to its relative degree of fault.

### ***15.1.4 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 15.1.4(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



## **15.2. Limitation on Indemnification**

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

## **15.3. 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 15, 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.

## **15.4. Defense of Claims**

### **15.4.1 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 15 (an "**Indemnification Notice**").

- (b) The delay or failure of such indemnified Party to provide an Indemnification Notice required pursuant to this Section 15.4 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**").

#### **15.4.2 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 15, 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 15 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.

### **15.4.3 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 15.4.3(a)(i), 15.4.3(a)(ii), 15.4.3(a)(iii), or 15.4.3(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 16 Limitation of Liability**

### **16.1. 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 16.1, 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 of the Power Purchase Agreement) between GenCo as one party and any Affiliates of Ultimate Sponsor as GenCo's counterparty (which shall be excluded by the foregoing provisions of this Section 16.1(a)).
- (b) Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement or a Project Agreement to which it is a party; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or any activity not contemplated by this Agreement and this provision is not intended to limit or deny GenCo the right to (i) claim and recover any and all lost revenues explicitly provided for under Article 20 of the Implementation Agreement or under any Project Agreement that permits such recovery; or (ii) indemnification and/or cost recovery in relation to Environmental/Archaeological Conditions as provided under any Project Agreement.

**Article 17**  
**Default; Termination**

**17.1. GenCo Events of Default**

Each of the following shall constitute an event of default by GenCo (each such event being a “**GenCo Event of Default**”):

- (a) the failure by GenCo to make any payment of any sum due to KEK Mining hereunder within fifteen (15) Days after GenCo’s receipt of written notice from KEK Mining that such payment is overdue, which notice shall specify the payment failure in reasonable detail; provided, however that no payment that is due as a result of the resolution of a Payment Dispute, a Technical Dispute, or any other Dispute shall be considered due for the purposes of this Section 17.1(a) until fifteen (15) Business Days following the resolution of such dispute;
- (b) the appointment of a custodian, receiver, trustee, or liquidator of GenCo, or of all or substantially all of the assets of GenCo, in any proceeding brought by GenCo, as applicable, or the appointment of any such custodian, receiver, trustee, or liquidator in any proceeding brought against GenCo that is not discharged within ninety (90) Days after such appointment, or if GenCo consents to or acquiesces in such appointment;
- (c) any representation or warranty made by GenCo under this Agreement proves to have been incorrect in any material respect as of the date made or reaffirmed, and such misrepresentation has or would reasonably be expected to have a material adverse effect on KEK Mining or the Kosovo e Re Project and such defect is not capable of being cured or is not cured within forty-five (45) Days after GenCo’s receipt of written notice from KEK Mining, which notice shall specify the misrepresentation in reasonable detail; provided, however, that if GenCo commences taking appropriate actions to cure such defect within such forty-five (45) Day period, and thereafter diligently continues to pursue such cure, the cure period shall extend for an additional ninety (90) Days so long as such defect is capable of being cured within such extended cure period;
- (d) the failure by GenCo in any respect in the observance or performance of any other material obligation of GenCo contained herein that GenCo has not cured within thirty (30) Days after GenCo’s receipt of written notice from KEK Mining specifying the failure in reasonable detail and demanding that the same be remedied; provided, however, that if GenCo commences taking appropriate actions to cure such failure within such thirty (30) Day period, and thereafter diligently continues to cure such failure, the cure period shall extend for an additional ninety (90) Days;
- (e) following the Transfer Date, the occurrence of an Abandonment (GenCo) and that continues for a period of thirty (30) consecutive Days without the written consent of KEK Mining; and
- (f) the occurrence of any breach by GenCo of its obligations under Section 20.13;

provided, however, that no such event shall be a GenCo Event of Default and GenCo shall be excused from performance under this Agreement if it is caused in whole or material part by:

- (i) a breach by KEK Mining of or a default by KEK Mining under this Agreement (including any KEK Mining Event of Default) or a Specified POE Action or Inaction;
- (ii) a GOK Event of Default (as defined in the Implementation Agreement) under the Implementation Agreement; or
- (iii) a Force Majeure Event (except in the case of a payment default pursuant to Section 17.1(a)); and

provided, further, that 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 Mining received reasonable advance notice of such proposed cure, settlement or waiver of such obligation under the applicable Project Agreement and failed to reasonably object to such cure, settlement, or waiver within a reasonable period of time.

GenCo may cure a GenCo Event of Default by causing a GenCo Contractor to cure such GenCo Event of Default.

## **17.2. KEK Mining Events of Default**

Each of the following shall constitute an event of default by KEK Mining (each such event being a “**KEK Mining Event of Default**”):

- (a) the failure by KEK Mining to make any payment of any sum due to GenCo hereunder within fifteen (15) Days after KEK Mining’s receipt of written notice from GenCo that such payment is overdue, which notice shall specify the payment failure in reasonable detail; provided, however that no payment that is due as a result of the resolution of a Payment Dispute, a Technical Dispute, or any other Dispute shall be considered due for the purposes of this Section 17.2(a) until fifteen (15) Business Days following the resolution of such dispute;
- (b) the appointment of a custodian, receiver, trustee, or liquidator of KEK Mining, or of all or substantially all of the assets of KEK Mining, in any proceeding brought by KEK Mining, as applicable, or the appointment of any such custodian, receiver, trustee, or liquidator in any proceeding brought against KEK Mining that is not discharged within ninety (90) Days after such appointment, or if KEK Mining consents to or acquiesces in such appointment;
- (c) any representation or warranty made by KEK Mining under this Agreement proves to have been incorrect in any material respect as of the date made or reaffirmed, and such misrepresentation has or would reasonably be expected to have a material adverse effect on GenCo or the Kosovo e Re Project and such defect is not capable of being cured or is not cured within forty-five (45) Days after KEK Mining’s receipt of written notice from GenCo, which notice shall specify the misrepresentation in reasonable detail; provided, however, that if KEK Mining commences taking appropriate actions to cure such defect within such forty-five (45) Day period, and thereafter diligently continues to pursue such cure, the cure period shall extend for an additional ninety (90) Days , so long as such defect is capable of being cured within such extended cure period;
- (d) the failure by KEK Mining in any respect in the observance or performance of any other material obligation of KEK Mining contained herein that KEK Mining has not cured within thirty (30) Days after KEK Mining’s receipt of written notice from GenCo specifying the failure in reasonable detail and demanding that the same be remedied; provided, however, that if KEK Mining commences taking appropriate actions to cure such failure within such thirty (30) Day period, and thereafter diligently continues to cure such failure, the cure period shall extend for an additional ninety (90) Days; and
- (e) the occurrence of any breach by KEK Mining of its obligations under Section 20.13;

provided, however, that no such event shall be a KEK Mining Event of Default and KEK Mining shall be excused from performance under this Agreement if it is caused in whole or material part by:

- (i) a breach by GenCo of or a default by GenCo under this Agreement (including any GenCo Event of Default) or a GenCo Action or Inaction; or
- (ii) a Force Majeure Event (except in the case of a payment default pursuant to Section 17.2(a)); and

provided, further, that to the extent that any obligation of KEK Mining under this Agreement is also an obligation of KEK Mining under any other Project Agreement, then any cure, settlement, or waiver of a breach of such obligation under the applicable Project Agreement shall constitute a cure, settlement, or waiver under this Agreement if GenCo received reasonable advance notice of such proposed cure, settlement or waiver of such obligation under the applicable Project Agreement and failed to reasonably object to such cure, settlement, or waiver within a reasonable period of time.

KEK Mining may cure a KEK Mining Event of Default by causing a Contractor of KEK Mining to cure such KEK Mining Event of Default.

Notwithstanding Section 3.1.1(d)(iv) or any other provision of this Agreement or any other Project Agreement, KEK Mining's failure to comply with, or otherwise take any action in relation to, the Applicable Standards or the Laws of Kosovo shall not be a KEK Mining Event of Default and there shall be no remedies whatsoever of GenCo in connection therewith, except as provided in Section 19.2(i) through Section 19.2(k) of the Implementation Agreement (and all related provisions (in all Project Agreements) providing for GenCo's rights and/or remedies in respect of a GOK Event of Default (as defined in the Implementation Agreement) or in respect of protections for the benefit of GenCo relating to any Specified POE Action or Inaction.

### **17.3. Notice to GOK of KEK Mining Event of Default**

In the event that a KEK Mining Event of Default occurs, GenCo shall deliver a notice (a "**Special GOK Notice of Default**") of the occurrence of such KEK Mining Event of Default to GOK at the address specified in the Implementation Agreement. GOK shall have the Applicable Counterparty Cure Period following the receipt of the Special GOK Notice of Default during which to make any payment or perform any act required of KEK Mining hereunder with the same effect as if such payment or act had been made or performed by KEK Mining.

### **17.4. Termination Notice**

- (a) Subject to Section 17.4(c), if any GenCo Event of Default or KEK Mining Event of Default, as the case may be, occurs and is continuing, the non-defaulting Party may terminate this Agreement by delivering a notice (a "**Termination Notice**") to the defaulting Party, which notice shall specify in reasonable detail the GenCo Event of Default or KEK Mining Event of Default, as the case may be, giving rise to the Termination Notice; provided, however, that GenCo may not deliver a Termination Notice unless and until it has delivered a Special GOK Notice of Default and the cure period set forth in Section 17.3 has expired without GOK having effected a cure; and provided, further, that neither Party may deliver a Termination Notice 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 and this Agreement is novated in accordance with Section 17.7.
- (b) Subject to Section 17.4(c), if any other Project Agreement is terminated in accordance with its terms, then either Party may terminate this Agreement by delivering a Termination Notice to the other Party, which notice shall specify the other Project Agreement that has terminated; provided, however, in the event that (i) there occurs a Buy-Out (as defined in the Implementation Agreement) under the Implementation Agreement, and (ii) this agreement is required to be novated pursuant to Schedule 4 (*Buy-Out Arrangements*) of the Implementation Agreement, then neither Party may deliver such a Termination Notice.
- (c) Subject to Section 17.5, this Agreement shall terminate on the date specified in the Termination Notice, which date shall not be earlier than the date that is ten (10) Business Days following the date on which the Termination Notice is delivered to the other Party or later than thirty (30) Days following the date of such delivery.

### **17.5. Obligations Following Termination Notice**

The Parties shall continue to perform their respective obligations under this Agreement pending the final resolution of any Dispute relating to or arising from a Termination Notice.

### **17.6. Other Remedies**

- (a) Except as provided in this Agreement and subject to Sections 17.6(b) and 17.6(c), the exercise of the right of a Party to terminate this Agreement, as provided herein, does not preclude such Party from exercising other rights or remedies that are provided in this Agreement or are available at law or in equity; provided, however, that no Party shall have a right to terminate or treat its obligations under this Agreement as repudiated except in accordance with the provisions of this Agreement. Subject to the provisions of Article 16 and except as may otherwise be set forth in this Agreement, remedies are cumulative, and the exercise of, or failure to exercise, any one or more of such rights or remedies by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other rights or remedies by such Party.
- (b) Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event GenCo terminates the Implementation Agreement pursuant to the terms of the Implementation Agreement, GOK purchases the KRPP Facility, GenCo transfers the KRPP Facility to GOK pursuant to the terms of the Implementation Agreement, and each Party has been paid all amounts due and owing under this Agreement and the Project Agreements as part of the purchase compensation, then, upon such transfer and such payment, any claims against or liability of the Parties under this Agreement shall be fully extinguished and neither Party shall have any further claim or recourse against the other Party under this Agreement, except as provided in Section 20.4.
- (c) Notwithstanding the foregoing or any other provision of this Agreement, the Parties agree that, in the event that GOK terminates the Implementation Agreement pursuant to the terms of the Implementation Agreement, GOK purchases the KRPP Facility, GenCo transfers the KRPP Facility to GOK pursuant to the terms of the Implementation Agreement, and each Party has been paid all amounts due and owing under this Agreement and the Project Agreements as part of the purchase compensation, then, upon such transfer and such payment, any claims against or liability of the Parties under this Agreement shall be fully extinguished and neither Party shall have any further claim or recourse against the other Party under this Agreement, except as provided in Section 20.4.

### **17.7. 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 Mining 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.

### **17.8. Right to Terminate for Failure to Achieve the Transfer Date**

- (a) Notwithstanding any other term of this Agreement, if GenCo terminates the Site Transfer Agreement pursuant to Section 5.4 (*Termination for Failure to Satisfy Conditions Precedent*) thereof, then GenCo or KEK Mining shall have the right to terminate this Agreement by notice to the other Party.
- (b) Notwithstanding any other term of this Agreement, if KEK Generation terminates the Site Transfer Agreement pursuant to Section 5.4 (*Termination for Failure to Satisfy Conditions*

*Precedent*) thereof, then KEK Mining or GenCo shall have the right to terminate this Agreement by notice to the other Party.

## **Article 18** **Force Majeure**

### **18.1. Force Majeure**

#### ***18.1.1 Definition of Force Majeure***

A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that, on or after the Execution Date, prevents or delays the performance by such Party (for the purposes of this Article 8, an “affected Party”) of its obligations under or pursuant to this Agreement (including a Party’s ability to dispose of Ash or Gypsum); provided, however, that such prevention or delay could not have been prevented, overcome, or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care.

#### ***18.1.2 Events Expressly Qualifying as Force Majeure Events***

Without limitation to Section 18.1.1, “**Force Majeure Events**” shall expressly include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements set forth in Section 18.1.1:

- (a) with respect to GenCo or a GenCo Party under this Agreement or any of the Project Agreements or any Construction/Maintenance Contract, the following events or circumstances that occur inside or directly involve Kosovo (each a “**Political Force Majeure Event**”):
  - (i) any act of war (whether declared or undeclared), invasion, armed conflict, or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage;
  - (ii) any Lapse of Consent;
  - (iii) except if GenCo exercises rights it has in respect of Section 19.2(e) of the Implementation Agreement, any action by any Public Authority that causes a permanent or temporary dispossession resulting from confiscation, commandeering or requisitioning of all or a material part of the Site, GenCo’s assets or the Kosovo e Re Project;
  - (iv) radioactive contamination or ionizing radiation;
  - (v) any Pass-Through Environmental/Archaeological Condition;
  - (vi) GOK, KEK Mining or any Specified POE is, or becomes a, Restricted Party (as defined in the Power Purchase Agreement);
  - (vii) any Political Force Majeure Event under another Project Agreement; or
  - (viii) any strike, work-to-rule, go-slow, or analogous labor action that is politically motivated.
- (b) with respect to GenCo or a GenCo Party under this Agreement or any of the Project Agreements or any Construction/Maintenance Contract, any Change in Law;
- (c) with respect to GenCo or a GenCo Party under this Agreement or any of the Project Agreements, or any Construction/Maintenance Contract, any (i) Raw Water Force Majeure Event or (ii) Change in Raw Water Quality; and



- (d) other events beyond the reasonable control of the affected Party or, in the case of GenCo, an affected GenCo Party or in the case of KEK Mining, an affected KEK Mining Party (each an “**Other Force Majeure Event**”), including, but not limited to:
  - (i) lightning, fire, earthquake, tsunami, flood, drought, storm, cyclone, typhoon, or tornado;
  - (ii) any Specified POE Force Majeure Event (as defined in the Power Purchase Agreement);
  - (iii) any strike, work-to-rule, go-slow, or analogous labor action that is not politically motivated;
  - (iv) fire, explosion, or chemical contamination not related to a Pass-Through Environmental/Archaeological Condition; or
  - (v) epidemic or plague.

### **18.1.3 Events Expressly Not Qualifying as Force Majeure Events**

Force Majeure Events shall expressly not include the following conditions, except and to the extent that such events or circumstances occur directly as a consequence of a Force Majeure Event:

- (a) normal wear and tear in materials and equipment;
- (b) breakdown in equipment;
- (c) lack of funds due to any commercial, economic or financial reason including a Party’s inability to make a profit or achieve a satisfactory rate of return;
- (d) except as provided in Section 18.1.2(d)(ii), delay in the performance of the obligations of any Contractor or supplier (including late delivery of equipment) that results in the failure of the affected Party to meet its obligations under this Agreement;
- (e) the results or consequences of any breach by a Party of the Laws of Kosovo, the terms of any Consent, or of any of the Project Agreements;
- (f) the results or consequences of any willful or negligent act or omission by a Party, or any failure by a Party to follow Prudent Utility Practices or Prudent Mining Practices;
- (g) with respect to KEK Mining only, a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event or Change in Raw Water Quality.

### **18.2. Notification Obligations**

- (a) If, by reason of a Force Majeure Event, a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall:
  - (i) give the other Party notice of the Force Majeure Event as soon as practicable, but in any event not later than the later of five (5) Business Days after the affected Party becomes aware of the occurrence of the Force Majeure Event or if the Force Majeure Event prevents a Party from providing notice to the other Party twenty-four (24) hours after the resumption of any means of providing notice between GenCo and KEK Mining; and
  - (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent that can reasonably be determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than seven (7) Days after the initial notice of the occurrence of the Force Majeure Event is given by the affected Party.

- (b) When appropriate, or when reasonably requested so to do by the other Party, the affected Party shall provide further notices to the other Party, more fully describing the Force Majeure Event and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it shall be unable to carry out any of its affected obligations due to the Force Majeure Event.
- (c) The affected Party shall provide notice to the other Party of:
  - (i) with respect to an ongoing Force Majeure Event, the cessation of the Force Majeure Event; and
  - (ii) its ability to recommence performance of its obligations under this Agreement, as soon as possible and in any event not later than seven (7) Days after the occurrence of each of clause (i) and (ii) above.
- (d) Failure by the affected Party to give written notice of a Force Majeure Event to the other Party within the five (5) Business Day period or twenty-four (24) hour period required under Section 18.2(a) shall not prevent the affected Party from giving such notice at a later time; provided, however, that in such case, the affected Party shall not be excused pursuant to Section 18.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If such notice is given within the five (5) Business Day period or twenty-four (24) hour period required by Section 18.2(a), the affected Party shall be excused for such failure or delay pursuant to Section 18.4 from the time of commencement of the relevant Force Majeure Event.

### **18.3. Duty to Mitigate**

The affected Party shall use all reasonable efforts (and shall ensure that its Contractors use all reasonable efforts) to mitigate the effects of a Force Majeure Event, including, but not limited to, the payment of reasonable sums of money by or on behalf of the affected Party (or such Contractor), which sums are reasonable in light of the likely efficacy of the mitigation measures.

### **18.4. Failure or Delays Caused by Force Majeure**

- (a) Following a Force Majeure Event:
  - (i) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment or provide security) under or pursuant to this Agreement during the existence of a Force Majeure Event but only to the extent that the affected Party has complied with its obligations under Section 18.3; and
  - (ii) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended day-for-day by the number of days during which the affected Party was prevented from performing as a result of the Force Majeure Event, but only to the extent that the affected Party has complied with its obligations under Section 18.3.

provided, however, that no relief, including extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 18.4 to the extent that such failure or delay would nevertheless have been experienced by the affected Party had the Force Majeure Event not occurred.

- (b) Notwithstanding the foregoing, KEK Mining shall not be entitled to claim for itself, and shall not be relieved of its obligations under this Agreement by, the occurrence of a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event or Change in Raw Water Quality.

### **18.5. Right to Terminate Following a Political Force Majeure Event or Change in Law**

In the event that the Implementation Agreement is terminated by either GOK or GenCo pursuant to Section 20.3 (*Termination Following a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event, or Change in Raw Quality*) of the Implementation Agreement, then either Party may terminate this Agreement by notice to the other Party.

## **Article 19 Dispute Resolution**

### **19.1. 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.

### **19.2. Dispute Resolution Procedures**

#### ***19.2.1 Informal Dispute Resolution by Parties***

Upon receipt by a Party of a notice from the other Party of a Dispute in accordance with Section 19.1 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 19.2.2.

#### ***19.2.2 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 19.2.1 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 19.3 (in the case of a Technical Dispute) or in accordance with Section 19.4 (in the case of a Payment Dispute), as the case may be, in each case subject to Section 19.2.2(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 19.4 and the expert appointed thereunder shall determine, in accordance with Section 19.4(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 19.4 and the remaining portion (if any) shall be referred to and resolved pursuant to Section 19.3.
- (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 19.3.
- (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 19.5; provided, however, that if such Party has not referred the Dispute for resolution in accordance with the procedures described in Section 19.5 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 19.3(f) (in the case of a Technical Dispute) or Section 19.4(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 19.5.

- (e) In the event that the Parties are unable to resolve a Dispute by informal discussions in accordance with Section 19.2.1.1 and such Dispute is not a Technical Dispute or a Payment Dispute, then the Dispute shall be resolved in accordance with Section 19.5.
- (f) The Parties may, through mutual agreement, elect to resolve any Dispute (including a Technical Dispute and a Payment Dispute) in accordance with Section 19.5.

### **19.3. Technical Disputes**

Any Technical Dispute subject to this Section 19.3 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 2 hereto. If the Parties are unable to appoint an expert from the list on Schedule 2 or cannot agree on an expert from the list on Schedule 2, or if the Technical Dispute involves issues that require an expert not listed on Schedule 2, 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 2, such person shall become the expert for the purpose of resolving the Technical Dispute. Otherwise, the Parties shall, as soon as practicable, meet and discuss in good faith for a period of five (5) Business Days to agree upon a person to be the expert. If the Parties fail to meet within a reasonable amount of time or are unable to agree on an expert at the end of such five (5) Business Day period, the Party initiating the submission of the Technical Dispute shall request the ICC Centre for Expertise to appoint the expert for ad hoc proceedings in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of Commerce, with the request that the ICC Centre for Expertise shall appoint within five (5) Business Days or as soon as practicable thereafter, and such Person so appointed shall be the expert for the purpose of resolving the Technical Dispute.
- (c) Within five (5) Business Days after receiving the written materials described in Section 19.3(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 19.3. If the expert determines that the Dispute is not capable of such resolution, the Dispute shall be resolved pursuant to Section 19.5.
- (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 19.2.2(d) and Section 19.3(h).
- (h) Except as provided in Section 19.3(i) with respect to the payment of costs, the proceedings under this Section 19.3 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 19.5. The process under this Section 19.3 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.

#### **19.4. Payment Disputes**

Any Payment Dispute subject to this Section 19.4 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 2 hereto. If the Parties are unable to appoint an expert from the list on Schedule 2 or cannot agree on an expert from the list on Schedule 2, or if the Payment Dispute involves issues that require an expert not listed on Schedule 2, 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 2, such person shall become the expert for the purpose of resolving the Payment Dispute. Otherwise, the Parties shall, as soon as practicable, meet and discuss in good faith for a period of five (5) Business Days to agree upon a person to be the expert. If the Parties fail to meet within a reasonable amount of time or are unable to agree on an expert at the end of such five (5) Business Day period, the Party initiating the submission of the Payment Dispute shall request the ICC Centre for Expertise to appoint the expert for ad hoc proceedings in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of Commerce, with the request that the ICC Centre for Expertise shall appoint within five (5) Business Days or as soon as practicable thereafter, and such Person so appointed shall be the expert for the purpose of resolving the Payment Dispute.
- (c) Within five (5) Business Days after receiving the written materials described in Section 19.4(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 19.4. If the expert determines that the Dispute is not capable of such resolution, the Dispute shall be resolved pursuant to Section

19.5; provided, however, that if the Dispute was referred to this Section 19.4 pursuant to Section 19.2.2(b), the Dispute shall be resolved pursuant to Section 19.3.

- (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 19.2.2(d) and Section 19.4(h).
- (h) Except as provided in Section 19.4(i) with respect to the payment of costs, the proceedings under this Section 19.4 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 19.5. The process under this Section 19.4 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.

#### **19.5. Arbitration**

- (a) Any Dispute subject to this Section 19.5 shall, subject to Section 19.5(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 Mining is a national and resident of Kosovo, while either GenCo or KEK Mining, 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 Mining, 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 19.5, for an arbitration under the ICSID Convention; or
  - (ii) the period for selecting the arbitrator specified in the ICC Rules,and the two (2) arbitrators thus nominated shall, within thirty (30) Days after the selection of the second arbitrator, select the third (3rd) arbitrator; provided, however, that to the extent that more than two Parties participate in the arbitration, the International Chamber of Commerce shall be designated as the appointing authority for purposes of selecting the arbitrators in accordance with the Rules of ICC as Appointing Authority.
- (f) No arbitrator appointed pursuant to this Section 19.5 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 19.5(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).

#### **19.6. 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 Sections 19.1, 19.3 and 19.4, the rights of the Parties to proceed with Dispute resolution under Sections 19.1, 19.3 and 19.4 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 Mining hereunder.

#### **19.7. Obligations Continue**

The pendency of a Dispute shall not in and of itself relieve either Party of its duty to perform under this Agreement, and each Party shall continue to perform its obligations, and shall have the right to exercise its rights, under this Agreement pending resolution of such Dispute, without limiting Section 17.5.

#### **19.8. Commercial Acts**

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

#### **19.9. Sovereign Immunity; Jurisdiction**

- (a) KEK Mining hereby irrevocably and unconditionally:
  - (i) agrees that should any proceedings be brought against KEK Mining 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 Mining 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 constitute 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 19.9(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 Mining to enforce any award or decision of any arbitrator who was duly appointed under this Agreement to resolve any Dispute between the Parties;
  - (ii) waives any right of immunity that it or any of its assets now has or may in the future have in any jurisdiction in connection with any such proceedings;
  - (iii) waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 19.9(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 20 Miscellaneous**

### **20.1. 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 Mining:

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

Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

(ii) 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  
Email: [CGK\\_CEO@contourglobal.com](mailto:CGK_CEO@contourglobal.com) and  
[CGK\\_GC@contourglobal.com](mailto: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 20.1.

- (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 20.1 shall use reasonable commercial efforts to provide to the receiving Party a reasonably accurate translation in Albanian within five (5) Business Days of sending such notice or other communication in English; provided, however, that a Party shall not be required to provide a translation of any technical drawings or similar technical or engineering documents. In the event of any inconsistency between the English original and the Albanian translation of any notice or other communication, the English version shall prevail over the Albanian version. For the avoidance of doubt, failure to deliver a translation of a notice or other communication in accordance with this Section 20.1(c) shall not affect the effectiveness of such notice or other communication as established pursuant to Section 20.1(b).
- (d) In the event that a notice delivered by GenCo to KEK Mining pursuant to this Agreement requires KEK Mining 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 Mining to respond (including any deemed approval or non-objection).

## **20.2. 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.

## **20.3. KEK Mining's Cooperation, Assistance, and Information**

KEK Mining 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 Mining and were set forth herein.

## **20.4. Survival**

- (a) On the expiry of this Agreement or the earlier termination of this Agreement, all covenants, obligations, representations, and warranties contained in this Agreement shall terminate and be of no force or effect and the Parties shall have no further obligations or liabilities under this Agreement; provided, however, the following shall expressly survive: (i) those obligations and liabilities that arose prior to and remain undischarged at the date of expiry or termination, and (ii) those obligations and liabilities that expressly survive such expiry or termination pursuant to Section 20.4(b).
- (b) Notwithstanding anything contained in this Agreement to the contrary, the provisions of Article 1 (*Definitions; Interpretation*), Article 7 (*Reclamation of the GenCo Exclusive Ash Landfill and the GenCo Exclusive Gypsum Landfill*), Article 15 (*Indemnification*), Article 16 (*Limitation of Liability*), Article 19 (*Dispute Resolution*), and Article 20 (*Miscellaneous*) shall expressly survive any termination or expiry of this Agreement.

## **20.5. 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.

## **20.6. 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.

## **20.7. Relationship of the Parties**

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

## **20.8. 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.

#### **20.9. 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.

#### **20.10. 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.

#### **20.11. Governing Law**

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

#### **20.12. 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.

#### **20.13. 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 20.13(a), this Agreement shall not be assigned by GenCo to any other party without the prior written consent of KEK Mining.
- (b) Subject to Sections 20.13(c) and 20.13(d), this Agreement shall not be assigned by KEK Mining to any other party without the prior written consent of GenCo.
- (c) The Parties acknowledge and agree that GOK might privatize, or separate from KEK Mining, the mining functions of KEK Mining. Notwithstanding Section 20.13(b), in the event a KEK Mining Reorganization or Privatization occurs, KEK Mining may assign all of its right, title, and interest in and to this Agreement to any Licensed KEK Mining Successor if (i) GOK without interruption guarantees the performance of the Licensed KEK Mining 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 Mining Successor that in the reasonable business judgment of GenCo provides an adequate alternative to the Government Guarantee, (ii) the Licensed KEK Mining Successor is reasonably capable of performing all KEK Mining 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 Mining pursuant to this Section 20.13 shall not relieve KEK Mining 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 20.13(a), 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 Mining, GOK or any other Person, assign and novate 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 and novation. If GenCo so requests, KEK Mining 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 Mining not reasonably comply with this Section 20.13(d), GenCo shall have the right to terminate this Agreement by delivering a notice to KEK Mining. The transfer or assignment of assets by GenCo pursuant to this Section 20.13(d) shall not relieve KEK Mining 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 20.13(a) and Section 20.13(b).
- (f) Any assignment in contravention of this Section 20.13 shall be null and void.

#### **20.14. 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. Each Party shall contractually require all its Contractors to have all the required skills and capacity necessary to perform or cause to be performed any tasks that they undertake in a timely and professional manner, utilizing sound engineering principles, project management procedures, supervisory procedures, and generally acceptable industry practices.
- (b) To the extent that a Party delegates its responsibilities under this Agreement to one or more Contractors, such Party shall ensure that each such Contractor is required, pursuant to its contract with such party, to perform its obligations in accordance with the Applicable Standards. Such Party shall provide the other Party with copies of all such contracts, which contracts may be redacted as necessary for purposes of confidentiality.

#### **20.15. Confidentiality**

- (a) Subject to Section 20.15(d), this Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and, subject to Section 20.15(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 20.15(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 20.15;
  - (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;
    - (A) any rating agencies, and their advisors, consultants, and insurers;
    - (B) any actual and potential equity investors, and in each case, their advisors, consultants, and insurers; or
    - (C) 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 20.15; or
  - (v) to any expert or arbitrator appointed pursuant to and under the terms of this Agreement.
- (d) Notwithstanding the provisions of Section 20.15(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 20.15 shall no longer apply to GenCo in respect of any such information released to the public.

#### **20.16. 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.

**20.17. 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.

**20.18. Further Assurances**

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

**20.19. 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.

**20.20. 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.

**ContourGlobal Signatory**

By:  \_\_\_\_\_

Name: Joseph C. Brandt

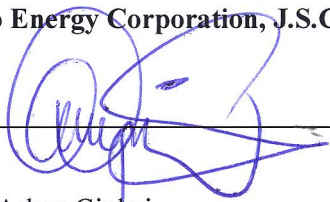
Title: CEO, ContourGlobal

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Kosovo Energy Corporation, J.S.C.**

By:  \_\_\_\_\_

Name: Arben Gjukaj

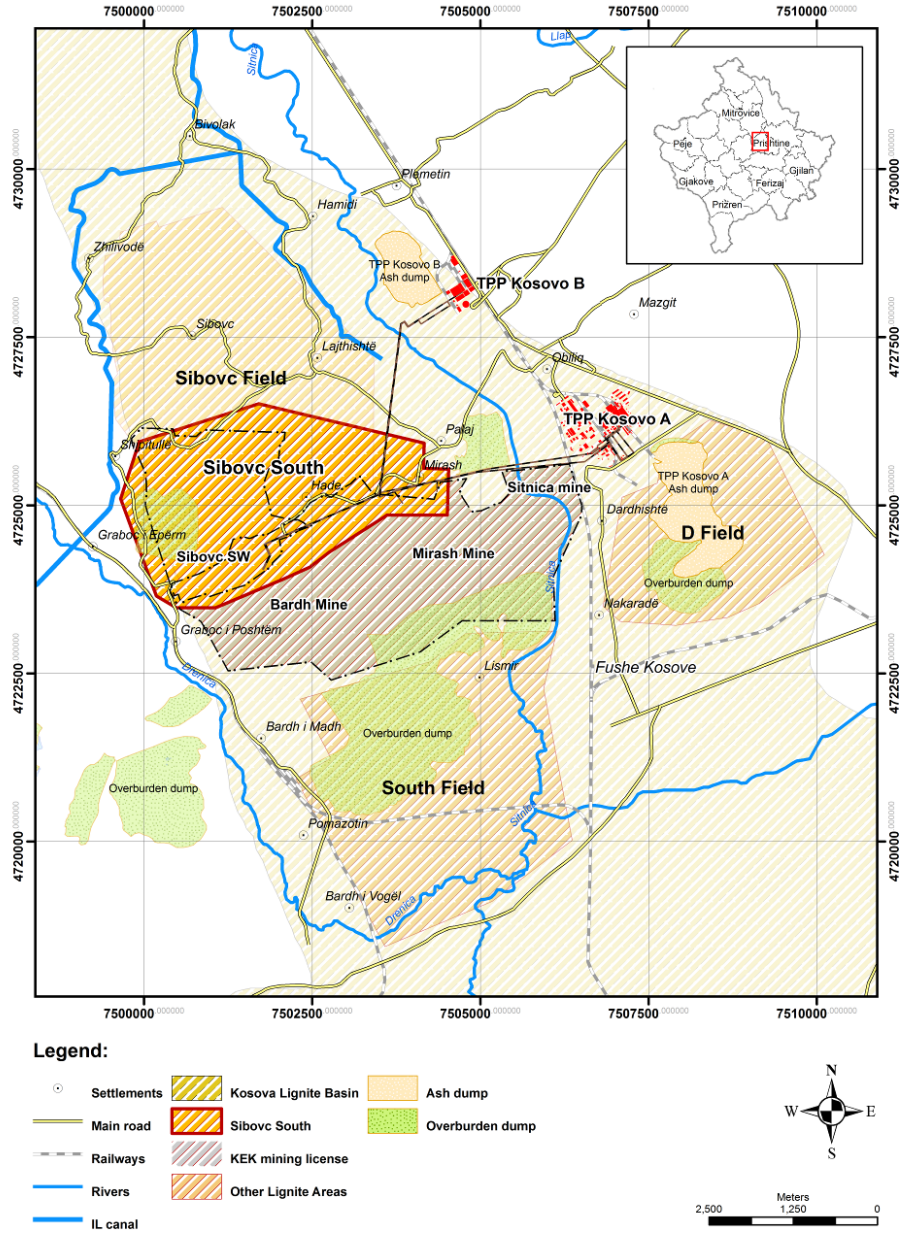
Title: CEO

[Notary]



## Schedule 1 Description of the B&M Mines

The B&M Mines are illustrated on the map below:



Schedule 1 - 1

**Schedule 2**  
**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 3**  
**KEK Mining Land**

The depiction of the KEK Mining Land to be developed by the Parties in accordance with Section 4.5.