

Lignite Supply Agreement

between

ContourGlobal Terra 6 S.à r.l.

and

Kosovo Energy Corporation, J.S.C.

**HUNTON &
WILLIAMS**

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Table of Contents

| | | Page |
|-------------------|--|-----------|
| Article 1 | Definitions; Interpretation | 1 |
| | 1.1 Definitions..... | 1 |
| | 1.2 Interpretation..... | 16 |
| Article 2 | Effective Date; Term; Supply Period | 18 |
| | 2.1 Effectiveness; Term..... | 18 |
| | 2.2 Supply Period..... | 18 |
| Article 3 | Supply of Lignite | 18 |
| | 3.1 Sale and Purchase of Lignite | 18 |
| | 3.2 Supply of Lignite for Design Purposes..... | 18 |
| | 3.3 Lignite Delivery Point..... | 19 |
| | 3.4 Quantity Limitations..... | 19 |
| | 3.5 Estimated Requirements; Lignite Orders..... | 20 |
| | 3.6 Take or Pay Quantity..... | 21 |
| | 3.7 Right to Sell Lignite from the Sibovc South Mine Field | 21 |
| | 3.8 Coal Yard Reserves and In-Pit Inventory | 21 |
| | 3.9 Grant of Necessary Property Rights | 22 |
| | 3.10 Failure to Supply | 23 |
| | 3.11 Operation and Maintenance of the Mining Assets..... | 24 |
| | 3.12 Installation and Operation of a Magnetic Separation Device and a Metal Detection Device | 24 |
| | 3.13 Procurement of Goods and Services..... | 24 |
| Article 4 | Measurement | 25 |
| | 4.1 Weight Determination | 25 |
| | 4.2 Sampling and Analysis..... | 25 |
| Article 5 | Assurances as to Supply..... | 26 |
| | 5.1 Dedicated Source of Supply | 26 |
| | 5.2 Limitation on Other Supply Commitments | 26 |
| Article 6 | Operating Procedures | 27 |
| | 6.1 Operating Procedures | 27 |
| | 6.2 Operating Procedures Amendments | 28 |
| | 6.3 Conflicts with Agreement..... | 28 |
| Article 7 | Quality; Off-Spec Deliveries..... | 28 |
| | 7.1 Lignite Quality | 28 |
| | 7.2 Inspection | 29 |
| | 7.3 Rejection; Effect of Rejection | 30 |
| Article 8 | Price | 30 |
| | 8.1 Price | 30 |
| | 8.2 Price Adjustment for Third Party Lignite Sales..... | 30 |
| | 8.3 Price Adjustment for Major Capital Investment..... | 31 |
| Article 9 | Environmental Remediation | 31 |
| | 9.1 Environmental Remediation to Abate Environmental/Archaeological Conditions | 31 |
| Article 10 | Reports to ICMM; Mine Development Plan..... | 32 |
| | 10.1 Reports | 32 |
| | 10.2 Mine Development Plan | 32 |
| Article 11 | Billing and Payment..... | 33 |
| | 11.1 Billing..... | 33 |

| | | | |
|-------------------|-------|--|-----------|
| | 11.2 | Payment..... | 34 |
| | 11.3 | Payment Disputes..... | 35 |
| | 11.4 | Supporting Data..... | 35 |
| Article 12 | | Risk of Loss; Title | 36 |
| | 12.1 | Risk of Loss; Title..... | 36 |
| Article 13 | | Taxes | 36 |
| | 13.1 | Taxes Applicable to KEK Mining..... | 36 |
| | 13.2 | Taxes Applicable to GenCo..... | 36 |
| | 13.3 | Changes in Tax..... | 36 |
| Article 14 | | Insurance | 37 |
| | 14.1 | Maintenance of Insurance Policies..... | 37 |
| | 14.2 | Event of Loss..... | 38 |
| | 14.3 | Certificates and other Evidence of Insurance | 38 |
| | 14.4 | Insurance Reports..... | 39 |
| | 14.5 | No Limitation on Liability..... | 39 |
| Article 15 | | Representations and Warranties | 39 |
| | 15.1 | Representations and Warranties of KEK Mining | 39 |
| | 15.2 | Representations and Warranties of GenCo..... | 40 |
| | 15.3 | Reaffirmation of Representations and Warranties..... | 40 |
| Article 16 | | Indemnification | 40 |
| | 16.1 | Indemnification | 40 |
| | 16.2 | Limitation on Indemnification..... | 42 |
| | 16.3 | Assertion of Claims to Exceed Minimum Indemnification Amount | 43 |
| | 16.4 | Defense of Claims | 43 |
| Article 17 | | Limitation of Liability..... | 45 |
| | 17.1 | Limitation of Liability..... | 45 |
| Article 18 | | Default; Termination | 45 |
| | 18.1 | KEK Mining Events of Default..... | 45 |
| | 18.2 | GenCo Events of Default..... | 46 |
| | 18.3 | Notice to GOK of KEK Mining Event of Default | 47 |
| | 18.4 | Termination Notice..... | 48 |
| | 18.5 | Obligations Following Termination Notice..... | 48 |
| | 18.6 | Other Remedies | 48 |
| | 18.7 | Obligations Following Termination of Implementation Agreement..... | 49 |
| | 18.8 | Right to Terminate for Failure to Achieve the Transfer Date..... | 49 |
| Article 19 | | Force Majeure | 49 |
| | 19.1 | Force Majeure | 49 |
| | 19.2 | Notification Obligations | 51 |
| | 19.3 | Duty to Mitigate | 52 |
| | 19.4 | Failure or Delays Caused by Force Majeure | 52 |
| | 19.5 | Payment During Force Majeure Event | 52 |
| | 19.6 | Restoration of the Mining Assets Following a Change in Law | 52 |
| | 19.7 | Effect of a Restoration on the Lignite Price | 55 |
| | 19.8 | Right to Declare Buy-Out Event Following an Other Force Majeure Event | 55 |
| | 19.9 | Right to Terminate Following a Political Force Majeure Event or Change in Law..... | 55 |
| | 19.10 | Notice of Termination Required; Compensation..... | 56 |
| Article 20 | | Dispute Resolution | 56 |
| | 20.1 | Notice of Dispute | 56 |
| | 20.2 | Dispute Resolution Procedures..... | 56 |
| | 20.3 | Technical Disputes | 57 |
| | 20.4 | Payment Disputes..... | 58 |
| | 20.5 | Arbitration | 59 |

| | | | |
|-------------------|---------------------------|--|-----------|
| | 20.6 | Related Disputes..... | 61 |
| | 20.7 | Obligations Continue..... | 61 |
| | 20.8 | Sovereign Immunity; Jurisdiction | 61 |
| Article 21 | Miscellaneous..... | | 62 |
| | 21.1 | Notices | 62 |
| | 21.2 | Amendment..... | 64 |
| | 21.3 | KEK Mining’s Cooperation, Assistance and Information | 64 |
| | 21.4 | Survival | 64 |
| | 21.5 | Third Party Beneficiaries..... | 64 |
| | 21.6 | No Waiver | 65 |
| | 21.7 | Relationship of the Parties..... | 65 |
| | 21.8 | Expenses of the Parties..... | 65 |
| | 21.9 | Consent..... | 65 |
| | 21.10 | Language..... | 65 |
| | 21.11 | Governing Law..... | 65 |
| | 21.12 | Entirety..... | 65 |
| | 21.13 | Assignment..... | 65 |
| | 21.14 | Contracting..... | 66 |
| | 21.15 | Confidentiality..... | 67 |
| | 21.16 | No Liability for Review | 68 |
| | 21.17 | Counterparts | 68 |
| | 21.18 | Further Assurances | 68 |
| | 21.19 | Severability | 68 |
| | 21.20 | Partial Invalidity..... | 68 |
| Schedule 1 | | Methodology for Establishing the Lignite Price; Lignite Quantities | |
| Schedule 2 | | Insurance | |
| Schedule 3 | | Contract Lignite Quality | |
| Schedule 4 | | Procedures for Determining Weight of Delivered Lignite | |
| Schedule 5 | | Sibovc South Mine Field | |
| Schedule 6 | | Take or Pay Quantities; Annual TOPQ Deficiency Payments | |
| Schedule 7 | | Description of the Delivery Points | |
| Schedule 8 | | List of Experts | |

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

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

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

RECITALS

- A. The Government of Kosovo intends as a matter of policy to involve the private sector in an infrastructure project that includes the development, design, construction, financing, ownership, operation, and maintenance of the KRPP Facility (as hereinafter defined) and rehabilitation of the Site (as hereinafter defined) by GenCo (the “**Kosovo e Re Project**”);
- B. GenCo intends to form a new entity organized under the Laws of Kosovo (“**CG Kosovo**”), and following the formation of CG Kosovo, GenCo intends to assign all of its right, title and interest in and to, and delegate its obligations under, this Agreement to CG Kosovo and KEK Mining acknowledges and consents to such assignment;
- C. As part of the Kosovo e Re Project, GenCo will develop, design, construct, finance, own, operate, and maintain the KRPP Facility in accordance with the Environmental Standards (as hereinafter defined);
- D. The KRPP Facility will require a reliable source of Lignite (as hereinafter defined) to operate; and
- E. GenCo desires to purchase Lignite for the electricity generation operations of the KRPP Facility from KEK Mining, and KEK Mining desires to supply and deliver to GenCo at the Delivery Points (as hereinafter defined) Lignite for use at the KRPP Facility in the quantities and pursuant to the terms and conditions set forth herein.

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

Article 1 **Definitions; Interpretation**

1.1 Definitions

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

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

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

- (a) a breach or default by 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.

“Abandonment (KEK Mining)” – The voluntary cessation for a period of 30 consecutive Days of the operation of the Sibovc South Mine Field for reasons other than:

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

“Acceptable Range” – The range of variations in quality parameters for Lignite, which are permitted for Lignite delivered under this Agreement and are specified in Schedule 3.

“Adjusted Lignite Price” – With respect to each Agreement Year, the price calculated pursuant to Section 4.1 of Schedule 6.

“Adjusted Take or Pay Quantity” or “Adjusted TOPQ” – With respect to each Agreement Year, the quantity calculated pursuant to Section 3.1 of Schedule 6.

“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 21.15(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.

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

“Alternate Testing Lab” – Has the meaning given thereto in Section 4.2.2(f).

“Analysis Certification” – Has the meaning given thereto in Section 4.2.2(b)(iv).

“Annual Take or Pay Quantity” or “Annual TOPQ” – With respect to each Agreement Year, the quantity calculated pursuant to Schedule 6.

“Annual TOPQ Deficiency Payment” – A payment for failure by GenCo to take delivery of and to pay for a quantity of Lignite at least equal to the Adjusted TOPQ, calculated in accordance with Schedule 6.

“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.

“As Received Basis” – Calculated to the moisture condition of the lignite samples as such samples arrive at the laboratory for testing and before any processing or conditioning, such lignite samples having been maintained in a sealed state such that the gain or loss of moisture has been prevented and having been collected and protected in accordance with Article 4.

“ASTM Standards” – Has the meaning given thereto in Section 4.2.1.

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

“Back-up Scales” – Has the meaning given thereto in Schedule 4.

“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.

“Carry Forward Quantity” – Has the meaning given thereto in Section 3.6(c).

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

“Change in Law” –

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

that in any such case

- (i) establishes any requirement that affects the development, design, construction, financing, ownership, operation, or maintenance relating to the Kosovo e Re Project that is different from the requirements or affects the profits, costs, or risks associated with the same
 - (A) in effect as of the Execution Date,
 - (B) specified in any applications, or other documents filed in connection with such applications, for any GenCo Consent filed by GenCo, or

(C) agreed to in any of the Project Agreements or the Construction/Maintenance Contracts; or

(ii) has a Material GenCo Effect.

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

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

“Change in Tax Notice” – Has the meaning given thereto in Section 13.3.1(a)(ii).

“Change Order” – 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.

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

“Coal Yard Reserves (KRPP)” – Has the meaning given thereto in Section 3.8(b)(ii).

“Coal Yard Reserves Area (KRPP)” – Has the meaning given thereto in Section 3.8(b)(i).

“Coal Yard Reserves Area (KRPP) Quality Report” – Has the meaning given thereto in Section 4.2.2(b)(iv).

“Coal Yard System (KRPP, Kosovo B)” – The equipment, machinery, and other assets used by KEK Mining to operate and manage the Coal Yard (KRPP, Kosovo B).

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

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

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

“Contract Lignite Quality” – Lignite Quality Parameters that are within the Acceptable Range, as provided in Schedule 3.

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

“Daily Contract Quantity” – The quantities up to which KEK Mining shall supply Lignite to GenCo, as specified in Section 3.4.1(b).

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

“Day-Ahead Scheduling Instruction” – Has the meaning given thereto in the Power Purchase Agreement.

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

“Delivery Point Quality Report” – Has the meaning given thereto in Section 4.2.2(b)(iv).

“Delivery Points” – The point after the Lignite crushers where KEK Mining’s last conveyor belt that is part of its delivery system ends and the GenCo conveyor belt commences, as indicated in Schedule 7.

“Designated Cost Recovery Period” – Ten (10) Agreement Years or such shorter or longer period (up to the remainder of the Supply Period) as may be designated by GenCo; provided, however, the Designated Cost Recovery Period shall be no greater than the number of Agreement Years that remain in the Supply Period.

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

“Due Date” – Has the meaning given thereto in Section 11.2(a).

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

“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.

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

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

- (a) conditions, circumstances, or other matters of fact relating to or arising out of the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, discharging, injecting, escaping, leaching, disposal (including the abandonment or discarding of ash, barrels, containers, and other closed receptacles containing any Hazardous

Material), dumping, or threatened release of Hazardous Materials, excluding trace materials inherent to lignite disposed of in accordance with the Project Agreements and the Environmental Standards; and

- (b) conditions, circumstances, or other matters of fact resulting in the exposure of any Person to Hazardous Materials.

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

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

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

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

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

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

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

“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.

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

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

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

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

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

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

“Force Majeure Event” – Has the meaning given thereto in Section 19.1.1.

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

“Full Restoration Report” – Has the meaning given thereto in Section 19.6.3(a).

“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 KEK Mining Effect; 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 or a KEK Mining 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 18.2.

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

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

“GenCo Lignite Delivery Easement” – Has the meaning given thereto in Section 3.9(a).

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

“GJ” – One billion (1×10^9) Joules.

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

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

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

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

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

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

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

“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 20.5(c).

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

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

“ICSID Convention” – Has the meaning given thereto in Section 20.5(a).

“ICSID Rules” – Has the meaning given thereto in Section 20.5(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/c8f524004a73daeca09afd998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES or such later version required to be met by any Lender under the Financing Documents.

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

“In-Pit Inventory” – Has the meaning given thereto in Section 3.8(b)(iii).

“Indemnification Acknowledgement” – Has the meaning given thereto in Section 16.4.1(c).

“Indemnification Notice” – Has the meaning given thereto in Section 16.4.1(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.

“Invoice Dispute Notice” – Has the meaning given thereto in Section 11.3.1.

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

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

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

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

“KEK Mining Action or Inaction” – The action or inaction of KEK Mining or any KEK Mining Party, which action or inaction constitutes a material breach or default of KEK Mining’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 KEK Mining or any KEK Mining Party and which action or inaction has a Material GenCo Effect; provided, however, that no such action or inaction shall be considered a KEK Mining Action or Inaction if such action or inaction is caused in whole or significant part by a GenCo Action or Inaction.

“KEK Mining Consents” – All Consents relating to the Mining Assets that KEK Mining is required to obtain in connection with the Kosovo e Re Project from and after the Transfer Date, including the Mining License.

“KEK Mining Event of Default” – Has the meaning given thereto in Section 18.1.

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

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

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

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

“Lignite Delivery System” – The equipment, machinery, and other assets used by KEK Mining to transport Lignite from the Sibovc South Mine Field to the Delivery Points under this Agreement.

“Lignite Order” – Has the meaning given thereto in Section 3.5.2.

“Lignite Price” – Has the meaning given thereto in Section 8.1(a).

“Lignite Pricing Report” – Has the meaning given thereto in Section 10.2(a)(iii).

“Lignite Quality Parameters” – The parameters for assessing lignite quality described in Schedule 3.

“Lignite Scales” – Has the meaning given thereto in Section 1.1(a) of Schedule 4.

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

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

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

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

“Major Capital Investment” – Has the meaning given thereto in Section 8.3(a).

“Major Capital Investment Lignite Credit” – The component of the Lignite Price calculated in accordance with Section 2.5 of Schedule 1.

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

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

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

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

- (a) KEK Mining or its ability to perform its obligations or exercise its rights under any Project Agreement to which it is a party;
- (b) the development, design, financing, ownership, and operation of the Sibovc South Mine Field;
- (c) the interests of GOK or any Specified POE or the return of or on their investment in relation to KEK Mining’s participation in the Kosovo e Re Project; and
- (d) the ability of any counterparty to any Project Agreement to which KEK Mining, any Specified POE, or GOK is a party to perform its obligations thereunder.

“Maximum Consumption Rate” – Has the meaning given thereto in Section 6.1 and Section 6.2 of Schedule 1.

“Maximum Daily Lignite Quantity” – Has the meaning given thereto in Schedule 1.

“Maximum Daily Test Lignite Quantity” – Has the meaning given thereto in Schedule 1.

“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 or such later version required to be met by any Lender under the Financing Documents.

“Mine Development Plan” – Has the meaning given thereto in Section 10.2(a)(i).

“Mine Field Analysis” – Has the meaning given thereto in Section 10.2(a)(vi).

“Mine Financing Plan” – Has the meaning given thereto in Section 10.2(a)(ii).

“Mining Assets” – Any of:

- (a) any property, KEK Mining Consents, or other rights in relation to the Sibovc South Mine Field that are held by KEK Mining;
- (b) the Lignite Delivery System;
- (c) the Coal Yard System (KRPP, Kosovo B); and
- (d) any other equipment, machinery, materials, real property, interests in real property, intellectual property, interests in intellectual property, or other property of any kind that are owned or leased by KEK Mining or in which KEK Mining otherwise holds a legal or beneficial interest and are used by KEK Mining to extract Lignite from the Sibovc South Mine Field and deliver and sell

Lignite under this Agreement, including for transporting Lignite to the Delivery Points hereunder and for managing the Coal Yard (KRPP, Kosovo B), related to the supply and delivery of Lignite under this Agreement.

“Mining Consultant” – Has the meaning given thereto in Section 10.2(a).

“Mining License” – The mining license issued to KEK Mining by ICMC permitting the exploitation of lignite from the Sibovc South Mine Field.

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

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

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

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

“Non-Conforming Lignite” – Any lignite tendered for delivery by KEK Mining hereunder that has one or more Lignite Quality Parameters that are outside the Acceptable Range or that is otherwise eligible for rejection pursuant to Section 7.3.

“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.

“Operating Procedures” – Has the meaning given thereto in Section 6.1(a).

“Other Force Majeure Buy-Out Event” – Has the meaning given thereto in Section 19.8(a).

“Other Force Majeure Event” – Has the meaning given thereto in Section 19.1.2(d).

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

“Payment Dispute” – A Dispute that relates to any actual or contingent payment obligation (other than those which arise directly from a termination of this Agreement) which may arise between the Parties related to this Agreement that, in any case, is the type of issue or matter that is reasonably susceptible to consideration and resolution by an expert with relevant experience.

“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 19.1.2(a).

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

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

“Preliminary Restoration Estimate” – Has the meaning given thereto in Section 19.6.1(a).

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

“Rejection Parameters” – The Lignite Quality Parameters shown in Schedule 3.

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

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

except to the extent that the provisions set forth in two or more of the above are such that the Person conducting such resettlement cannot simultaneously comply with such provisions, in which case the order of the standards listed above shall be the order of precedence, and the relevant provisions of the relevant

lower-ranked standard (or standards, if necessary) shall not apply to the extent necessary to enable such Person to comply with the higher-ranked standard. For the avoidance of doubt, nothing herein shall reduce the obligation of a Party to comply with the most stringent of the foregoing standards.

“Restoration” – Has the meaning given thereto in Section 19.6.1(a).

“Restoration Cost Estimate” – Has the meaning given thereto in Section 19.6.1(a)(i).

“Restoration Costs” – The documented costs that are reasonably and prudently incurred by KEK Mining to effect a Restoration to the extent those costs exceed any insurance proceeds, including in the event of a Change in Law:

- (a) the cost of any material modifications or material capital additions to the Mining Assets that are necessary for KEK Mining to come into compliance with a Change in Law; and
- (b) the cost of additional quantities or higher quality of consumables that can be directly attributed to compliance by the KEK Mining with a Change in Law;

consistent with the requirements of the applicable Laws of Kosovo and Prudent Mining Practices, and the use of efficient and low-cost methods, to the extent consistent with Prudent Mining Practices.

“Restoration Expert” – Has the meaning given thereto in Section 19.6.1(a).

“Restoration Period” – The period of restoration established in the Restoration Schedule and as defined in Section 19.6.1(a)(ii).

“Restoration Schedule” – Has the meaning given thereto in Section 19.6.1(a)(ii).

“Resultant Damage” – Any resultant, secondary or collateral physical loss or damage to the KRPP Facility or to GenCo’s other property or equipment at the Site (excluding any indirect or consequential economic 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).

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

“Sibovc South Mine Field” – The field commonly known as the “Sibovc” field over which KEK Mining holds a license, which field is more particularly described in Schedule 5.

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

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

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

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

except to the extent that the provisions set forth in two or more of the above are such that GenCo cannot simultaneously comply with such provisions, in which case the order of the standards listed above shall

be the order of precedence, and the relevant provisions of the relevant lower-ranked standard (or standards, if necessary) shall not apply to the extent necessary to enable GenCo to comply with the higher-ranked standard. For the avoidance of doubt, nothing herein shall reduce the obligation of a Party to comply with the most stringent of the foregoing standards.

“Special GOK Notice of Default” – Has the meaning given thereto in Section 18.3.

“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.

“Start-Up Maximum Monthly Test Lignite Quantity” – Has the meaning given thereto in Section 6.3 of Schedule 1.

“Supply Period” – Has the meaning given thereto in Section 2.2(a).

“Take or Pay Quantity” – With respect to each Agreement Year, the quantity of Lignite specified in Schedule 6.

“Target Debt to Equity Ratio” – No less than sixty-five percent (65%) debt to thirty-five percent (35%) equity, with the percentage of equity including any KEK Mining shareholder loans, as such ratio may be adjusted pursuant to Section 3.1 of Schedule 1 or by mutual agreement of the Parties.

“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.

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

“Termination Notice” – Has the meaning given thereto in Section 18.4(a).

“Testing Lab” – Has the meaning given thereto in Section 4.2.2(b).

“Third Party Lignite Sales Agreement” – Has the meaning given thereto in Section 8.2(a).

“Threshold Amount” – An amount equal to the greater of (a) five percent (5%) of the Other Force Majeure Purchase Price (as defined in the Implementation Agreement), and (b) Five Million Euros (€5,000,000).

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

“Total Contract Quantity” – The amount of Lignite for the full Supply Period, equal to Eighty Four Million (84,000,000) Tonnes of Lignite.

“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 Power Purchase Agreement.

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

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

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

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

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

“World Bank Group EHS Guidelines” – The World Bank Group’s Environmental, Health and Safety Guidelines, available as at the Execution Date (subject to future relocation) at <http://www.ifc.org/ehsguidelines> or such later version required to be met by any Lender under the Financing Documents, including the applicable sections of the: (i) Environmental, Health and Safety Guidelines on Thermal Power Plants (2008), Mining (2007) and Waste Management Facilities (2007), and (ii) Section 2.0 of the Environmental, Health and Safety (EHS) Guidelines: Occupational Health and Safety (April 30, 2007).

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

1.2 Interpretation

- (a) In this Agreement, unless a clear contrary intention appears:
- (i) the singular number includes the plural number, and vice versa;
 - (ii) calculations other than prices required to be made hereunder shall be expressed with four decimal places of precision;
 - (iii) reference to any Person includes such Person’s permitted successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
 - (iv) reference to any gender includes each other gender;
 - (v) reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or modified and in effect from time to time in accordance with

the terms thereof; provided, however, that reference to the Applicable Standards (other than the Laws of Kosovo) means the Applicable Standards (other than the Laws of Kosovo) in effect on the Execution Date and, following the execution of the Financing Documents, the versions of the Applicable Standards (other than the Laws of Kosovo) required to be met by any Lender under the Financing Documents;

- (vi) references to any legislation or legislative provision include references to any statutory modification or re-enactment of such legislation or legislative provision and any legislation or legislative provision substituted for that legislation or legislative provision, provided that nothing in this Section 1.2(a)(vi) shall prevent a Party from seeking relief for a Change in Law as provided in any Project Agreement;
 - (vii) “hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section, Schedule, or other provision hereof, unless otherwise specifically stated;
 - (viii) “including” (and with correlative meaning “include” or “includes”) means including without limiting the generality of any description preceding such term;
 - (ix) a letter, document, or other instrument providing that GOK has “no objection” (or “does not object” or other words of similar import) in relation to a particular matter shall be deemed a GOK consent in relation to such matter;
 - (x) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”;
 - (xi) references to documents, instruments, or agreements shall be deemed to refer as well to all addenda, exhibits, schedules, or amendments thereto; and
 - (xii) references to a Party becoming aware or having knowledge of an event or circumstances shall be deemed to refer to personnel of such Party that have responsibility for matters relating to such event or circumstances, or any current or former director or officer, becoming aware or having knowledge.
- (b) Captions and headings in this Agreement are for reference only and do not constitute a part of the substance of this Agreement and shall not be considered in construing this Agreement.
 - (c) References in the body of this Agreement to Articles, Sections, and Schedules (and Annexes thereof) are to Articles and Sections of and Schedules (and Annexes thereof) to this Agreement, unless stated otherwise. References in any Schedule to Articles, Sections, and Annexes are references to Articles, Sections, and Annexes of that Schedule, unless stated otherwise. References in any Schedule (or Annex thereto) to Articles and Sections of the Agreement are references to the body of this Agreement, unless stated otherwise.
 - (d) In carrying out its obligations and duties, and in providing estimates under this Agreement, each Party shall have an implied obligation of good faith.
 - (e) Except as otherwise indicated in this Agreement, references to time are references to Central European Standard Time or Central European Summer Time, as then applicable at the Site.
 - (f) This Agreement was negotiated by the Parties with the benefit of legal representation, and, accordingly, any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party as the drafting party shall not apply to any construction or interpretation hereof.
 - (g) To the extent there exists a conflict between any provisions of this Agreement and any Schedule or Annex, the provisions of this Agreement shall prevail, but the absence of a provision in a Schedule or Annex or in this Agreement (as the case may be) shall not constitute a conflict.

Article 2
Effective Date; Term; Supply Period

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 terminated earlier in accordance with its terms, remain in force until the expiration of the Supply Period.

2.2 Supply Period

- (a) Subject to Section 2.2(b), the Supply Period shall commence ten (10) Months prior to the Commercial Operations Date and shall expire upon the expiration or prior termination of the Power Purchase Agreement, provided that if the GOK (or its designee) acquires the KRPP Facility and this Agreement is assigned to the GOK (or its designee) in connection with such acquisition, then the GOK (or its designee) may renew this Agreement at its option until the expiration of the Generation License (as defined in the Power Purchase Agreement) (such period, the “**Supply Period**”).
- (b) GenCo shall give to KEK Mining the following notices of the commencement of the Supply Period, which in each case shall set the earliest date for the commencement of the Supply Period:
 - (i) within thirty (30) Days’ of signing the EPC Contract a notice of the date on which GenCo expects the first Day of the Supply Period will occur;
 - (ii) not less than one (1) Month’s notice of the date on which GenCo expects the first Day of the Supply Period will occur;
 - (iii) not less than ten (10) Days’ notice of the date on which GenCo expects the first Day of the Supply Period will occur; and
 - (iv) notice of the occurrence of the first Day of the Supply Period on the Day prior to the Day thereof.

Article 3
Supply of Lignite

3.1 Sale and Purchase of Lignite

Subject to and in accordance with the terms and conditions contained herein, throughout the Supply Period:

- (a) KEK Mining shall sell and deliver at the Delivery Points to GenCo such Lignite as may be required for the purpose of meeting GenCo’s obligations under the Power Purchase Agreement, and
- (b) GenCo shall receive, purchase, and pay the Lignite Price for such quantity of Lignite delivered at the Delivery Points by KEK Mining,

in each case subject to the limitations described in Section 3.4.

3.2 Supply of Lignite for Design Purposes

Notwithstanding Sections 2.2 or 3.1, during the selection process for the EPC/LTM Bidder Consortium in accordance with Section 3.9 (*Tender for EPC Contractor and LTM Contractor; Tendered PPA Inputs; Future LTM Contractor Replacement*) of the Power Purchase Agreement, KEK Mining shall upon no less than sixty (60) Days’ prior written notice from GenCo, sell and make reasonably available to GenCo Lignite in a quantity reasonably necessary for the preparation of a bid by any EPC/LTM Bidder

Consortium or by the winning EPC/LTM Bidder Consortium for the design of the KRPP Facility (but in no event greater than five hundred (500) Tonnes in aggregate), and GenCo shall receive, purchase, and pay the Lignite Price for such quantity of Lignite, for the purposes of conducting analyses of such Lignite necessary for the design of the KRPP Facility.

3.3 Lignite Delivery Point

The Lignite Delivery Point shall be located on such point of the Coal Yard (KRPP, Kosovo B) as selected by KEK Mining (which point shall in no event be farther from the Site than the distance specified in the Tender (Plant) documents) prior to the signing of the EPC Contract, but in no event earlier than the amount of time prior to the Transfer Date specified by the Mining Consultant (or at such later time as may be mutually agreed by the Parties) in accordance with Schedule 7. GenCo shall install, operate, and maintain a system of conveyors to receive Lignite at the designated Delivery Point as indicated in Schedule 7. KEK Mining shall install, operate and maintain a system of conveyors or other delivery equipment as needed to meet its obligations under this Agreement to deliver Lignite at the designated Delivery Point as indicated in Schedule 7.

3.4 Quantity Limitations

3.4.1 Lignite Orders; DCQ; ACQ

Subject to Section 3.4.2, during the Supply Period, the obligations of KEK Mining and GenCo under Section 3.1 shall be subject to the following limitations:

- (a) Lignite Orders: a limit for any period covered in a Lignite Order of no more Lignite than the amount of Lignite specified in such Lignite Order made in accordance with the Operating Procedures;
- (b) Daily Contract Quantity: without limiting Section 3.4.1(a), a limit for each Day as follows:
 - (i) prior to the Commercial Operations Date of the KRPP Facility, quantities of Lignite, not to exceed the Maximum Daily Test Lignite Quantity, on an as needed basis for purposes of testing the KRPP Facility; and
 - (ii) from and after the Commercial Operations Date of the KRPP Facility, and until the expiration of the Supply Period, up to the Maximum Daily Lignite Quantity per Day for the KRPP Facility.
- (c) Start-Up Period Monthly Contract Quantity: without limiting Sections 3.4.1(a) or 3.4.1(b), a limit for each Month during the six (6) Month period prior to the Scheduled Commercial Operations Date of the KRPP Facility, not to exceed the applicable Start-Up Maximum Monthly Test Lignite Quantity for such Month, on an as needed basis for purposes of testing the KRPP Facility.
- (d) Total Contract Quantity: a limit for the Supply Period equal to the Total Contract Quantity.
- (e) Lignite Shortfall Quantity: In the event that, based on the quantities of Lignite KEK Mining has available for delivery to its customers (including GenCo) on any given Day during the Supply Period, KEK Mining is unable to deliver Lignite to (i) GenCo, in the full amount requested by GenCo under Section 3.5 and (ii) KEK Mining's other customers who have requested Lignite for delivery on such Day, in the full amounts requested by all such customers, KEK Mining shall deliver Lignite to GenCo in an amount equal to the proportionate share GenCo's Lignite order represents to the total Lignite orders for such Day. For the avoidance of doubt, KEK Mining's obligations under this Section 3.4.1(e) shall not limit KEK Mining's obligations under this Agreement, including without limitation Sections 3.8 and 3.10, or otherwise limit GenCo's remedies under this Agreement.

3.4.2 Quantity Adjustment

The quantities of Lignite referred to in Section 3.4.1 are based on Lignite having a nominal value of eight point five four eight (8.548) GJ/t (LHV). If the average GJ/t content of the Lignite (LHV) delivered to GenCo during any relevant period is more or less than this value, such quantities shall be adjusted on a pro rata basis to account for such variance.

3.5 Estimated Requirements; Lignite Orders

3.5.1 Estimated Lignite Requirements

- (a) Not later than two hundred seventy (270) Days prior to the Scheduled Commercial Operations Date and not later than two hundred seventy (270) Days prior to the end of each Agreement Year thereafter, GenCo shall notify KEK Mining of its requirements, estimated in good faith, for Lignite on a Monthly basis (or any part-Months, as the case may be) for the following Agreement Year.
- (b) Not later than forty-five (45) Days prior to the Scheduled Commercial Operations Date and not later than forty-five (45) Days prior to the beginning of each ½-Year Period thereafter, GenCo shall notify KEK Mining of its requirements, estimated in good faith, for Lignite on a Monthly basis (or any part-Months, as the case may be) for the following six (6) Months.
- (c) Not later than ten (10) Days prior to the Scheduled Commercial Operations Date and not later than ten (10) Days prior to the beginning of each Month thereafter, GenCo shall further notify KEK Mining of its requirements, estimated in good faith, for Lignite on a Daily basis for the following Month, or, if the Scheduled Commercial Operations Date occurs within ten (10) Days of the end of a Month, its requirements for the remainder of the Month and for the following Month, as the case may be.
- (d) Not later than two (2) Business Days prior to the Scheduled Commercial Operations Date and not later than two (2) Business Days prior to the beginning of each Week thereafter, GenCo shall notify KEK Mining of its requirements, estimated in good faith, for Lignite on an hourly basis for the following Week, or, if the Scheduled Commercial Operations Date occurs within two (2) Business Days of the end of a Week, its requirements for the remainder of the Week and the following Week, as the case may be.
- (e) No notice issued by GenCo under this Section 3.5.1 shall be binding on GenCo and no such notice shall subsequently prevent GenCo from altering its requirements, estimated in good faith, for Lignite from time to time, provided that GenCo shall, as soon as is practicable, notify KEK Mining of any material changes to its requirements for Lignite specified in any such notice.

3.5.2 Lignite Orders

During the Supply Period, at or before the time that is two (2) hours following receipt of NKEC's Day-Ahead Scheduling Instruction pursuant to the Power Purchase Agreement on the Day prior to the Day on which GenCo requires Lignite to be delivered to the Delivery Points, GenCo shall give notice (such notice, the "**Lignite Order**") to KEK Mining in writing or by electronic communication of:

- (a) the total quantity of Lignite GenCo requires to be delivered on the Day; and
- (b) the Delivery Point at which such Lignite shall be delivered.

3.5.3 Variation from Lignite Orders

- (a) GenCo shall communicate to KEK Mining in accordance with the Operating Procedures any significant deviations from planned Lignite receipts occasioned by any significant unplanned deviations during a Day, if reasonably practicable. Following a communication from GenCo

under this Section 3.5.3(a), KEK Mining shall use reasonable efforts to adjust Lignite deliveries for such Day to accommodate such deviation from planned Lignite receipts.

- (b) KEK Mining shall communicate to GenCo in accordance with the Operating Procedures any significant deviations from planned Lignite deliveries occasioned by any significant unplanned deviations during a Day, if reasonably practicable. For the avoidance of doubt, KEK Mining's communications under this Section 3.5.3(b) shall not limit KEK Mining's obligations under Section 3.10, or otherwise limit GenCo's remedies under this Agreement.

3.6 Take or Pay Quantity

- (a) If during any Agreement Year GenCo fails (including in relation to a Force Majeure Event declared by KEK Mining pursuant to Section 19.1) to take delivery of and to pay for a quantity of Lignite at least equal to the Adjusted TOPQ, then GenCo shall pay KEK Mining the Annual TOPQ Deficiency Payment calculated in accordance with Schedule 6.
- (b) In the event GenCo pays an Annual TOPQ Deficiency Payment in accordance with Section 3.6(a), then the amount of such Annual TOPQ Deficiency Payment shall be applied to reduce any amount payable by GenCo with respect to the delivery of Lignite that is in excess of the Adjusted TOPQ that is applicable to any Agreement Year that succeeds the Agreement Year with respect to which the Annual TOPQ Deficiency Payment was paid.
- (c) In the event GenCo takes delivery of and pays for a quantity of Lignite that is in excess of the Adjusted TOPQ during any Agreement Year, then the difference between the Lignite delivered during such Agreement Year and the Adjusted TOPQ for such Agreement Year shall be classified as a "**Carry Forward Quantity**," which Carry Forward Quantity shall be used to reduce the Adjusted TOPQ during any subsequent Agreement Year in accordance with Schedule 6.

3.7 Right to Sell Lignite from the Sibovc South Mine Field

- (a) KEK Mining covenants that as of the commencement of the Supply Period it shall have the legal right to sell as provided herein Lignite from the Sibovc South Mine Field in the quantity required under Section 3.4, and KEK Mining covenants that, throughout the Supply Period it shall continue to have the legal right to sell Lignite as provided in this Agreement.
- (b) Promptly following KEK Mining's receipt of all Consents that are required of KEK Mining pursuant to the Laws of Kosovo to be obtained as a condition to submitting an application for the Mining License, KEK Mining shall use its commercially reasonable efforts to prepare and file with ICMM its application for the Mining License.
- (c) KEK Mining shall promptly give to GenCo notice of issuance by ICMM of the Mining License.

3.8 Coal Yard Reserves and In-Pit Inventory

- (a) KEK Mining shall control, operate, and maintain the Coal Yard (KRPP, Kosovo B) and manage all Lignite thereon.
- (b) In addition to KEK Mining's other Lignite delivery obligations under this Agreement, KEK Mining shall:
 - (i) designate an area of the Coal Yard (KRPP, Kosovo B) for storing reserves exclusively for the KRPP Facility (the "**Coal Yard Reserves Area (KRPP)**");
 - (ii) within thirty (30) Days of the commencement of the Supply Period, reserve exclusively for delivery to GenCo fifteen (15) Days' supply of Lignite, calculated at the then-applicable Daily Contract Quantity, to be maintained at the Coal Yard Reserves Area (KRPP), to the extent that such quantities are not already in place at the Coal Yard (KRPP, Kosovo B) (the "**Coal Yard Reserves (KRPP)**"), and in the event that the Coal

Yard Reserves (KRPP) fall below fifteen (15) Days' supply of Lignite, KEK Mining shall provide a written notice to GenCo of such shortfall; and

- (iii) within seven (7) Months of the commencement of the Supply Period, ensure that a supply of Lignite in the mine sufficient to meet all of KEK Mining's Lignite delivery obligations (including to any third parties) for three (3) Months (which, for the purposes of calculating KEK Mining's supply obligations to GenCo, shall be calculated at the then-applicable Daily Contract Quantity) has been uncovered so that such inventory can be mined without the need to remove any additional overburden from any area of the Sibovc South Mine Field (the "**In-Pit Inventory**"), and in the event that the In-Pit Inventory falls below three (3) Months' supply of Lignite, KEK Mining shall provide a written notice to GenCo of such shortfall.
- (c) Following the initial periods described in Section 3.8(b) and then throughout the Supply Period, KEK Mining shall:
- (i) monitor the Coal Yard Reserves (KRPP) and reserve exclusively for delivery to GenCo additional Lignite as necessary to maintain at least fifteen (15) Days' supply of Lignite at the Coal Yard Reserves Area (KRPP), calculated at the then-applicable Daily Contract Quantity; and
 - (ii) maintain at least three (3) Months' supply of Lignite, which for purposes of calculating KEK Mining's supply obligations to GenCo, shall be calculated at the then-applicable Daily Contract Quantity, as In-Pit Inventory.
- (d) KEK Mining shall utilize Lignite from the Coal Yard Reserves (KRPP) at any time as necessary to deliver Lignite to GenCo in accordance with the terms of a Lignite Order.
- (e) Notwithstanding the foregoing, nothing in this Agreement shall preclude KEK Mining from delivering, and KEK Mining shall have the right to deliver, Lignite from other reserve areas (including reserves for the Kosovo B Facility) so long as such Lignite is from the Sibovc South Mine Field.

3.9 Grant of Necessary Property Rights

- (a) KEK Mining hereby grants to GenCo a non-exclusive easement to, on, over, across, and within the portions of the Coal Yard (KRPP, Kosovo B) specified by KEK Mining, which shall be reasonable for use by GenCo, GenCo Contractors, and any Person authorized by GenCo to obtain access to the Delivery Point, the conveyer system and for use by GenCo, GenCo Contractors, and any Person authorized by GenCo, with all equipment and machinery, as may be necessary to enable GenCo to install, operate, and maintain a system of conveyors to receive Lignite at the Delivery Points ("**GenCo Lignite Delivery Easement**"). Such easement shall be effective as of the Transfer Date and shall remain effective until the end of the Supply Period.
- (b) GenCo shall use the easement rights set forth above in such a manner as to not unreasonably disrupt operations of the Kosovo B Facility or the Coal Yard (KRPP, Kosovo B), provided that KEK Mining acknowledges and agrees that the presence and operation of the conveyors on the GenCo Lignite Delivery Easement area shall not be deemed to disrupt operations of the Kosovo B Facility or the Coal Yard (KRPP, Kosovo B) to the extent GenCo operates and maintains such conveyors within the portions of the Coal Yard (KRPP, Kosovo B) specified by KEK Mining, as described in Section 3.9(a) above. Furthermore, KEK Mining shall not unreasonably disrupt, and shall cause other Persons on the Coal Yard (KRPP, Kosovo B) to not unreasonably disrupt, operations of GenCo on the GenCo Lignite Delivery Easement.

3.10 Failure to Supply

- (a) To the extent that KEK Mining fails or is unable to deliver Lignite to a Delivery Point specified in a Lignite Order in accordance with the terms of this Agreement (including in relation to a Force Majeure Event declared by KEK Mining pursuant to Section 19.1), KEK Mining shall be liable to GenCo for all of the following Losses (including, notwithstanding the first parenthetical contained in the definition of “Loss,” any indirect or consequential losses, damages, liabilities, payments, or obligations) incurred by GenCo as a result of such non-delivery by KEK Mining:
- (i) any fines, penalties, or charges assessed by any Public Authority or payable to a third party and paid by GenCo as a result of such non-delivery;
 - (ii) the additional cost (above the cost that GenCo would be required to pay under this Agreement) of GenCo purchasing or extracting Lignite from another source to the extent reasonably done to mitigate other losses hereunder;
 - (iii) during the Supply Period but prior to the Commercial Operations Date (A) all costs, fees and expenses payable to the Lenders under the Financing Documents, (B) all interest payable or accruing on the then-outstanding principal amount of the debt related to the KRPP Facility and (C) all fees, penalties and expenses (including as a result of Change Orders) payable by GenCo to GenCo Contractors pursuant to the terms of the Construction/Maintenance Contracts or any other agreement approved by NKEC and GOK, in each case, during the period affected by the non-supply (but only to the extent that such amounts are not paid to GenCo by NKEC pursuant to any provision of the Power Purchase Agreement);
 - (iv) from and after the Commercial Operations Date:
 - (A) any and all lost revenues and payment obligations in favour of GenCo arising from Schedule 1 of the Power Purchase Agreement in relation to GenCo’s lost Availability Payments (which GenCo would otherwise have received from NKEC under the Power Purchase Agreement but for the non-supply), but for the avoidance of doubt not including any lost Energy Payments (as defined in the Power Purchase Agreement);
 - (B) all fees, penalties and expenses (including Change Orders) payable by GenCo to GenCo Contractors pursuant to the terms of the Construction/Maintenance Contracts or any other agreement approved by NKEC and GOK, in each case, during the period affected by the non-delivery (but only to the extent that such amounts are not paid to GenCo by NKEC pursuant to the Power Purchase Agreement); and
 - (C) any and all GenCo payment obligations, such as indemnities, liquidated damages or other fees payable by GenCo, arising from Schedule 1 of the Power Purchase Agreement, including any such amounts arising in connection with GenCo’s failure to maintain adequate reserves of Lignite or GenCo’s failure to achieve or to be able to achieve the dispatch levels required by the Power Purchase Agreement (which GenCo would otherwise have avoided under the Power Purchase Agreement but for the non-supply).

For purposes of this Agreement, including this Section 3.10, KEK Mining shall be deemed to have failed to supply any Lignite that is delivered by KEK Mining and subsequently rejected by GenCo in accordance with this Agreement.

- (b) Notwithstanding the foregoing, KEK Mining shall not be liable to GenCo for any failure to deliver Lignite to the extent that KEK Mining’s failure to deliver the Lignite is a result of any act

or omission attributable to GenCo, including GenCo's failure to submit a Lignite Order in accordance with the Operating Procedures as provided under Section 3.5.2.

- (c) The failure by KEK Mining to supply and deliver Lignite as and when required hereunder shall only constitute a breach or default of this Agreement if:
 - (i) KEK Mining has a liability to GenCo pursuant to this Section 3.10 in respect of such failure to supply and deliver Lignite; and
 - (ii) KEK Mining fails to discharge such liability (if any) in accordance with this Section 3.10.
- (d) In the event that KEK Mining expects that KEK Mining will be unable to supply and deliver Lignite as and when required hereunder, KEK Mining shall immediately notify GenCo of such expected inability to supply and deliver Lignite.

3.11 Operation and Maintenance of the Mining Assets

KEK Mining shall operate and maintain the Mining Assets in accordance with the terms of this Agreement, the Operating Procedures developed in accordance with Article 6, the Laws of Kosovo, KEK Mining Consents, Prudent Mining Practices, and Applicable Standards, subject to Section 18.1.

3.12 Installation and Operation of a Magnetic Separation Device and a Metal Detection Device

- (a) KEK Mining shall control, operate, and maintain a magnetic separation device and a metal detection device in accordance with Prudent Mining Practices at a point near (but prior to) the Delivery Point.
- (b) GenCo shall control, operate, and maintain a back-up magnetic separation device and a back-up metal detection device in accordance with Prudent Mining Practices at a point near (but after) the Delivery Point.

3.13 Procurement of Goods and Services

- (a) KEK Mining shall, when procuring goods and services that will have an impact on the Lignite Price payable under this Agreement, use reasonable and prudent procurement methods and procedures that:
 - (i) if KEK Mining is a Publicly Owned Enterprise, comply with the Law on Public Procurement in Kosovo, 2011; and
 - (ii) if KEK Mining is not a Publicly Owned Enterprise and is not subject to the public procurement laws of Kosovo (e.g., following the privatization of KEK Mining), comply with the EU Utilities Procurement Directive; provided, however, the threshold above which the specified procurement procedures apply under the EU Utilities Procurement Directive shall be modified for purposes of this Agreement to be equal to the threshold for large value contracts set forth in the Law on Public Procurement in Kosovo, 2011, as amended by the Law Amending the Law on Public Procurement in Kosovo (05/L-092),

and shall include in the Lignite Price only documented costs that are reasonably and prudently incurred.

- (b) For the purposes of Section 3.13(a), the cost of goods and services will have an impact on the Lignite Price payable under this Agreement if the cost of such goods and services will form the basis of, or cause an adjustment to, the Lignite Price or any of the components thereof in accordance with the terms of Schedule 1 (*Methodology for Establishing the Lignite Price; Lignite Quantities*) of this Agreement.

Article 4 Measurement

4.1 Weight Determination

The procedures for establishing the weight of any Lignite delivered to a Delivery Point shall be as specified in Schedule 4.

4.2 Sampling and Analysis

4.2.1 Standards

Lignite shall be sampled and analyzed on an As Received Basis, and otherwise in accordance with the procedures set forth in this Article 4 and the sampling and analysis methods and procedures approved by the American Society for Testing Materials (the “**ASTM Standards**”), as such standards may be amended from time to time.

4.2.2 Sampling and Analysis at the Delivery Points

- (a) KEK Mining shall collect representative samples for every twelve (12) hour period (i) at a point reasonably near (but prior to) the Coal Yard Reserves Area (KRPP) and (ii) at the Delivery Points, in each case by continuous (in accordance with Prudent Mining Practices) automatic sampling equipment. The authorized representatives of GenCo or their designees shall have the right to observe the sampling at each location. In the event the Parties’ authorized representative(s) are not present during the sampling, KEK Mining shall continue drawing samples of Lignite and the non-presence of any of the authorized representatives of GenCo shall not affect the validity of such sampling.
- (b) GenCo will select, subject to KEK Mining approval (not to be unreasonably withheld), an independent third party testing laboratory (the “**Testing Lab**”) and the Testing Lab will:
 - (i) ensure that all samples are divided into not less than four (4) parts and placed into suitable airtight containers, properly labeled and sealed;
 - (ii) hold the second, third, and fourth parts of each sample for a period of ninety (90) Days after the end of the Month during which such sample was taken;
 - (iii) analyze the first part of each sample on an As Received Basis in accordance with the ASTM Standards; and
 - (iv) deliver to KEK Mining and GenCo, within five (5) Business Days, a report as to the Lignite Quality Parameters of each 12-hour sample (each such report a “**Delivery Point Quality Report**” if taken at a Delivery Point and a “**Coal Yard Reserves Area (KRPP) Quality Report**” if taken at the Coal Yard Reserves Area (KRPP)), together with a certification that the results of the analysis of each sample are accurate within recognized tolerances of the ASTM Standards (each such certification, an “**Analysis Certification**”).
- (c) If at any time the Coal Yard Reserves (KRPP) includes Non-Conforming Lignite to such extent that the Coal Yard Reserves (KRPP) could not be blended to provide for delivery of Lignite with Lignite Quality Parameters that are within the Acceptable Range, KEK Mining shall promptly remove such Non-Conforming Lignite from the Coal Yard Reserves (KRPP) or otherwise improve Coal Yard Reserves (KRPP) quality such that it meets the Contract Lignite Quality.
- (d) The value of each Lignite Quality Parameter shown in the Delivery Point Quality Reports shall be used by GenCo for the purpose of adjustment of the Lignite Price pursuant to Schedule 1.
- (e) The cost of such sampling and analysis and the preparation of the Coal Yard Reserves Area (KRPP) Quality Report or Delivery Point Quality Report shall be borne equally by KEK Mining

and GenCo (it being acknowledged that GenCo shall be entitled to recover its costs pursuant to Schedule 1 of the Power Purchase Agreement).

- (f) Each Party shall be entitled during the ninety (90) Day period set forth in Section 4.2.2(b)(ii) to receive upon request one part of such samples for purposes of testing and analysis. If either Party disputes the results of the Testing Lab's Coal Yard Reserves Area (KRPP) Quality Report or Delivery Point Quality Report with respect to such sample based upon such Party's analysis, the fourth part of such sample shall be analyzed by a second independent third party testing laboratory selected by GenCo, subject to KEK Mining approval (not to be unreasonably withheld) (the "**Alternate Testing Lab**") in accordance with the ASTM Standards. The results of the analysis by the Alternate Testing Lab shall be binding upon the Parties with respect to such sample.
- (g) The costs of analysis by the Alternate Testing Lab with respect to a particular sample shall be borne by:
 - (i) the Party initiating the dispute as to the results of the Testing Lab's analysis of such sample, if the Alternate Testing Lab's results with respect to such sample were equivalent to or more favorable to the non-initiating Party than the Testing Lab's results with respect to such sample; or
 - (ii) the non-initiating Party, if the Alternate Testing Lab's results with respect to such sample were more favorable to the initiating Party than the Testing Lab's results with respect to such sample.

Article 5

Assurances as to Supply

5.1 Dedicated Source of Supply

- (a) KEK Mining shall be obligated to supply Lignite under this Agreement from the Sibovc South Mine Field in quantities that shall not in the aggregate, except as expressly provided herein, exceed the Total Contract Quantity. Accordingly, KEK Mining hereby warrants and agrees to dedicate or cause to be dedicated lignite reserves in the Sibovc South Mine Field that are at least equal in quantity to the Total Contract Quantity times one hundred twenty percent (120%).
- (b) KEK Mining shall not be permitted to deliver to GenCo lignite from a source other than the Sibovc South Mine Field, except to the extent approved by GenCo.

5.2 Limitation on Other Supply Commitments

- (a) KEK Mining undertakes not to sell lignite from the Sibovc South Mine Field to other purchasers except in such quantities as will not impair or otherwise adversely affect KEK Mining's ability to (i) deliver the Total Contract Quantity to GenCo from the Sibovc South Mine Field in accordance with the provisions of this Agreement and (ii) meet its dedicated reserve obligations set forth in Section 5.1, in each case during the Supply Period.
- (b) In furtherance of Section 5.2(a), KEK Mining agrees to maintain, after giving effect to any third party sale or commitment to sell (including any other third party obligations or commitments existing prior to the third party sale or commitment giving rise to this requirement), sufficient capacity in KEK Mining's lignite processing operations (including crushing, beneficiating, loading, and transporting) to deliver Lignite from the Sibovc South Mine Field to GenCo in the quantities contemplated hereunder.
- (c) KEK Mining shall, at GenCo's request, provide written evidence to GenCo reasonably satisfactory to GenCo that KEK Mining is in compliance and will continue to comply with Section 5.2(a) and Section 5.2(b).

- (d) In addition to KEK Mining's dedication to GenCo of the Total Contract Quantity from the Sibovc South Mine Field, KEK Mining hereby represents and warrants to, and covenants with GenCo that it has and will maintain sufficient lignite reserves at all times following the Effective Date to enable it to deliver to GenCo Lignite requested by GenCo under the terms of this Agreement in a quantity not to exceed the Total Contract Quantity. KEK Mining unconditionally and irrevocably agrees that it shall be liable to GenCo for damages under Section 3.10 if its representations, warranties, and covenants with GenCo set forth in the immediately preceding sentence prove not to be true or if KEK Mining is unable to honor or comply with such representations, warranties, and covenants.

Article 6 Operating Procedures

6.1 Operating Procedures

- (a) At least eighteen (18) Months prior to the Scheduled Commercial Operations Date, GenCo and KEK Mining shall jointly initiate the preparation of a set of mutually agreed written operating procedures to facilitate the Parties' performance under this Agreement (the "**Operating Procedures**"). If the Parties are unable to agree upon terms of the Operating Procedures at least twelve (12) Months prior to the Scheduled Commercial Operations Date, such failure to agree shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 20. The Operating Procedures shall be in English and shall be accompanied by a true and correct translation in Albanian. In the event of any conflict between the Operating Procedures in English and the translation in Albanian, the Operating Procedures in English shall prevail.
- (b) The Operating Procedures shall encompass the following procedures and provisions:
- (i) *Operation Plan*—an overall operating plan and procedures for the delivery and receipt of Lignite in accordance with this Agreement;
 - (ii) *Communication of Lignite Orders*—acceptable means of communications for GenCo to communicate to KEK Mining each Lignite Order;
 - (iii) *Maintenance Procedures*—planning and coordination procedures for scheduled and unscheduled maintenance on the Parties' facilities;
 - (iv) *Testing Protocols*—subject always to the provisions of Article 4, testing protocols and schedules if the Parties deem that to be advisable;
 - (v) *Safety Rules and Procedures*—when the operations or actions of the employees or Contractors of one Party affect the operations or safety of the facilities, employees, or Contractors of the other Party, safety rules and operating procedures;
 - (vi) *Conveyor Coordination* — the Parties shall agree on the operation of the conveyors, including the following possible options:
 - (A) GenCo shall operate both GenCo and KEK Mining conveyors in and around the Delivery Point to ensure such conveyors operate in a coordinated fashion;
 - (B) KEK Mining shall operate both GenCo and KEK Mining conveyors in and around the Delivery Point to ensure such conveyors operate in a coordinated fashion; or
 - (C) The Parties shall each operate their own conveyor, but automated or other procedures shall be established to coordinate and synchronize the conveyor operation; and

- (vii) *Other*—such other matters as the Parties mutually agree may be necessary or desirable to facilitate operation, communications, safety, or other matters of mutual concern.

6.2 Operating Procedures Amendments

From time to time during the Supply Period, either Party may propose amendments to the Operating Procedures to better achieve the objectives of this Agreement or for the mutual benefit of the Parties. Such proposals shall be delivered in writing by the proposing Party to the other Party. If the Parties are unable to agree upon the terms of such proposed amendments within three (3) Months of the delivery of such proposed amendment, such failure to agree shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 20. Notwithstanding anything to the contrary set forth herein, in no event shall the Parties be required following any Dispute resolution, to undertake an amendment to the Operating Procedures that is inconsistent with the Laws of Kosovo, Prudent Mining Practices, Prudent Utility Practices, the terms of the Project Agreements, or the terms of the Financing Documents.

6.3 Conflicts with Agreement

In the event of any conflict between this Agreement and the Operating Procedures developed pursuant to Section 6.1 or Section 6.2, the provisions of this Agreement shall prevail.

Article 7 Quality; Off-Spec Deliveries

7.1 Lignite Quality

7.1.1 Contract Lignite Quality

- (a) GenCo shall deliver to KEK Mining in advance of the Tender (Plant) a copy of the proposed characteristics of the design Lignite on which the KRPP Facility will be designed and shall reasonably consider any KEK Mining comments in relation thereto, including in relation to KEK Mining's ability to deliver Lignite consistent with such design quality.
- (b) The Lignite delivered by KEK Mining to GenCo hereunder shall be of a quality within the Acceptable Range, as provided in Schedule 3. Such Lignite shall be unwashed and undried unless such additional preparation is mutually agreed and set forth in the Operating Procedures.
- (c) The Lignite Price shall be adjusted in accordance with the provisions of Schedule 1 for variations in the quality of the Lignite delivered to the Delivery Points within the limits of the Acceptable Range.
- (d) Any Non-Conforming Lignite tendered by KEK Mining for delivery to GenCo, as determined in accordance with the sampling and analysis procedures provided in Section 4.2, and any lignite tendered by KEK Mining for delivery to GenCo that GenCo reasonably believes to be Non-Conforming Lignite, shall be subject to rejection pursuant to Section 7.3.

7.1.2 Change in Specifications Due to Changes in Law Impacting Generation Facilities

- (a) GenCo, by notice to KEK Mining, shall be entitled to request an amendment or modification of the Acceptable Ranges of the Lignite Quality Parameters from time to time to such an extent as may be necessary to give effect to any Change in Law impacting GenCo's KRPP Facility (including those Changes in Law that are related to the environment, health, or safety). Subject to Section 7.1.2(b), KEK Mining shall agree to amendments or modifications to the Acceptable Range of Lignite Quality Parameters if and from such time as it is able and legally permitted (including by amendments or other modifications to the Mining License from ICM, which KEK Mining shall diligently pursue) to supply Lignite satisfying the Contract Lignite Quality, as so amended or modified, in the quantities required hereunder.

- (b) The Parties shall enter into good-faith negotiations as to the change in the Lignite Price, if any, that is necessary for KEK Mining to deliver Lignite conforming to the amended or modified Contract Lignite Quality, which the Parties agree shall include only such additional or reduced costs and expenses (including in relation to extraction, processing, blending, refining, storage, and handling) actually incurred by KEK Mining in the delivery of Lignite satisfying the amended or modified Contract Lignite Quality. If the Parties cannot agree on the change in the Lignite Price, such Dispute shall be resolved in accordance with Article 20.
- (c) If KEK Mining is unable, despite its commercially reasonable efforts, to comply with any such modification or amendment of the Contract Lignite Quality, KEK Mining will so notify GenCo within thirty (30) Days of receiving such notice from GenCo. GenCo may thereafter withdraw such request or may by notice in writing to KEK Mining terminate this Agreement with immediate effect. Absent such withdrawal or termination, KEK Mining may give notice of its intent to terminate this Agreement and, if GenCo does not withdraw such request within thirty (30) Days of its receipt of such notice from KEK Mining, KEK Mining may terminate this Agreement by delivering written notice of such termination to GenCo.
- (d) Notwithstanding the negotiations under Section 7.1.2(a), the terms of this Agreement shall continue in full force and effect and the Parties shall continue to perform their respective obligations hereunder unless and until this Agreement is terminated pursuant to Section 7.1.2(c).

7.1.3 *Size and Impurities*

- (a) The Lignite delivered by KEK Mining to GenCo shall satisfy the size limitations for individual pieces of Lignite provided in Schedule 3. The sampling of lignite for compliance with the provisions of this Section 7.1.3(a) shall be carried out as provided in Section 4.2, and lignite not satisfying the requirements of this Section 7.1.3(a) shall be subject to rejection pursuant to the provisions of Section 7.3.
- (b) KEK Mining shall ensure that:
 - (i) all of the Lignite delivered under this Agreement shall be reasonably free (consistent with Prudent Mining Practices) of impurities, including but not limited to igneous rocks, sandstone, shale, overburden, underclay, scrap metal (exclusive of trace metals inherent within the lignite), and other non-intrinsic material;
 - (ii) no Lignite delivered to the Delivery Points shall contain any Hazardous Materials (exclusive of trace materials inherent within the lignite);
 - (iii) no Lignite delivered to the Delivery Points shall contain any oil or other material that could have the effect of changing the natural heating value of the Lignite or its combustible characteristics.

7.1.4 *Consistency of Blending*

KEK Mining shall use all reasonable efforts to ensure that each delivery of Lignite is of reasonably uniform size and quality.

7.2 *Inspection*

- (a) GenCo may, at any reasonable time during normal business hours, after giving two (2) Business Days' notice and without unreasonable interference, inspect KEK Mining's facilities, mines, and operations.
- (b) KEK Mining may, at any reasonable time during normal business hours, after giving two (2) Business Days' notice and without unreasonable interference, inspect GenCo's lignite handling facilities and operations and other facilities and operations that may be reasonably relevant to KEK Mining.

7.3 Rejection; Effect of Rejection

- (a) KEK Mining shall take all practical precautions to prevent delivering lignite that, with regard to one (1) or more of the Rejection Parameters, is outside the Acceptable Range for a period longer than that specified in Schedule 3 for each Rejection Parameter or contains impurities proscribed in Section 7.1 or elsewhere in this Agreement unless GenCo consents thereto on mutually agreed terms.
- (b) If any lignite delivered hereunder is with regard to one (1) or more of the Rejection Parameters, outside the Acceptable Range for a period longer than that specified in Schedule 3 for each Rejection Parameter or contains impurities proscribed in Section 7.1 or elsewhere in this Agreement or is otherwise not in compliance with the requirements of this Agreement, GenCo shall, notwithstanding anything to the contrary in this Agreement, be entitled to reject such Non-Conforming Lignite. In the event of such rejection, GenCo shall have the right to exercise any of its rights and remedies provided in this Section 7.3 and elsewhere in this Agreement. Notwithstanding the foregoing, but subject to Section 16.1.1(f), GenCo shall be deemed to have accepted and waived its rights to reject such Non-Conforming Lignite once it has been burnt or otherwise consumed in the KRPP Facility.
- (c) Promptly but in any case within sixty (60) minutes (or as soon as reasonably practicable in the event of an emergency) upon becoming aware of any Non-Conforming Lignite or any determination that any lignite previously delivered by KEK Mining was Non-Conforming Lignite, GenCo shall notify KEK Mining of such by telephone, followed by written notice.

Article 8 Price

8.1 Price

- (a) The price per Tonne of Lignite (the “**Lignite Price**”) delivered at the Delivery Points shall be calculated in accordance with the methodology set forth in Schedule 1.
- (b) The Lignite Price does not include the amount of value added tax that will be payable in connection with the sale of such Lignite, and GenCo shall reimburse KEK Mining for the amount of any such value added tax actually paid by KEK Mining, whether directly or by offset, in connection with such sale.

8.2 Price Adjustment for Third Party Lignite Sales

- (a) In the event that KEK Mining enters into any agreement for the sale of lignite from the Sibovc South Mine Field for use in an electric generating facility other than the KRPP Facility, or to any other non-domestic purchaser, in quantities that are in excess of five percent (5%) of the quantities sold to GenCo under this Agreement (a “**Third Party Lignite Sales Agreement**”), then KEK Mining shall notify GenCo within ten (10) Business Days that KEK Mining has entered into such Third Party Lignite Sales Agreement, which notice shall include a copy of the Third Party Lignite Sales Agreement, and GenCo may review such Third Party Lignite Sales Agreement to determine whether:
 - (i) the price per Tonne of lignite under such Third Party Lignite Sales Agreement is less than the Lignite Price, net of any differences in price due to differences in the costs incurred by KEK Mining in order to transport lignite, manage the Coal Yard (KRPP, Kosovo B), or provide other services; or
 - (ii) the terms of such Third Party Lignite Sales Agreement are more beneficial to the lignite purchaser than the terms of this Agreement, taking into account lignite quality, lignite quantity, and other non-price terms.

- (b) Within thirty (30) Days of receipt by GenCo of a notice from KEK Mining in accordance with Section 8.2(a), GenCo may request amendments to this Agreement to:
 - (i) reduce the Lignite Price to the price per Tonne of lignite specified in the Third Party Lignite Sales Agreement, net of any differences in price due to differences in the costs incurred by KEK Mining in order to transport lignite, manage the Coal Yard (KRPP, Kosovo B), or provide other services; and
 - (ii) otherwise adjust the terms of this Agreement to reflect the more beneficial terms of the Third Party Lignite Sales Agreement.
- (c) Following a request by GenCo for amendments to this Agreement in accordance with Section 8.2(b), the Parties shall execute, with retroactive effect to the date of the commencement of supply under the relevant Third Party Lignite Sales Agreement, such amendments to this Agreement.

8.3 Price Adjustment for Major Capital Investment

- (a) The Parties acknowledge that it might become necessary from time to time for KEK Mining to undertake one or more significant investments in new major equipment in order to maintain production output (each, a “**Major Capital Investment**”). In the event that:
 - (i) KEK Mining reasonably demonstrates that a Major Capital Investment is necessary and consistent with the Mine Development Plan;
 - (ii) GOK approves an increase to the Lignite Price necessary to accommodate such Major Capital Investment;
 - (iii) KEK Mining procures the major equipment requiring such Major Capital Investment in compliance with Section 3.13; and
 - (iv) KEK Mining allocates the cost of the Major Capital Investment across the lignite supplied to all buyers of Sibovc South Mine Field lignite (such that the cost of the Major Capital Investment is incorporated into the Lignite Price payable by GenCo in an amount commensurate with GenCo’s benefit from the investment, as reflected in the variable XD_Y set forth in Section 2.5 of Schedule 1),

then GenCo shall pay KEK Mining Major Capital Investment Lignite Credits to enable KEK Mining to recover over the Designated Cost Recovery Period the costs of such Major Capital Investment, all as calculated in accordance with Schedule 1.

- (b) The amount of any Major Capital Investment Lignite Credits shall be set in accordance with Schedule 1. The amount of the Major Capital Investment Lignite Credits shall be determined at the time the Major Capital Investment is completed by KEK Mining.
- (c) For any Major Capital Investment, KEK Mining shall deliver to GenCo (i) a copy of the GOK approval of the Major Capital Investment, and (ii) a schedule of the costs of the Major Capital Investment, together with copies of the invoices, for review by GenCo.

Article 9

Environmental Remediation

9.1 Environmental Remediation to Abate Environmental/Archaeological Conditions

All costs and expenses of any environmental remediation required to abate any Environmental/Archaeological Conditions within the Sibovc South Mine Field shall be borne solely by KEK Mining (without limiting KEK Mining’s right to seek assistance from the GOK or other sources). KEK Mining shall provide notice to GenCo promptly upon becoming aware of any Environmental/Archaeological Conditions with the Sibovc South Mine Field, along with a summary,

when reasonably available, of KEK Mining's planned remediation of such Environmental/Archaeological Conditions.

Article 10

Reports to ICMM; Mine Development Plan

10.1 Reports

KEK Mining shall provide GenCo with a copy of all reports and plans required to be (a) provided by the Mining Consultant in accordance with Section 10.2 and/or (b) submitted by KEK Mining to ICMM; provided, however, that, without limiting the provisions of Section 21.15, GenCo shall treat as confidential all commercially sensitive information contained in such reports.

10.2 Mine Development Plan

- (a) Prior to the Transfer Date (and with respect to item (iv) below within ninety (90) Days of the Effective Date), GOK shall, and KEK Mining shall cause GOK to, retain a reputable mining engineering firm ("**Mining Consultant**") to:
- (i) assist KEK Mining to update the mine development plan for the Sibovc South Mine Field (the "**Mine Development Plan**") to take into consideration the necessary development to supply the KRPP Facility for the life of the KRPP Facility;
 - (ii) assist KEK Mining to develop a plan (the "**Mine Financing Plan**") to address the achievable and sustainable capital and operational financing activities of KEK Mining related to its carrying out of the updated Mine Development Plan;
 - (iii) produce a report (the "**Lignite Pricing Report**") recommending a sustainable, long-term lignite price that will be required to carry out the Mine Development Plan and the Mine Financing Plan and sustain KEK Mining's activities over the term of the Supply Period related to GenCo and KEK Generation. Such Lignite Pricing Report shall serve as the basis for the long-term fixed-price lignite pricing regime within this Agreement, and will take into account factors such as costs of depreciation, permitting, insurance, leasing costs and administrative and general overheads, as well as labor costs, costs of materials and supplies, maintenance and repair, services, taxes and royalties (based on current law and government decisions), costs of environmental remediation of sites where environmental contamination conditions exist and reclamation costs in their price calculations, based on the Mine Development Plan;
 - (iv) assist KEK Mining to extend KEK Mining's existing Mining License and undertake modification of such license to reflect the updated Mine Development Plan and attainment of all other necessary permits, licenses and approvals;
 - (v) provide advice and consultation in connection with planning and implementation of all measures necessary to fulfill KEK Mining's environmental, social and health and safety obligations related to the Sibovc South Mine Field development, land acquisition, and resettlement obligations, all in accordance with Applicable Standards;
 - (vi) take core samples from the Sibovc South Mine Field ("**Mine Field Analysis**") to confirm that the quality of the lignite therein is consistent with the Contract Lignite Quality; and
 - (vii) evaluate whether measures related to the drying of Lignite should be implemented prior to its delivery to GenCo and the appropriate location for drying equipment.
- (b) To the extent that the Mine Development Plan, the Mine Financing Plan, the Lignite Pricing Report, the Mine Field Analysis, or any other written reports of the Mining Consultant recommends reasonable amendments to the following listed provisions, then, not later than the Transfer Date, the Parties shall incorporate in good faith appropriate amendments to this

Agreement and any other applicable Project Agreement based upon such recommendations of the Mining Consultant:

- (i) reference prices set forth in Annex 1 to Schedule 1;
 - (ii) the Index Adjustment Factor described in Schedule 1;
 - (iii) whether the quality and quantity of the lignite in the Sibovc South Mine Field is consistent with the Contract Lignite Quality, including ranges and reference levels for the Lignite calorific value, sulphur content in Lignite, ash content in Lignite, moisture content in Lignite, and xylite content in Lignite and whether mechanisms required to provide for the drying of Lignite prior to the Delivery Point are appropriate and where necessary infrastructure should be located;
 - (iv) the insurance coverage described in Schedule 2 and in the Ash and Gypsum Disposal Agreement (as defined in the Power Purchase Agreement) is appropriate for KEK Mining;
 - (v) the Take or Pay Quantity is:
 - (A) sufficient to fund KEK Mining's operation of the Sibovc South Mine Field as required under this Agreement; and
 - (B) not more than is sufficient to fund KEK Mining's operation of the Sibovc South Mine Field as required under this Agreement; and
 - (vi) the Target Debt to Equity Ratio.
- (c) Notwithstanding any provision herein, GenCo shall have no obligation or liability relating to the resettlement of persons by KEK Mining in connection with the KEK Mining's expansion of the Sibovc South Mine Field.

Article 11 Billing and Payment

11.1 Billing

11.1.1 KEK Mining Invoices

At any time on or after the first (1st) Business Day of each Month, KEK Mining shall submit an invoice to GenCo (with copies to NKEC and KESCO) stated in Euros for any amounts due from GenCo to KEK Mining pursuant to this Agreement. Such invoice shall be issued in accordance with the applicable Tax Laws of Kosovo and shall include (without limitation) the following information:

- (a) the amount, in Tonnes, of Lignite that KEK Mining delivered to the Delivery Points during the preceding Month;
- (b) the applicable Lignite Price for such Lignite;
- (c) the total amount due for such Month; and
- (d) any interest payable hereunder on an amount not paid with respect to a prior invoice by the Due Date, showing the calculation of such claimed interest in reasonable detail,

together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.

Invoices shall be calculated to the nearest Eurocent (€0.01) amount.

11.1.2 GenCo Invoices

At any time on or after the first (1st) Business Day of each Month, GenCo shall submit to KEK Mining an invoice (with copies to NKEC and KESCO) stated in Euros for any amounts due from KEK Mining to GenCo pursuant to this Agreement. Such invoice shall include (without limitation) the following information:

- (a) the Monthly offset or premium for variance in calorific content for the preceding Month, if applicable under Schedule 1;
- (b) the amount of damages or other payments due to GenCo under this Agreement for the previous Month (or part-Month); and
- (c) any interest payable hereunder on an amount not paid with respect to a prior invoice by the Due Date, showing the calculation of such claimed interest in reasonable detail,

together with such supporting information as may reasonably be necessary to substantiate the amounts claimed in the invoice.

Invoices shall be calculated to the nearest Eurocent (€0.01) amount.

11.2 Payment

- (a) Subject to Section 11.2(h),
 - (i) GenCo shall pay KEK Mining the amount shown on an invoice delivered in accordance with Section 11.1.1, less deductions for any disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the Day the invoice is received by GenCo (or, in the event such Day is not a Business Day, the next Business Day thereafter); and
 - (ii) KEK Mining shall pay GenCo the amount shown on an invoice delivered in accordance with Section 11.1.2, less deductions for any disputed amounts or portions of amounts shown in the invoice, on or before the thirtieth (30th) Day following the Day the invoice is received by KEK Mining (or, in the event such Day is not a Business Day, the next Business Day thereafter),

(in each case, the “**Due Date**”).

- (b) Any invoice delivered pursuant to this Article 11 shall be paid in Euros.
- (c) Unless otherwise specified in this Agreement, and without limiting the rights to expatriation set forth in the Project Agreements and under the Laws of Kosovo, payments due under this Agreement shall be payable by electronic funds transfer to the account in Kosovo (which can be at a Kosovo branch of a foreign bank) indicated by the Party to receive payment.
- (d) Each Party shall have the right to set off any amounts due and payable by it to the other Party under this Agreement against any and all amounts then due and payable to it by the other Party under this Agreement or any other Project Agreement. Such rights of set-off shall relate only to amounts that are then due and payable to and by a Party and are undisputed or have been determined to be payable pursuant to Article 20.
- (e) Late payments by either Party of amounts due and payable under this Agreement shall bear interest at a rate per annum equal to the Delayed Payment Rate.
- (f) KEK Mining’s obligation to pay any amount under this Agreement shall remain in full force and effect, and shall not be affected by the provisions of the Government Guarantee, except to the extent that KEK Mining’s obligation to GenCo has been discharged in accordance with the Government Guarantee.

- (g) Payments received by either Party shall be applied against outstanding invoices on the “first in, first out” principle, so that the invoices not then subject to dispute that have been outstanding the longest (in whole or in part) shall be paid first.
- (h) Each Party shall have access to all necessary information and audit rights to verify amounts claimed by the other Party. Any such audit shall be conducted at the sole expense of the Party exercising such rights, subject to findings of material impropriety. The auditing Party shall treat such audit data as confidential and shall not release such audit data to Persons other than (in the event that GenCo is the auditing Party) the Lenders or the agents and designees of the auditing Party or (in the event that GenCo is the auditing Party) the agents and designees of the Lenders, or in the course of any legal proceedings arising under this Agreement.

11.3 Payment Disputes

11.3.1 Invoice Dispute Notice

At any time within three hundred sixty (360) Days after receipt of an invoice, a Party may serve notice (an “**Invoice Dispute Notice**”) on the other Party (with copies to NKEC and KESCO) that the amount of such invoice (or part thereof) is in dispute. Each Invoice Dispute Notice shall specify the invoice concerned and the amount in dispute, giving reasons as complete and as detailed as reasonably possible. A Party shall be entitled to submit any Dispute relating to an invoice to Dispute resolution in accordance with Article 20, so long as it has delivered an Invoice Dispute Notice to the other Party in accordance with this Section 11.3.1. Any Dispute relating to an invoice shall qualify as a Payment Dispute for purposes of Dispute resolution proceedings under Article 20.

11.3.2 Resolution Procedures

Upon resolution of the Dispute in accordance with Article 20 and without prejudice to the right of either Party to refer a Dispute to arbitration, any amounts disputed and not paid but determined to be owed by a Party or any amounts paid and determined not to be owed shall be paid or repaid to the other Party, as the case may be, within ten (10) Business Days after such resolution or determination, together with interest thereon from but excluding the date initially owed or paid until and including the date paid or repaid, as the case may be, at the Delayed Payment Rate.

11.4 Supporting Data

- (a) KEK Mining shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of the amount, in Tonnes, of Lignite that KEK Mining supplied to GenCo during the preceding Month, the applicable Lignite Price for such Lignite, and any other claims for payment or recovery of costs or expenses made by KEK Mining under this Agreement. All such records and data shall be maintained for a period of not less than sixty (60) Months following the last date on which such data and information was relevant for claims by KEK Mining for payment by GenCo.
- (b) GenCo shall maintain accurate and complete records and data, as reasonably necessary to calculate or confirm the correctness of the invoices for damages and any other claims for payment or recovery of costs or expenses made by GenCo under this Agreement. All such records and data shall be maintained for a period of not less than sixty (60) Months following the last date on which such data and information was relevant for claims by GenCo for payment by KEK Mining.

Article 12
Risk of Loss; Title

12.1 Risk of Loss; Title

- (a) KEK Mining shall be responsible for all facilities prior to the Delivery Points, and shall develop, design, finance, own, operate, and maintain such facilities in accordance with Prudent Mining Practices.
- (b) GenCo shall be responsible for the KRPP Facility and all related facilities at and following the Delivery Points and shall develop, design, construct, rehabilitate, finance, own, operate, and maintain (as applicable) them in accordance with Prudent Utility Practices.
- (c) All risk of loss and title to all Lignite delivered to GenCo under or pursuant to this Agreement shall pass from KEK Mining to GenCo at the Delivery Points; provided that, at no point shall risk of loss or title to Hazardous Materials be deemed to have passed to GenCo (exclusive of trace materials inherent within the Lignite).

Article 13
Taxes

13.1 Taxes Applicable to KEK Mining

Subject to Section 8.1(b) and Section 13.3, 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.

13.2 Taxes Applicable to GenCo

Subject to Section 13.3, 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.

13.3 Changes in Tax

13.3.1 Change in Tax Occurrence

- (a) If a Change in Tax occurs or if either Party reasonably believes that a Change in Tax has occurred that in either case:
 - (i) applies to the sale of Lignite or any other payments due under this Agreement; and
 - (ii) causes GenCo or the Sponsor HoldCo (in relation to their interest in GenCo and to the extent the Sponsor HoldCo is not covered by Change in Tax provisions of any other Project Agreement) to, in respect of the Kosovo e Re Project, incur any material increase in their overall Tax obligations or realize any material savings in their overall Tax obligations, then either Party may give the other Party notice of such Change in Tax (such notice, a “**Change in Tax Notice**”) with reasonable details of any of the circumstances related to such claimed Change in Tax.
- (b) GenCo shall give KEK Mining notice within thirty (30) Days of becoming aware of a Change in Tax resulting in any material Tax savings by GenCo or the Sponsor HoldCo.

13.3.2 Consequences of a Change in Tax

- (a) Upon the occurrence of a Change in Law, or upon the occurrence of a Change in Law constituting a Change in Tax that is the subject of a Change in Tax Notice, one or more adjustments to the applicable Lignite Price or other payment made under this Agreement shall be made to increase or to reduce (as the case may be) the payments made by GenCo to KEK Mining under this

Agreement so that GenCo and/or the Sponsor HoldCo (as the case may be) are in the same overall financial and economic position as they were in with respect to this Agreement prior to the occurrence of the applicable Change in Tax, and notwithstanding the foregoing to the extent a Change in Tax also qualifies as a Change in Law, then to the extent such Change in Tax can be mitigated in accordance with this Section 13.3.2 then the other provisions of this Agreement related to Changes in Law shall not apply.

- (b) The Parties shall meet within thirty (30) Days of the issuance of any Change in Tax Notice to discuss and endeavor to agree on the adjustments contemplated by Section 13.3.2(a). In the event the Parties have not agreed to such adjustments within ninety (90) Days of the issuance of any Change in Tax Notice, then the Dispute shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 20.

Article 14

Insurance

14.1 Maintenance of Insurance Policies

14.1.1 Insurance Requirements

- (a) At its sole cost and expense, KEK Mining shall obtain and maintain or cause to be obtained and maintained policies of insurance:
 - (i) no less than the policies set forth in Section 1.1 of Schedule 2 (and satisfying the general conditions set forth in Section 1.2 of Schedule 2); or
 - (ii) if greater, that should be maintained pursuant to Prudent Mining Practices.
- (b) The insurance to be obtained and maintained by KEK Mining under Section 14.1.1(a) shall be obtained from insurers from whom KEK Mining is permitted under the Laws of Kosovo to purchase policies.
- (c) To the extent available, each insurance policy shall be issued by an insurer (or reinsurer, to the extent reinsurance is obtained) of sound financial status. Insurers (or any reinsurer) with whom KEK Mining has policies of insurance shall be deemed to be “of sound financial status” if such insurers (or any reinsurers) have either an S&P “Claims-Paying Ability Rating” of at least A- or an A.M. Best “Financial Strength Rating” rating of at least A/VIII. If such rating systems are discontinued, such insurers shall have a substantially similar rating, and if the Parties are unable to agree upon an acceptable substitute rating, such failure to agree shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 20.

14.1.2 Exceptions to Insurance Requirements

It is understood that KEK Mining shall not be in breach of its obligations under Section 14.1.1 to the extent that and for so long as:

- (a) either:
 - (i) 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

- (ii) 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 14.1.1(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
- (b) 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.

14.2 Event of Loss

14.2.1 Notice of Damage or Loss

If any substantial or significant part of the Mining Assets shall suffer a loss or an event occurs that prevents KEK Mining from performing under this Agreement due to physical damage to a substantial portion of the Mining Assets, KEK Mining shall promptly, and in any case within five (5) Days after it has knowledge of such event, so notify GenCo.

14.2.2 Event of Loss

If an insured event occurs that prevents KEK Mining from performing under this Agreement due to physical damage to a substantial portion of the Mining Assets, insurance proceeds shall be used to repair or restore the applicable equipment, material, and facilities to its condition prior to the event, unless otherwise agreed by the Parties or unless otherwise required by the Financing Documents.

14.3 Certificates and other Evidence of Insurance

14.3.1 Obligation to Provide

- (a) As of the Transfer Date, and at each policy renewal thereafter (but, in any event, at least annually), KEK Mining shall cause its insurers or agents to provide GenCo with certificates of insurance evidencing the policies and endorsements taken out pursuant to Section 14.1, including the name and address of the insurer, type, basic coverage, and name of insured and “additional insureds.”
- (b) Within fifteen (15) Business Days of KEK Mining’s receipt thereof or, if later, within ninety (90) Days of the Transfer Date, KEK Mining shall provide a copy of all insurance policies taken out pursuant to Section 14.1.
- (c) KEK Mining shall provide, as and when updated, copies of all insurance policies taken out pursuant to Section 14.1.

14.3.2 Failure to Provide Evidence of Insurance

- (a) If KEK Mining fails to provide evidence of insurance as required under Section 14.3.1, GenCo may, unless promptly cured by KEK Mining following notice from GenCo, itself take out such insurance and pay such premiums as may be necessary to maintain it in force.
- (b) GenCo may recover from KEK Mining any amount paid by GenCo to obtain insurance as provided under Section 14.3.2(a).

- (c) Failure by GenCo to obtain the insurance coverage permitted under Section 14.3.2(a) shall not relieve KEK Mining of its insurance obligations under this Article 14 or otherwise limit KEK Mining's obligations or liabilities under this Agreement.

14.4 Insurance Reports

KEK Mining shall provide GenCo with copies of any technical underwriters' reports or other technical reports received by KEK Mining from any insurer.

14.5 No Limitation on Liability

KEK Mining's maintenance of or failure to maintain the insurance coverage required by this Article 14 shall not in any way relieve or limit KEK Mining's obligations and liabilities under any provision of this Agreement.

Article 15 Representations and Warranties

15.1 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) 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;
- (f) 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;
- (g) there is no action, suit, proceeding, or investigation pending or, to KEK Mining's knowledge, threatened:
 - (i) for the dissolution of KEK Mining; or
 - (ii) otherwise against KEK Mining,

that, if adversely determined, would have a material adverse effect on its ability to perform its obligations hereunder or the validity or enforceability of this Agreement; and

- (h) any failure of KEK Mining to own, maintain, or operate the Mining Assets in accordance with the applicable Laws of Kosovo is not reasonably anticipated to materially affect KEK Mining's ability to perform its obligations under this Agreement.

15.2 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 15.3, GenCo shall represent and warrant to Water Supplier 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 does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on GenCo or any valid order of any court, or any regulatory agency or other body having authority to which GenCo is subject; and
- (e) none of the execution, delivery, or performance by GenCo of this Agreement, the compliance with the terms and provisions hereof, and the carrying out of the transactions contemplated hereby, conflicts or will conflict with or result in a breach or violation of its Charter Documents or any of the terms, conditions, or provisions of any Law of Kosovo or any applicable permit, or any order, writ, injunction, judgment, or decree of any Public Authority against GenCo.

15.3 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 15.2 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 15.1 are true and accurate as at such date.

Article 16 Indemnification

16.1 Indemnification

16.1.1 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 Lignite Delivery Easement 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 Lignite Delivery Easement 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;
- (e) resulting from, related to, or arising out of, any Environmental/Archaeological Condition existing on the GenCo Lignite Delivery Easement 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; and
- (f) in the event KEK Mining delivers Non-Conforming Lignite to GenCo, for all Resultant Damage associated with GenCo's use of such Non-Conforming Lignite at the KRPP Facility, but only up to the following limits:
 - (i) €25 million per occurrence; and
 - (ii) €100 million per Agreement Year.

16.1.2 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; or
- (d) resulting from, related to, or arising out of, any Environmental/Archaeological Condition in relation to the GenCo Lignite Delivery Easement 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.

16.1.3 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 16 in proportion to its relative degree of fault.

16.1.4 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 16.1.4(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 Archeological 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 Archeological Conditions shall be deemed to be a Pass-Through Environmental/Archeological Condition regardless of the date on which any such condition is discovered.

16.2 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.

16.3 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 16, 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.

16.4 Defense of Claims

16.4.1 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 16 (an "**Indemnification Notice**").
- (b) The delay or failure of such indemnified Party to provide an Indemnification Notice required pursuant to this Section 16.4 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**").

16.4.2 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 16, 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 16 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.

16.4.3 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 16.4.3(a)(i), 16.4.3(a)(ii), 16.4.3(a)(iii), or 16.4.3(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 17
Limitation of Liability

17.1 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 17.1, except in relation to contracts (other than the O&M Contract and Administrative Services Agreement and any LTM Agreement approved by NKEC under Article 3 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 17.1(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 18
Default; Termination

18.1 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 18.1(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;
 - (e) following the Transfer Date, the occurrence of an Abandonment (KEK Mining) that continues for a period of thirty (30) Days, without the prior written consent of GenCo; and
 - (f) the occurrence of any breach by KEK Mining of its obligations under Section 21.13;
- 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 18.1(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 3.11 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).

18.2 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 18.2(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) 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 21.13;

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 breach by GOK of or a default by GOK under the Implementation Agreement (including any GOK Event of Default, as defined thereunder); or
- (iii) a Force Majeure Event (except in the case of a payment default pursuant to Section 18.2(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 with 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.

18.3 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.

18.4 Termination Notice

- (a) Subject to Section 18.4(c), if any KEK Mining Event of Default or GenCo 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 KEK Mining Event of Default or GenCo 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 18.3 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 18.7.
- (b) Subject to Section 18.4(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 18.5, 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.

18.5 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.

18.6 Other Remedies

- (a) Except as provided in this Agreement and subject to Sections 18.6(b) and 18.6(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 17 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 except as provided in Section 21.4.
- (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 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 21.4.

- (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 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 Section 21.4.

18.7 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.

18.8 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 19 Force Majeure

19.1 Force Majeure

19.1.1 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 19, an “affected Party”) of its obligations under or pursuant to this Agreement (including a Party’s ability to deliver or receive Lignite from the Sibovc South Mine Field); 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.

19.1.2 Events Expressly Qualifying as Force Majeure Events

Without limitation to Section 19.1.1, “**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 19.1.1:

- (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 (as defined in the Power Purchase Agreement);
- (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, the occurrence of a (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 (as defined in the Power Purchase Agreement); or
 - (v) epidemic or plague.

19.1.3 Events Expressly Not Qualifying as Force Majeure Events

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

- (a) normal wear and tear in materials and equipment;
- (b) breakdowns in equipment;
- (c) lack of funds due to any commercial, economic or financial reason including a Party's inability to make a profit or achieve a satisfactory rate of return;
- (d) changes in market conditions that affect the:
 - (i) cost of lignite; or

- (ii) demand or price for any of KEK Mining's or GenCo's products;
- (e) except as provided in Section 19.1.2(a)(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;
- (f) the results or consequences of any breach by a Party of the Laws of Kosovo, the terms of any Consent, or of any of the Project Agreements;
- (g) the results or consequences of any willful or negligent act or omission by a Party, or any failure by a Party to follow Prudent Utility Practices or Prudent Mining Practices; or
- (h) 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.

19.2 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 KEK Mining and GenCo; and
 - (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent that can reasonably be determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that the affected Party shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than seven (7) Days after the initial notice of the occurrence of the Force Majeure Event is given by the affected Party.
- (b) When appropriate, or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party, more fully describing the Force Majeure Event and its cause(s) and providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effect(s) thereof and estimates, to the extent practicable, of the time that the affected Party reasonably expects it shall be unable to carry out any of its affected obligations due to the Force Majeure Event.
- (c) The affected Party shall provide notice to the other Party:
 - (i) with respect to an ongoing Force Majeure Event, of the cessation of the Force Majeure Event; and
 - (ii) of its ability to recommence performance of its obligations under this Agreement,
 as soon as possible and in any event not later than seven (7) Days after the occurrence of each of clause (i) and (ii) above.
- (d) Failure by the affected Party to give written notice of a Force Majeure Event to the other Party within the five (5) Business Day period or twenty-four (24) hour period required under Section 19.2(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 19.4 for any failure or delay in complying with its obligations under or pursuant to this Agreement until such notice has been given. If said notice is given within the five (5) Business Day period or twenty-four (24) hour period required by Section 19.2(a), the affected Party shall

be excused for such failure or delay pursuant to Section 19.4 from the time of commencement of the relevant Force Majeure Event.

19.3 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.

19.4 Failure or Delays Caused by Force Majeure

Following a Force Majeure Event:

- (a) the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment or provide security) under or pursuant to this Agreement during the existence of a Force Majeure Event but only to the extent that the affected Party has complied with its obligations under Section 19.3; and
- (b) any performance deadline that the affected Party is obligated to meet under this Agreement shall be extended day-for-day by the number of days during which the affected Party was prevented from performing as a result of the Force Majeure Event, but only to the extent that the affected Party has complied with its obligations under Section 19.3;

provided, however, that no relief, including extension of performance deadlines, shall be granted to the affected Party pursuant to this Section 19.4 to the extent that such failure or delay would nevertheless have been experienced by the affected Party had the Force Majeure Event not occurred.

19.5 Payment During Force Majeure Event

Upon the occurrence of any Force Majeure Event during the Supply Period, then during the pendency of a Force Majeure Event, GenCo shall pay to KEK Mining the Lignite Price for Lignite delivered during the pendency of such Force Majeure Event.

19.6 Restoration of the Mining Assets Following a Change in Law

19.6.1 Preparation of Preliminary Restoration Estimate Following a Change in Law

- (a) In the event that compliance by KEK Mining with a Change in Law requires a material modification or a material capital addition to the Mining Assets (each such material modification or capital addition referred to herein as a “**Restoration**”), KEK Mining shall engage an independent engineering consultancy firm reasonably acceptable to both Parties (and, to the extent the Parties cannot agree, then an expert appointed by the ICC International Centre for Expertise for ad hoc proceedings in accordance with the ICC Rules for Expertise for ad hoc proceedings) (the “**Restoration Expert**”) to develop and deliver to GenCo a preliminary written estimate (the “**Preliminary Restoration Estimate**”) of:
 - (i) the projected Restoration Costs (the “**Restoration Cost Estimate**”) and the Threshold Amount; and
 - (ii) a description of the required work to complete the Restoration and a preliminary schedule (such schedule and each such schedule contained in the Full Restoration Report, a “**Restoration Schedule**,” which Restoration Schedule shall include the period of time reasonably estimated to complete the Restoration, which period shall be referred to herein as the “**Restoration Period**”) for the activities required to complete Restoration, including, if the Restoration Cost Estimate is greater than the Threshold Amount, a reasonable period to arrange the financing.

- (b) KEK Mining shall use commercially reasonable efforts to ensure that the Restoration Expert's Preliminary Restoration Estimate is as comprehensive and as complete as possible under the circumstances.
- (c) KEK Mining shall deliver the Preliminary Restoration Estimate within thirty (30) Days after the date by which it was first required to provide notice to GenCo under Section 19.2(a); provided, however, if the Change in Law has not ended by the time of such notice, KEK Mining shall deliver the Preliminary Restoration Estimate within thirty (30) Days of the notice required by Section 19.2(c).

19.6.2 Determination as to Preparation of Full Restoration Report

GenCo and KEK Mining shall meet within ten (10) Days of the delivery of the Preliminary Restoration Estimate to discuss the conclusions set forth therein. If KEK Mining concludes that the Restoration Cost Estimate shall be less than the Threshold Amount and GenCo agrees with the Restoration Cost Estimate and with the Restoration Schedule, then KEK Mining shall proceed with the Restoration in accordance with Section 19.6.6. Otherwise, KEK Mining shall proceed with the preparation of a Full Restoration Report and the provisions of Section 19.6.3 shall apply.

19.6.3 Preparation of Full Restoration Report

- (a) When required under Section 19.6.2, KEK Mining shall engage the Restoration Expert to commence the preparation of an appraisal report (a "**Full Restoration Report**") within five (5) Days after the date it was determined that a Full Restoration Report would be necessary, and deliver a copy of such Full Restoration Report to GenCo as soon as practicable, but in any event not later than thirty (30) Days thereafter. The Full Restoration Report shall address in good faith and in such detail as is practicable under the circumstances the following matters (to the extent applicable):
 - (i) a description of the Force Majeure Event and the damage to the Mining Assets, and/or the other effects or impacts on, the Mining Assets;
 - (ii) an estimation of the time it will take to restore the Mining Assets (as much as it may be possible to do so) to its condition immediately prior to the Force Majeure Event or to bring the Mining Assets into compliance with the Change in Law;
 - (iii) a Restoration Schedule;
 - (iv) a statement and explanation regarding whether Restoration or modification of the Mining Assets or necessary capital additions are technically feasible;
 - (v) the cost necessary to restore the Mining Assets to its condition immediately prior to the Force Majeure Event or the costs to come into compliance with the Change in Law and the expected associated costs under Section 19.5;
 - (vi) a revised cash flow forecast for the Mining Assets;
 - (vii) the insurance proceeds, if any, that may be recovered, the date or dates on which such proceeds may be received, and the particular purposes for which such proceeds are required to be applied;
 - (viii) the plan to fund the costs of the Restoration; and
 - (ix) an estimate of how the Lignite Price will be affected by the Restoration.
- (b) KEK Mining shall provide reasonable supporting data for the information included in the Full Restoration Report and shall provide copies of all certificates and reports of KEK Mining's financial and technical advisers, as appropriate or as reasonably requested by GenCo, in support of the applicable matters referred to in this Section 19.6.3.

19.6.4 Full Restoration Report Disputes

- (a) Within ten (10) Days of the delivery of a Full Restoration Report to a Party, the Parties shall meet to discuss the Full Restoration Report and any action(s) to be taken. In connection with the review by GenCo of a Full Restoration Report prepared by the Restoration Expert on behalf of KEK Mining, KEK Mining shall provide promptly to GenCo such additional information pertaining to the Full Restoration Report and the matters described therein as GenCo may reasonably request.
- (b) Disputes in relation to any matter set forth in the Full Restoration Report shall qualify as Technical Disputes for purposes of Dispute resolution proceedings under Article 20.

19.6.5 Determination Following Full Restoration Report

- (a) GenCo reserves the right to determine whether to proceed with Restoration (subject to the obligation to pay an adjusted Lignite Price pursuant to Section 19.7) or terminate this Agreement following the delivery of a Full Restoration Report.
- (b) GenCo shall, within fifteen (15) Days of the issuance of the Full Restoration Report, provide KEK Mining with a written notice of its election to either:
 - (i) terminate this Agreement pursuant to Section 19.8; or
 - (ii) authorize KEK Mining to proceed with Restoration.

19.6.6 Implementation of Restoration

The following provisions shall apply to a Restoration resulting from a Change in Law:

- (a) KEK Mining shall proceed in good faith to try to secure financing for the cost of Restoration (i) through the World Bank or other appropriate international financial institution or, if not available, (ii) at a debt to equity ratio that is equal to or greater than the Target Debt to Equity Ratio. If KEK Mining is unable to obtain binding commitments for such financing commensurate with the Designated Cost Recovery Period within ninety (90) Days of receipt of GenCo's notice authorizing KEK Mining to proceed with Restoration, then unless GenCo commits to provide financing for the Restoration within the next thirty (30) Days, and obtains such financing within an additional forty-five (45) Days, the failure to secure financing shall be treated as an election by GenCo to terminate this Agreement pursuant to Section 19.6.5. KEK Mining shall use commercially reasonable efforts to maximize the debt to equity ratio associated with its investment in the Restoration so that such debt to equity ratio exceeds the Target Debt to Equity Ratio;
- (b) if financing for the Restoration has been secured, then KEK Mining shall proceed with the Restoration in accordance with the Restoration Schedule;
- (c) upon completion of the Restoration, KEK Mining shall be entitled to special compensation pursuant to Section 19.7; and
- (d) KEK Mining shall provide GenCo with a summary of all costs actually incurred in implementing the Restoration, together with copies of all invoices for such work.

19.6.7 Termination Due to Ongoing Change in Law

Notwithstanding anything herein to the contrary, in the event of:

- (a) the occurrence of a Change in Law that has a material adverse effect on KEK Mining's ability to operate the Mining Assets or to provide Lignite in accordance with the terms of this Agreement and such Change in Law continues to have such effect for a period exceeding six (6) Months (not including the effects thereof); provided, however, that if KEK Mining commences taking

appropriate actions to cure such effect within such six (6) Month period, and thereafter diligently continues to pursue such cure, the cure period shall extend for an additional six (6) Months so long as such effect is capable of being cured within such extended cure period;

- (b) a series of such related Changes in Law that continue to have such effect in the aggregate for a period that exceeds two hundred seventy (270) Days (not including the effects thereof) during any Agreement Year; or
- (c) a Change in Law following which:
 - (i) the Parties agree or the outcome of the Dispute resolution process under Article 20 is that a Restoration is not feasible or GenCo decides that the Restoration Costs are not acceptable, provided that GenCo shall make such determination primarily based on the Power Purchase Agreement tariff impact; and
 - (ii) the Mining Assets do not operate for two hundred seventy (270) Days following such determination or decision, and during such period the Change in Law is not rescinded or modified in a way to permit or avoid the Restoration,

KEK Mining and GenCo shall each have the option to terminate this Agreement immediately, but only to the extent such event(s) are ongoing.

19.7 Effect of a Restoration on the Lignite Price

In the case of a Restoration resulting from a Change in Law, the Lignite Price shall, from and after the date of the completion of the Restoration, be adjusted in accordance with Schedule 1.

19.8 Right to Declare Buy-Out Event Following an Other Force Majeure Event

- (a) If any of the following events occur, either Party may, at its option, declare that an “**Other Force Majeure Buy-Out Event**” has occurred:
 - (i) the Mining Assets or any part thereof are damaged as a result of an Other Force Majeure Event;
 - (ii) the effects of the Other Force Majeure Event continue for a period of six (6) Months or more; provided, however, that if KEK Mining commences taking appropriate actions to cure such effect within such six (6) Month period, and thereafter diligently continues to pursue such cure, the cure period shall extend for an additional six (6) Months so long as such effect is capable of being cured within such extended cure period; and
 - (iii) KEK Mining is unable to deliver during such period at least forty percent (40%) of the Lignite KEK Mining would be required to deliver under this Agreement in the absence of the effects of the Other Force Majeure Event without limiting its delivery obligations under Section 3.4.1(e).
- (b) If the Mining Assets are damaged as a result of an Other Force Majeure Event and it is clearly evident that the Mining Assets cannot be reconstructed within a period of twelve (12) Months or the Mining Assets cannot be repaired or replaced so as to be capable of satisfying all of KEK Mining’s delivery obligations under this Agreement, either Party may, at its option, declare that an Other Force Majeure Buy-Out Event has occurred.

19.9 Right to Terminate Following a Political Force Majeure Event or Change in Law

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

19.10 Notice of Termination Required; Compensation

- (a) A Party shall exercise any right to terminate this Agreement under this Article 19 by delivering a notice of termination to the other Party in accordance with Section 21.1. Any such notice from KEK Mining shall be consented to by a duly authorized representative of GOK. A copy of any such notice from GenCo shall be delivered to the GOK at the same time the notice is delivered to KEK Mining in accordance with the provisions of Section 23.1 (*Notices*) of the Implementation Agreement. Such notice shall identify the Change in Law in reasonable detail and the basis for termination. Termination of this Agreement shall be effective at 5:00 p.m. on the thirtieth (30th) Day following the date of delivery of such notice.
- (b) If this Agreement is terminated as a result of a Force Majeure Event under this Article 19, or if a Party declares an Other Force Majeure Buy-Out Event, then the provisions of Section 20.3 (*Termination Following a Political Force Majeure Event, Change in Law, Raw Water Force Majeure Event or Change in Raw Water Quality*) or Section 20.4 (*Termination Following an Other Force Majeure Event*), as the case may be, of the Implementation Agreement shall be applied to determine whether compensation is to be paid by the parties and the amount of such compensation.

Article 20 Dispute Resolution

20.1 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.

20.2 Dispute Resolution Procedures

20.2.1 Informal Dispute Resolution by Parties

Upon receipt by a Party of a notice from the other Party of a Dispute in accordance with Section 20.1 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 20.2.2.

20.2.2 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 20.2.1 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 20.3 (in the case of a Technical Dispute) or in accordance with Section 20.4 (in the case of a Payment Dispute), as the case may be, in each case subject to Section 20.2.2(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 20.4 and the expert appointed thereunder shall determine, in accordance with Section 20.4(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 20.4 and the remaining portion (if any) shall be referred to and resolved pursuant to Section 20.3.
- (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 20.3.

- (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 20.5; provided, however, that if such Party has not referred the Dispute for resolution in accordance with the procedures described in Section 20.5 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 20.3(f) (in the case of a Technical Dispute) or Section 20.4(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 20.5
- (e) In the event that the Parties are unable to resolve a Dispute by informal discussions in accordance with Section 20.2.1 and such Dispute is not a Technical Dispute or a Payment Dispute, then the Dispute shall be resolved in accordance with Section 20.5.
- (f) The Parties may, through mutual agreement, elect to resolve any Dispute (including a Technical Dispute and a Payment Dispute) in accordance with Section 20.5.

20.3 Technical Disputes

Any Technical Dispute subject to this Section 20.3 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 8 hereto. If the Parties are unable to appoint an expert from the list on Schedule 8 or cannot agree on an expert from the list on Schedule 8, or if the Technical Dispute involves issues that require an expert not listed on Schedule 8, 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 8, 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 20.3(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 20.3. If the expert determines that the Dispute is not capable of such resolution, the Dispute shall be resolved pursuant to Section 20.5.

- (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 20.2.2(d) and Section 20.3(h).
- (h) Except as provided in Section 20.3(i) with respect to the payment of costs, the proceedings under this Section 20.3 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 20.5. The process under this Section 20.3 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.

20.4 Payment Disputes

Any Payment Dispute subject to this Section 20.4 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 8 hereto. If the Parties are unable to appoint an expert from the list on Schedule 8 or cannot agree on an expert from the list on Schedule 8, or if the Payment Dispute involves issues that require an expert not listed on Schedule 8, 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 8, 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 20.4(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 20.4. If the expert determines that the Dispute is not capable of such resolution, the Dispute shall be resolved pursuant to Section 20.5; provided, however, that if the Dispute was referred to this Section 20.4 pursuant to Section 20.2.2(b), the Dispute shall be resolved pursuant to Section 20.3.
- (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 20.2.2(d) and Section 20.4(h).
- (h) Except as provided in Section 20.4(i) with respect to the payment of costs, the proceedings under this Section 20.4 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 20.5. The process under this Section 20.4 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.

20.5 Arbitration

- (a) Any Dispute subject to this Section 20.5 shall, subject to Section 20.5(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 KEK Mining and GenCo is a national and resident of Kosovo, while either KEK Mining or GenCo, as the case may be, is controlled by nationals of another Contracting State (as such term is used in the ICSID Convention) KEK Mining or GenCo, 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 20.5, 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 20.5 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 20.5(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).

20.6 Related Disputes

- (a) The arbitral tribunal may consolidate an arbitration arising out of or relating to this Agreement with any arbitration arising out of or relating to one or more of the Project Agreements if the subject matter of the Disputes arises out of or relates to essentially the same facts or transactions. Such consolidated arbitration shall be determined by the arbitral tribunal appointed for the arbitration proceeding that was commenced first in time.
- (b) Except as otherwise provided in Section 20.1, 20.3, and 20.4, the rights of the Parties to proceed with Dispute resolution under Section 20.1, 20.3, and 20.4 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 KEK Mining or GenCo hereunder.

20.7 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 18.5.

20.8 Sovereign Immunity; Jurisdiction

- (a) 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 20.8(a), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same; 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.
- (b) 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 constitutes its private and commercial acts and waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Section 20.8(b), and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same;
 - (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.

Article 21 Miscellaneous

21.1 Notices

- (a) All notices and other communications required or permitted to be given by a Party (including any invoices or Invoice Dispute Notices required or permitted to be delivered hereunder) shall be in writing and either delivered personally or by courier or sent by fax or by e-mail to the address or number of the other Party specified below:

- (i) If to 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 GOK:

Government of Kosovo
Rr. Nene Tereza Nr. 36
Pristina, Kosovo
Attention: Minister of Economic Development
Tel: +381-38-200-215-00/01
Fax: _____

(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
and CGK_GC@contourglobal.com

with a copy to GOK:

Government of Kosovo
Rr. Nene Tereza Nr. 36
Pristina, Kosovo
Attention: Minister of Economic Development
Tel: +381-38-200-215-00/01
Fax: _____

provided, however, that a Party may change the address to which notices are to be sent to it by giving not less than thirty (30) Days' prior written notice to the other Party in accordance with this Section 21.1(a).

- (b) No notice or other communication shall be effective until received or deemed received. Notices or other communications shall be deemed to have been received by the receiving Party:
- (i) when delivered if personally delivered;
 - (ii) three (3) Business Days after sending, if sent by international courier;
 - (iii) upon sending if sent by fax, subject to confirmation of an uninterrupted transmission report and provided that a hard copy is dispatched not later than the following Business Day to the recipient by international courier or personal delivery; or
 - (iv) upon sending if sent by e-mail, provided that a hard copy is dispatched not later than the following Business Day to the recipient by international courier or personal delivery; provided, however, the Parties may from time to time mutually agree in writing that no hard copy delivery requirements are required with respect to certain day-to-day and other similarly routine operational communications.
- (c) All notices and other communications required or permitted to be given by a Party pursuant to this Agreement (including any invoices required or permitted to be delivered thereunder and the results of any testing or analysis of the Lignite supplied) shall be copied to GOK in the same manner and at the same time as such notice is provided to the other Party.

- (d) A Party delivering a notice or other communication in accordance with Section 21.1(a) shall use commercially reasonable 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; 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 21.1(d) shall not affect the effectiveness of such notice or other communication as established pursuant to Section 21.1(b).
- (e) In the event that a notice delivered by GenCo to KEK Mining or GOK pursuant to this Agreement requires KEK Mining or GOK, as applicable, to either provide a response (including any approval or non-objection) within a certain time period or be deemed to have approved or not objected to the taking of any action by GenCo, GenCo shall include in such notice a description of the response period and consequences of the failure of KEK Mining or GOK, as applicable, to respond (including any deemed approval or non-objection).

21.2 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.

21.3 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.

21.4 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 21.4(b).
- (b) Notwithstanding anything contained in this Agreement to the contrary, the provisions of Article 1 (*Definitions; Interpretation*), Section 3.10 (*Failure to Supply*), Article 8 (*Price*), Article 11 (*Billing and Payment*), Article 12 (*Risk of Loss; Title*), Article 16 (*Indemnification*), Article 17 (*Limitation of Liability*), Article 19 (*Force Majeure*), Article 20 (*Dispute Resolution*), and Article 21 (*Miscellaneous*) shall expressly survive any termination or expiry of this Agreement.

21.5 Third Party Beneficiaries

Except for the rights expressly granted herein and the rights in favor of GOK with respect to its interests in respect of this Agreement as granted under Section 3.13 of the Implementation Agreement, which rights are expressly acknowledged, 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.

21.6 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.

21.7 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.

21.8 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.

21.9 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.

21.10 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.

21.11 Governing Law

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

21.12 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.

21.13 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 an entity formed under the Laws of 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 21.13(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 21.13(c) and 21.13(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 21.13(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 21.13 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 21.13(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 21.13(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 21.13(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 21.13(a) and Section 21.13(b).
- (f) Any assignment in contravention of this Section 21.13 shall be null and void.

21.14 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 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.

21.15 Confidentiality

- (a) Subject to Section 21.15(d), this Agreement and all information disclosed hereunder or in connection with this Agreement shall be treated as confidential and, subject to Section 21.15(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 21.15(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 21.15;
 - (ii) to Persons professionally engaged by or on behalf of such Party (including its advisors, consultants and insurers); provided that such Persons shall be required by such Party to undertake to keep such information confidential and that such Party shall use reasonable endeavors to secure compliance with such undertaking;
 - (iii) to any government department or any governmental or regulatory agency having jurisdiction over such Party but only to the extent that such Party is required by law to make such disclosure;
 - (iv) to:
 - (A) any lending or other financial institution, including the World Bank Group, in connection with the financing or refinancing of such Party's operations and, in each case, their advisors, consultants, and insurers in connection with any financing or refinancing;
 - (B) any rating agencies, and their advisors, consultants and insurers;
 - (C) any actual and potential equity investors, and in each case, their advisors, consultants, and insurers; or
 - (D) any bona fide intended assignee or transferee (and, in each case, their advisors, consultants and insurers) of the whole or any part of the rights and interests of the disclosing Party under this Agreement,

but (in each case) only to the extent required in connection with obtaining such financing, refinancing, rating, equity investment or in respect of such proposed assignment and subject to such Person or intended assignee or transferee first agreeing with such Party to be bound by confidentiality provisions substantially the same as those contained in this Section 21.15; or
 - (v) to any expert or arbitrator appointed pursuant to and under the terms of this Agreement.
- (d) Notwithstanding the provisions of Section 21.15(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 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 21.15 shall no longer be applicable to GenCo in respect of any such information released to the public.

21.16 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.

21.17 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.

21.18 Further Assurances

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

21.19 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.

21.20 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.


Kosovo Energy Corporation, J.S.C.

By:  _____

Name: Arben Gjukaj

Title: CEO

ContourGlobal Signatory

By:  _____

Name: Joseph C. Brandt

Title: CEO, ContourGlobal

By: _____

Name: _____

Title: _____

[Notary]

Schedule 1
Methodology for Establishing the Lignite Price; Lignite Quantities

Table of Contents

| | | |
|-----|---|----|
| | Article 1 Definitions..... | 2 |
| 1.1 | Definitions..... | 2 |
| | Article 2 Calculation of Lignite Price..... | 3 |
| 2.1 | Lignite Price..... | 3 |
| 2.2 | Index Adjustment Factor..... | 4 |
| 2.3 | Land Acquisition Credit..... | 6 |
| 2.4 | CIL Lignite Credit..... | 7 |
| 2.5 | Major Capital Investment Lignite Credit..... | 9 |
| 2.6 | Other Income..... | 11 |
| | Article 3 Annual Budgeting and Reconciliation Process..... | 12 |
| 3.1 | Annual Budgeting Process..... | 12 |
| 3.2 | Annual Reconciliation Process..... | 13 |
| 3.3 | Calculation of the Total Demand Correction Factors..... | 14 |
| 3.4 | Calculation of the Non-Budgeted Correction Factors..... | 14 |
| 3.5 | Close-Out Reconciliation Process..... | 15 |
| | Article 4 Monthly Offset for Variance in Calorific Content..... | 15 |
| 4.1 | Monthly Offset for Variance in Calorific Content..... | 15 |
| | Article 5 Adjustment of Target Debt to Equity Ratio..... | 16 |
| 5.1 | Adjustment of Target Debt to Equity Ratio..... | 16 |
| | Article 6 Lignite Quantities..... | 17 |
| 6.1 | Maximum Daily Test Lignite Quantity..... | 17 |
| 6.2 | Maximum Daily Lignite Quantity..... | 17 |
| 6.3 | Start-Up Maximum Monthly Test Lignite Quantity..... | 17 |

Article 1 Definitions

1.1 Definitions

Capitalized terms used but not defined in this Schedule 1 shall have the meaning given to them in the body of the Agreement. Wherever the following terms appear in this Schedule 1, they shall have the meanings stated below:

“Accountants” – An internationally recognized independent firm of chartered accountants registered to do business and licensed in Kosovo and appointed by KEK Mining and reasonably acceptable to GenCo for the purpose of delivering the opinions referenced in Section 3.2(a).

“Accountants’ Opinion” – Has the meaning given thereto in Section 3.2(a).

“Agreed Budget” – Has the meaning given thereto in Section 3.1(c).

“Annual Diesel Fuel Index” – The arithmetic mean of the daily Diesel Fuel Indexes for each trading day during a Year.

“Annual EU 28 PPI” – The arithmetic mean of the twelve (12) monthly EU 28 PPIs of a Year.

“Annual Kosovo CPI” – The arithmetic mean of the twelve (12) monthly Kosovo CPIs of a Year.

“CIL Lignite Credit” – The component of the Lignite Price calculated in accordance with Section 2.4.

“Close-Out Reconciliation Report” – Has the meaning given thereto in Section 3.5(a).

“Correction Factor (CIL)” – The correction factor used to correct for any overpayment or underpayment of Restoration Costs to KEK Mining, as calculated in accordance with Section 3.4.

“Correction Factor (LA)” – The correction factor used to correct for any overpayment or underpayment of Land Acquisition Costs to KEK Mining, as calculated in accordance with Section 3.3.

“Correction Factor (MCI)” – The correction factor used to correct for any overpayment or underpayment of Major Capital Investment Costs to KEK Mining, as calculated in accordance with Section 3.4.

“Correction Factor (OI)” – The correction factor used to correct for any Other Income to KEK Mining, as calculated in accordance with Section 3.3.

“Diesel Fuel Index” – The daily closing price of the Gasoil 1-Month Futures Price (London), published daily by ICE (or any successor or replacement entity thereto).

“Equity Yield” – A nominal rate equal to the current regulated rate of return permitted by ERO (as defined in the Power Purchase Agreement) in the KEK Generation prices per annum, as in force prior to the Execution Date, or such lower rate as may be directed by KEK Mining.

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

“Index Adjustment Factor” – Has the meaning given thereto in Section 2.2.

“Indexation Reference Date” – January 1, 2018.

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

“Land Acquisition” – An acquisition by KEK Mining of land and land rights necessary for the development of the Sibovc South Mine Field and the Mining Assets.

“Land Acquisition Costs” – Those costs that are documented, reasonable, necessary and prudently incurred by KEK Mining to acquire the land and land rights necessary for the development of the Sibovc South Mine Field and the Mining Assets, including documented costs reasonable, necessary, and prudently incurred pursuant to in connection with the implementation of any Resettlement Action Plan (as defined in the Implementation Agreement) in accordance with the Resettlement Standards, to the extent such costs are related to the supply of Lignite under this Agreement.

“Land Acquisition Credit” – Has the meaning given thereto in Section 2.3.

“Major Capital Investment Costs” – The documented, prudent and reasonable costs incurred by KEK Mining in connection with a Major Capital Investment approved by GOK that KEK Mining seeks to recover under this Agreement.

“Other Income” – The component of the Lignite Price determined in accordance with Section 2.6.

“Proposed Budget” – Has the meaning given thereto in Section 3.1(a).

“Reference Agreement Lignite Transportation Price Component” – The amount reflected as the “Reference Agreement Lignite Transportation Price Component” for the relevant Agreement Year in Annex 1.

“Reference Base Commodity Price Component” – The amount reflected as the “Reference Base Commodity Price Component” for the relevant Agreement Year in Annex 1.

“Reference Coal Yard Management Price Component” – The amount reflected as the “Reference Coal Yard Management Price Component” for the relevant Agreement Year in Annex 1.

“Reference Common Lignite Transportation Price Component” – The amount reflected as the “Reference Common Lignite Transportation Price Component” for the relevant Agreement Year in Annex 1.

“Royalties” – The amount per Tonne of Lignite of any royalties payable by KEK Mining in respect of the Mining License pursuant to the Law on Mines and Minerals (2010) as amended by the Law Amending the Law on Mines and Minerals (04/L-158), or any similar Law of Kosovo that imposes analogous charges applicable to developers of lignite concessions, to the extent related to the supply of Lignite under this Agreement.

Article 2 Calculation of Lignite Price

2.1 Lignite Price

- (a) Subject to Section 2.1, the Lignite Price, per Tonne, for Agreement Year ‘y’ shall be calculated in accordance with the following formula:

$$LP_y = \left[(BasePrice_{Ref,y} + TrnspPrice_{Ref,y} + CYManPrice_{Ref,y}) \times IAF_y \right] + \sum_{i=1}^q (LandAcq_{y,i}) + \sum_{i=1}^s (CIL_{y,i}) + \sum_{i=1}^t (MajCapInv_{y,i}) + Royalties_y - OIC_y$$

Where:

LP_y means the Lignite Price for Agreement Year ‘y’, as calculated in accordance with this Section 2.1, stated in Euros per Tonne;

$BasePrice_{Ref,y}$ means the Reference Base Commodity Price Component for Agreement Year ‘y’;

$TrnspPrice_{Ref,y}$ means the sum of (i) the Reference Common Lignite Transportation Price Component for Agreement Year ‘y’; and (ii) the Reference

| | |
|----------------------|---|
| | Agreement Lignite Transportation Price Component for Agreement Year ‘y’; |
| $CYManPrice_{Ref,y}$ | means the Reference Coal Yard Management Price Component for Agreement Year ‘y’; |
| IAF_y | means the Index Adjustment Factor for Agreement Year ‘y’, as calculated in accordance with Section 2.2; |
| $LandAcq_{y,i}$ | means the Land Acquisition Credit for Agreement Year ‘y’ in relation to Land Acquisition ‘i’, as calculated in accordance with Section 2.3; |
| q | refers to the number of Land Acquisition Credits that are applicable during Agreement Year ‘y’; |
| $CIL_{y,i}$ | means the CIL Lignite Credit for Agreement Year ‘y’ in relation to Restoration ‘i’, as calculated in accordance with Section 2.4; |
| s | refers to the number of CIL Lignite Credits that are applicable during Agreement Year ‘y’; |
| $MajCapInv_{y,i}$ | means the Major Capital Investment Lignite Credit for Agreement Year ‘y’ in relation to Major Capital Investment ‘i’, as calculated in accordance with Section 2.5; |
| t | refers to the number of Major Capital Investment Lignite Credits that are applicable during Agreement Year ‘y’; |
| $Royalties_y$ | means the amount of any Royalties, calculated on a per Tonne basis, payable during Agreement Year ‘y’; and |
| OIC_y | means the Other Income component for Agreement Year ‘y’, calculated in accordance with Section 2.6. |

- (b) The Lignite Price shall be calculated for each Agreement Year ‘y’ based on reasonable estimates of the variables described above (including reasonable estimates of any variables used in calculating such variables), as contained in the Agreed Budget.
- (c) Discrepancies between the estimated values specified in Section 2.1(b) and the actual values for such quantities for Agreement Year ‘y’ shall be reconciled pursuant to Sections 3.3 and 3.4, which calculate the correction factors to allow for the correction of any overpayment or underpayment of KEK Mining during Agreement Year ‘y’ over the course of Agreement Year ‘y+2’.

2.2 Index Adjustment Factor

- (a) The indexation adjustment factor referred to in Section 2.1 (the “**Index Adjustment Factor**”) shall be calculated according to the following formula:

$$IAF_y = \left(WF_{KCPI} \times \frac{KCPI_{y-1}}{KCPI_{Ref}} \right) + \left(WF_{EUPPI} \times \frac{EUPPI_{y-1}}{EUPPI_{Ref}} \right) + \left(WF_{DFI} \times \frac{DFI_{y-1}}{DFI_{Ref}} \right)$$

Where:

IAF_y means the Index Adjustment Factor applicable for the Agreement Year ‘y’;

- WF_{KCPI} means the weighting factor applicable to the Annual Kosovo CPI, which is equal to forty percent (40%);
- $KCPI_{y-1}$ means the Annual Kosovo CPI for the Year that concluded prior to the start of Agreement Year ‘y’; and
- $KCPI_{Ref}$ means the Annual Kosovo CPI for the Year during which the Indexation Reference Date occurs;
- WF_{EUPPI} means the weighting factor applicable to the Annual EU 28 PPI, which is equal to fifty-five percent (55%);
- $EUPPI_{y-1}$ means the Annual EU 28 PPI for the Year that concluded prior to the start of Agreement Year ‘y’;
- $EUPPI_{Ref}$ means the Annual EU 28 PPI for the Year during which the Indexation Reference Date occurs;
- WF_{DFI} means the weighting factor applicable to the Annual Diesel Fuel Index, which is equal to five percent (5%);
- DFI_{y-1} means the Annual Diesel Fuel Index for the Year that concluded prior to the start of Agreement Year ‘y’; and
- DFI_{Ref} means the Annual Diesel Fuel Index for the Year during which the Indexation Reference Date occurs.
- (b) In the event that any of the Annual EU 28 PPI, the Annual Kosovo CPI, or the Annual Diesel Fuel Index for the immediately preceding Year is not available at the start of an Agreement Year, then until such time as the Annual EU 28 PPI, Annual Kosovo CPI, or Annual Diesel Fuel Index, as the case may be, for the immediately preceding Year becomes available, the Parties shall use the most recently available Annual EU 28 PPI, Annual Kosovo CPI, or Annual Diesel Fuel Index, as the case may be, in calculating the Index Adjustment Factor and, as soon as the Annual EU 28 PPI, Annual Kosovo CPI, or Annual Diesel Fuel Index, as the case may be, for the immediately preceding Year becomes available:
- (i) the Parties shall use the current Annual EU 28 PPI, Annual Kosovo CPI, or Annual Diesel Fuel Index, as the case may be, for the immediately preceding Year for the remainder of such Agreement Year; and
 - (ii) either Party may calculate an adjustment, without interest, with respect to the period during which the Annual EU 28 PPI, Annual Kosovo CPI, or Annual Diesel Fuel Index, as the case may be, for the immediately preceding Year was not available to enable it to recover any amounts it would have been paid had such Annual EU 28 PPI, Annual Kosovo CPI, or Annual Diesel Fuel Index, as the case may be, been available and applied as and from the start of the Agreement Year.
- (c) If the EU 28 PPI ceases to be published by Eurostat, the Kosovo CPI ceases to be published by the Statistical Agency of Kosovo, or the Diesel Fuel Index ceases to be published by ICE, the Parties shall apply an alternative index, with the objective of replacing the EU 28 PPI, the Kosovo CPI, or the Diesel Fuel Index, as the case may be, with the index most similar to the EU 28 PPI, the Kosovo CPI, or the Diesel Fuel Index, as the case may be.
- (d) Calculation of the Index Adjustment Factor shall take into account any resetting, reweighting, or other adjustment of the EU 28 PPI, the Kosovo CPI, or the Diesel Fuel Index, as the case may be.

2.3 Land Acquisition Credit

- (a) The Parties acknowledge and agree that the Reference Base Commodity Price Component (and other components of the Lignite Price provided for herein) does not reflect Land Acquisition Costs. To allow for the recovery by KEK Mining of Land Acquisition Costs in relation to a Land Acquisition over the Designated Cost Recovery Period following any such Land Acquisition, a Land Acquisition Credit shall be calculated in accordance with this Section 2.3 in connection with each such Land Acquisition and added as a component of the Lignite Price.
- (b) Each unrelated Land Acquisition may lead to a separate Land Acquisition Credit.
- (c) Each Land Acquisition Credit shall be included in the Lignite Price only for the duration of the relevant Designated Cost Recovery Period.
- (d) A Land Acquisition Credit applicable during each Agreement Year 'y' in relation to a Land Acquisition 'i' shall be calculated as follows:

$$LandAcq_y = \frac{LandAcqCost_y + K_{LA,y-2}}{XD_y}$$

Where:

- LandAcq_y* means the Land Acquisition Credit payable during Agreement Year 'y';
- LandAcqCost_y* means the Land Acquisition Costs for Agreement Year 'y', as calculated in accordance with Section 2.3(e);
- K_{LA,y-2}* means the Correction Factor (LA) for Agreement Year 'y-2', as calculated in accordance with Section 3.3; and
- XD_y* means either (A) *AD_y* in the case of a Land Acquisition that impacts only the Coal Yard (KRPP, Kosovo B) or the Lignite Delivery System used solely to deliver Lignite to the Delivery Points under this Agreement, or (B) *TD_y* in the case of a Land Acquisition that impacts any assets used to supply Lignite to all customers of KEK Mining;

Where:

- AD_y* means the quantity of Lignite sold by KEK Mining pursuant to the Agreement during Agreement Year 'y', stated in Tonnes; and
- TD_y* means the quantity of Lignite sold by KEK Mining to all of its customers during Agreement Year 'y', stated in Tonnes, including quantities of Lignite sold to GenCo pursuant to the Agreement, stated in Tonnes;

provided, however, that in the event *AD_y* or *TD_y*, as applicable, is equal to zero, then:

- (i) *XD_y* shall be equal to 1; and
- (ii) KEK Mining shall issue an invoice in accordance with Article 11 of the Agreement for which the quantity of Lignite delivered shall be deemed to be equal to 1 for purposes of recovery of the relevant Land Acquisition Credit, provided that the total amount due specified on such invoice shall be reduced by the Adjusted Lignite Price multiplied by 1.

- (e) The Land Acquisition Cost for Agreement Year ‘y’ in relation to a Land Acquisition ‘i’ shall be calculated as follows:

$$LandAcqCost_y = DebtSrvc_y + ERR$$

Where:

- LandAcqCost_y* means the Land Acquisition Costs calculated for Agreement Year ‘y’;
- DebtSrvc_y* means any principal, interest, or customary and reasonable commitment fees payable during Agreement Year ‘y’ with respect to any loans incurred by KEK Mining to finance the relevant Land Acquisition Costs, such loans having been incurred on terms satisfactory to GenCo; and
- ERR* means the amount necessary for the return of and return on equity in each Agreement Year of the Designated Cost Recovery Period, which shall be calculated as follows (and which shall remain constant for each Agreement Year of the Designated Cost Recovery Period):

$$ERR = E \times \left(\frac{R}{1 - (1 + R)^{-N}} \right)$$

Where:

- E* means the lesser of (i) the amount of equity (if any) contributed to KEK Mining in order to finance the relevant Land Acquisition Costs, and (ii) the total Land Acquisition Costs (including equity and amounts financed through loans) multiplied by the Target Equity Ratio (as defined in the Power Purchase Agreement);
- N* means the number of Agreement Years in the relevant Designated Cost Recovery Period; and
- R* means the Equity Yield.

- (f) For the avoidance of doubt, no Land Acquisition Credit shall be payable with respect to the acquisition of land or rights in land except to the extent such land or rights in land are actually used by KEK Mining in the performance of its obligations under this Agreement (as opposed to land or rights in land used by KEK Mining in the performance of its obligations under another agreement pursuant to which KEK Mining may supply Lignite).

2.4 CIL Lignite Credit

- (a) To allow for the recovery by KEK Mining of Restoration Costs in relation to a Restoration following a Change in Law as provided in Section 19.6 of the Agreement over the Designated Cost Recovery Period following any such Restoration, a CIL Lignite Credit shall be calculated in accordance with this Section 2.4 in connection with each such Restoration and shall be added as a component of the Lignite Price.
- (b) Each unrelated Restoration of the type described in Section 2.4(a) may lead to a separate CIL Lignite Credit.
- (c) Each CIL Lignite Credit shall be included in the Lignite Price only for the duration of the relevant Designated Cost Recovery Period.

- (d) The CIL Lignite Credit applicable during each Agreement Year ‘y’ in relation to a Restoration ‘i’ undertaken pursuant to Section 19.6 of the Agreement shall be calculated as follows:

$$CIL_y = \frac{RstrtnCost_y + K_{CIL,y-2}}{XD_y}$$

Where:

CIL_y means the CIL Lignite Credit payable during Agreement Year ‘y’ in respect of a Restoration undertaken pursuant to Section 19.6 of the Agreement;

$RstrtnCost_y$ means the Restoration Costs for Agreement Year ‘y’, as calculated in accordance with Section 2.4(e);

$K_{CIL,y-2}$ means the Correction Factor (CIL) for Agreement Year ‘y-2’, as calculated in accordance with Section 3.4; and

XD_y means either (A) AD_y in the case of a Change in Law that impacts only the Coal Yard (KRPP, Kosovo B) or the Lignite Delivery System used solely to deliver Lignite to the Delivery Points under this Agreement, or (B) TD_y in the case of a Change in Law that impacts any assets used to supply Lignite to all customers of KEK Mining;

Where:

AD_y means the quantity of Lignite sold by KEK Mining pursuant to the Agreement during Agreement Year ‘y’, stated in Tonnes; and

TD_y means the quantity of Lignite sold by KEK Mining to all of its customers during Agreement Year ‘y’, stated in Tonnes, including quantities of Lignite sold to GenCo pursuant to the Agreement, stated in Tonnes;

provided, however, that in the event AD_y or TD_y , as applicable, is equal to zero, then:

- (i) XD_y shall be equal to 1; and
 - (ii) KEK Mining shall issue an invoice in accordance with Article 11 of the Agreement for which the quantity of Lignite delivered shall be deemed to be equal to 1 for purposes of recovery of the relevant CIL Lignite Credit, provided that the total amount due specified on such invoice shall be reduced by the Adjusted Lignite Price multiplied by 1.
- (e) The Restoration Costs for Agreement Year ‘y’ in relation to a Restoration ‘i’ undertaken pursuant to Section 19.6 of the Agreement shall be calculated as follows:

$$RstrtnCost_y = DebtSrvc_y + ERR$$

Where:

$RstrtnCost_y$ means the Restoration Costs calculated for Agreement Year ‘y’;

DebtSrv_y means any principal, interest, or customary and reasonable commitment fees payable during Agreement Year ‘y’ with respect to any loans incurred by KEK Mining to finance the relevant Restoration Costs, such loans having been incurred on terms satisfactory to GenCo; and

ERR means the amount necessary for the return of and return on equity in each Agreement Year of the Designated Cost Recovery Period, which shall be calculated as follows (and which shall remain constant for each Agreement Year of the Designated Cost Recovery Period):

$$ERR = E \times \left(\frac{R}{1 - (1 + R)^{-N}} \right)$$

Where:

E means the lesser of (i) the amount of equity (if any) contributed to KEK Mining in order to finance the relevant Restoration Costs, and (ii) the amount of the total Restoration Costs (including equity and amounts financed through loans) multiplied by the Target Equity Ratio (as defined in the Power Purchase Agreement);

N means the number of Agreement Years in the relevant Designated Cost Recovery Period; and

R means the Equity Yield.

- (f) For the avoidance of doubt, no CIL Lignite Credit shall be payable with respect to a Change in Law except to the extent such Change in Law required a Restoration of Mining Assets actually used by KEK Mining in the performance of its obligations under this Agreement (as opposed to a Restoration of Mining Assets used by KEK Mining in the performance of its obligations under another agreement pursuant to which KEK Mining may supply Lignite).

2.5 Major Capital Investment Lignite Credit

- (a) The Parties acknowledge and agree that the Reference Base Commodity Price Component (and other components of the Lignite Price provided for herein) does not reflect Major Capital Investment Costs. To allow for the recovery by KEK Mining of Major Capital Investment Costs over the Designated Cost Recovery Period following any such Major Capital Investment, a Major Capital Investment Lignite Credit shall be calculated in accordance with this Section 2.5 in connection with each such Major Capital Investment and added as a component of the Lignite Price.
- (b) Each unrelated Major Capital Investment may lead to a separate Major Capital Investment Lignite Credit.
- (c) Each Major Capital Investment Lignite Credit shall be included in the Lignite Price only for the duration of the relevant Designated Cost Recovery Period.
- (d) A Major Capital Investment Lignite Credit applicable during each Agreement Year ‘y’ in relation to a Major Capital Investment ‘i’ shall be calculated as follows:

$$MajCapInv_y = \frac{MajCapInvCost_y + K_{MCI,y-2}}{XD_y}$$

Where:

$MajCapInv_y$ means the Major Capital Investment Lignite Credit payable during Agreement Year ‘y’;

$MajCapInvCost_y$ means the Major Capital Investment Costs for Agreement Year ‘y’, as calculated in accordance with Section 2.5(e);

$K_{MCI,y-2}$ means the Correction Factor (MCI) for Agreement Year ‘y-2’, as calculated in accordance with Section 3.4; and

XD_y means either (A) AD_y in the case of a Major Capital Investment that impacts only the Coal Yard (KRPP, Kosovo B) or the Lignite Delivery System used solely to deliver Lignite to the Delivery Points under this Agreement, or (B) TD_y in the case of a Major Capital Investment that impacts any assets used to supply Lignite to all customers of KEK Mining;

Where:

AD_y means the quantity of Lignite sold by KEK Mining pursuant to the Agreement during Agreement Year ‘y’, stated in Tonnes; and

TD_y means the quantity of Lignite sold by KEK Mining to all of its customers during Agreement Year ‘y’, stated in Tonnes, including quantities of Lignite sold to GenCo pursuant to the Agreement, stated in Tonnes;

provided, however, that in the event AD_y or TD_y , as applicable, is equal to zero, then:

- (i) XD_y shall be equal to 1; and
 - (ii) KEK Mining shall issue an invoice in accordance with Article 11 of the Agreement for which the quantity of Lignite delivered shall be deemed to be equal to 1 for purposes of recovery of the relevant Major Capital Investment Lignite Credit, provided that the total amount due specified on such invoice shall be reduced by the Adjusted Lignite Price multiplied by 1.
- (e) The Major Capital Investment Costs for Agreement Year ‘y’ in relation to a Major Capital Investment ‘i’ shall be calculated as follows:

$$MajCapInvCost_y = DebtSrvc_y + ERR$$

Where:

$MajCapInvCost_y$ means the Major Capital Investment Costs calculated for Agreement Year ‘y’;

$DebtSrvc_y$ means any principal, interest, or customary and reasonable commitment fees payable during Agreement Year ‘y’ with respect to any loans incurred by KEK Mining to finance the relevant Major Capital Investment Costs, such loans having been incurred on terms satisfactory to GenCo; and

ERR means the amount necessary for the return of and return on equity in each Agreement Year of the Designated Cost Recovery Period, which

shall be calculated as follows (and which shall remain constant for each Agreement Year of the Designated Cost Recovery Period):

$$ERR = E \times \left(\frac{R}{1 - (1 + R)^{-N}} \right)$$

Where:

E means the lesser of (i) the amount of equity (if any) contributed to KEK Mining in order to finance the relevant Major Capital Investment Costs, and (ii) the total Major Capital Investment Costs (including equity and amounts financed through loans) multiplied by the Target Equity Ratio (as defined in the Power Purchase Agreement);

N means the number of Agreement Years in the relevant Designated Cost Recovery Period; and

R means the Equity Yield.

- (f) For the avoidance of doubt, no Major Capital Investment Lignite Credit shall be payable with respect to a Major Capital Investment except to the extent such Major Capital Investment impacts only the Coal Yard (KRPP, Kosovo B) or the Lignite Delivery System used solely to deliver Lignite to the Delivery Points under this Agreement (as opposed to Major Capital Investments used by KEK Mining at least in part in the performance of its obligations under another agreement pursuant to which KEK Mining may supply Lignite).

2.6 Other Income

The Other Income component shall be calculated for each Agreement Year ‘y’ as follows:

$$OIC_y = \frac{OI_y + K_{OI,y-2}}{TD_y}$$

Where:

OIC_y means the Other Income component for Agreement Year ‘y’, calculated in accordance with this Section 2.6;

OI_y means the sum of the following items, each of which, unless specified otherwise, is measured on an accrual basis:

- (a) 90% of any income of KEK Mining derived from the Sibovc South Mine Field that is not income from Lignite sales, in relation to Agreement Year ‘y’;
- (b) 90% of liquidated damages, penalties, claims, late payment charges, compensation in relation to events of default from the Contractors of KEK Mining during Agreement Year ‘y’;
- (c) 90% of the proceeds from the sale or disposal during Agreement Year ‘y’ of any Mining Asset under the care, custody and control of KEK Mining; and
- (d) 90% of any other income of KEK Mining during Agreement Year ‘y’ derived from the use of the Mining Assets to provide other products and

services other than Lignite, or other than as provided for under this Agreement.

$K_{OI,y-2}$ means the Correction Factor (OI) for Agreement Year 'y-2', as calculated in accordance with Section 3.3; and

TD_y means the quantity of Lignite sold by KEK Mining to all of its customers during Agreement Year 'y', stated in Tonnes, including quantities of Lignite sold to GenCo pursuant to this Agreement.

For the avoidance of doubt, "Other Income" shall not include any sales of lignite by KEK Mining for use in the Kosovo A Facility or the Kosovo B Facility.

Article 3 **Annual Budgeting and Reconciliation Process**

3.1 Annual Budgeting Process

- (a) Not later than ninety (90) Days prior to the start of each Agreement Year 'y', KEK Mining shall deliver an annual budget for and statement of the Lignite Price for Agreement Year 'y' (a "**Proposed Budget**") to GenCo that for each of the following (as applicable):
 - (i) estimates the Land Acquisition Credit(s) for Agreement Year 'y' based upon the assumptions specified in Section 2.3;
 - (ii) estimates the revenues comprising the Other Income for Agreement Year 'y' based upon the assumptions specified in Section 2.6;
 - (iii) estimates the TD_y for Agreement Year 'y';
 - (iv) estimates the AD_y for Agreement Year 'y';
 - (v) estimates any other components relevant for the Lignite Price for Agreement Year 'y'; and
 - (vi) estimates the Lignite Price for Agreement Year 'y'.
- (b) GenCo shall, within thirty (30) Days of its receipt of the Proposed Budget deliver any comments thereon to KEK Mining.
- (c) The Parties shall, within thirty (30) Days of KEK Mining's receipt of GenCo's comments on the Proposed Budget meet to discuss GenCo's comments on the Proposed Budget. Upon agreement by the Parties on the contents of the Proposed Budget, such Proposed Budget shall constitute the agreed budget ("**Agreed Budget**") for Agreement Year 'y'.
- (d) In the event the Parties have not agreed on the contents of the Proposed Budget at least ten (10) Days prior to the commencement of Agreement Year 'y', then:
 - (i) any portions of the Proposed Budget that are agreed shall constitute a portion of the Agreed Budget; and
 - (ii) with respect to any portions of the Proposed Budget that are not agreed, such failure to agree shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 20 of the Agreement.
- (e) The Parties acknowledge that, on the first Day of each Agreement Year, there may be a Dispute such that the Agreed Budget (or a part thereof) for the Agreement Year may not be available. Commencing on the start of the Agreement Year and until such time as the Agreed Budget (or the remaining part thereof) for the Agreement Year becomes available, the Parties shall use the most recently available Agreed Budget (together with any agreed portions of the current Proposed

Budget) in calculating amounts due and, as soon as the Agreed Budget for the Agreement Year becomes available:

- (i) the Parties shall use the current Agreed Budget for the Agreement Year for the remainder of such Agreement Year;
 - (ii) either Party may calculate an adjustment with respect to the period during which the Agreed Budget for the Agreement Year was not available to enable it to recover any amounts it would have been paid had such Agreed Budget been available and applied as and from the start of the Agreement Year, together with interest applied per annum using the average of the Euribor rates that were prevailing on the first Business Day of each Month occurring during the immediately preceding Year.
- (f) KEK Mining shall deliver together with each Proposed Budget an indicative budget for the three (3) Agreement Years that follow Agreement Year 'y'. Such indicative budget shall not be binding and shall not prevent KEK Mining from subsequently proposing different budgets for the relevant Agreement Year in a Proposed Budget.

3.2 Annual Reconciliation Process

- (a) Beginning with the Proposed Budget for the third Agreement Year, in addition to the information required by Section 3.1(a), each Proposed Budget shall state the following information (to the extent applicable) accompanied by an opinion of the Accountants (an "**Accountants' Opinion**") that, in their opinion such statement fairly and accurately represents each of the following items in accordance with the requirements of this Schedule 1, and that the amounts shown in respect of each of the following items, as applicable, have been determined in accordance with the accounting records of KEK Mining, which have been maintained in accordance with the International Financial Reporting Standards and the Laws of Kosovo:
- (i) the actual Land Acquisition Costs for Agreement Year 'y-2';
 - (ii) the Correction Factor (LA) in relation to Agreement Year 'y-2', which shall be applied to the Lignite Price for Agreement Year 'y-2' in accordance with Section 3.3;
 - (iii) the Correction Factor (CIL) in relation to Agreement Year 'y-2', which shall be applied to the Lignite Price for Agreement Year 'y-2' in accordance with Section 3.4;
 - (iv) the Correction Factor (MCI) in relation to Agreement Year 'y-2', which shall be applied to the Lignite Price for Agreement Year 'y-2' in accordance with Section 3.4;
 - (v) the actual Other Income for Agreement Year 'y-2';
 - (vi) the Correction Factor (OI) in relation to Agreement Year 'y-2', which shall be applied to the Lignite Price for Agreement Year 'y-2' in accordance with Section 3.3;
 - (vii) the actual TD_y for Agreement Year 'y-2';
 - (viii) the actual AD_y for Agreement Year 'y-2'; and
 - (ix) each of the other components relevant for calculation of the Lignite Price for Agreement Year 'y-2';
- (b) Each Accountants' Opinion shall be limited to the matters discussed in Section 3.2(a), and shall not include a review of the necessity or reasonableness of any expenses or whether an expense has been prudently incurred.
- (c) Each Proposed Budget shall, in addition, contain a description of the methodologies, estimates, and calculations contained in such Proposed Budget in reasonable detail with specific references to this Schedule 1, the Agreement, and other agreements, as applicable.

3.3 Calculation of the Total Demand Correction Factors

The Correction Factor (LA) and Correction Factor (OI) shall each be calculated in accordance with the following formula:

$$K_{[LA][OI],TD_{y-2}} = (ActualCost_{y-2} - BudgetCost_{y-2}) \times (1 + I_{y-1})$$

Where:

$K_{[LA][OI],TD_{y-2}}$ means, as the case may be, either:
(A) the Correction Factor (LA) for Agreement Year ‘y-2’; or
(B) the Correction Factor (OI) for Agreement Year ‘y-2’,
each as calculated in accordance with this Section 3.3;

$ActualCost_{y-2}$ means, as the case may be, either:
(A) the actual Land Acquisition Costs for Agreement Year ‘y-2’ as determined by the Accountants and specified in the Accountants’ Opinion relating to Agreement Year ‘y-2’; or
(B) the actual Other Income for Agreement year ‘y-2’ as determined by the Accountants and specified in the Accountants’ Opinion relating to Agreement Year ‘y-2’;

$BudgetCost_{y-2}$ means, as the case may be, either:
(A) the Land Acquisition Costs specified in the Agreed Budget and applicable during Agreement Year ‘y-2’; or
(B) the Other Income specified in the Agreed Budget and applicable during Agreement Year ‘y-2’; and

I_{y-1} means the average of the Euribor rates that were prevailing on the first Business Day of each Month occurring during Agreement Year ‘y-1’.

3.4 Calculation of the Non-Budgeted Correction Factors

The Correction Factor (CIL) and Correction Factor (MCI) shall each be calculated in accordance with the following formula:

$$K_{[Env][CIL][MCI],TD_{y-2}} = (ActualCost_{y-2} - RcvrdCost_{y-2}) \times (1 + I_{y-1})$$

Where:

$K_{[Env][CIL][MCI],TD_{y-2}}$ means, as the case may be, either:
(A) the Correction Factor (CIL) for Agreement Year ‘y-2’; or
(B) the Correction Factor (MCI) for Agreement Year ‘y-2’,
each as calculated in accordance with this Section 3.4;

$ActualCost_{y-2}$ means, as the case may be, either:
(A) the Restoration Costs for Agreement Year ‘y-2’; or
(B) the Major Capital Investment Costs for Agreement Year ‘y-2’;

$RcvrdCost_{y-2}$ means, as the case may be, either:

- (A) the amount of the Restoration Costs actually recovered in Agreement Year ‘y-2’; or
- (B) the amount of the Major Capital Investment Costs actually recovered in Agreement Year ‘y-2’; and

I_{y-1} means the average of the Euribor rates that were prevailing on the first Business Day of each Month occurring during Agreement Year ‘y-1’.

3.5 Close-Out Reconciliation Process

- (a) Within ninety (90) Days of the end of the Supply Period or the termination of this Agreement, as the case may be, KEK Mining shall in accordance with Section 3.2, *mutatis mutandis*, submit to GenCo a report (“**Close-Out Reconciliation Report**”) stating the information required pursuant to Section 3.2, *mutatis mutandis*, for Agreement Year ‘y-1’, accompanied by an Accountants’ Opinion providing that, in their opinion such statement fairly and accurately represents each of the items therein in accordance with the requirements of this Schedule 1, and that the amounts shown in respect of each of the following items have been determined in accordance with the accounting records of KEK Mining, which have been maintained in accordance with the International Financial Reporting Standards and the Laws of Kosovo.
 - (b) Within thirty (30) Days thereafter, GenCo or KEK Mining, as the case may be, shall make a lump sum payment to the other in an amount equal to the difference between
 - (i) the budgeted amounts described in Section 3.1 for Agreement Years ‘y-1’ and ‘y-2’, and
 - (ii) both
 - (A) with respect to Agreement Year ‘y-2’, the amounts to be recovered through the correction factors described in Sections 3.3 and 3.4 that are still unrecovered as of the end of the Supply Period or the date termination of this Agreement, as the case may be;
 - (B) with respect to Agreement Year ‘y-1’, the amounts described in the Close-Out Reconciliation Report.

Article 4

Monthly Offset for Variance in Calorific Content

4.1 Monthly Offset for Variance in Calorific Content

- (a) In the event that the calorific content of Lignite delivered during a Day ‘d’, as determined by sampling and analysis conducted in accordance with Section 4.2 of the Agreement, varies from the reference calorific content equal to 8.548 GJ/t (LHV), then:
 - (i) if the calorific content of Lignite delivered during Day ‘d’ is less than the reference calorific content, GenCo shall be entitled to an offset from KEK Mining for the deficiency in calorific content of such Lignite; or
 - (ii) if the calorific content of Lignite delivered during Day ‘d’ is greater than the reference calorific content, KEK Mining shall be entitled to an additional payment from GenCo for the excess calorific content of such Lignite.

The amount of the Monthly offset payable from KEK Mining to GenCo or from GenCo to KEK Mining, as the case may be, for any Month ‘m’ shall be calculated in accordance with the following formula:

$$CalContOffsetPmt_m = \sum_{d=1}^{dm} \left(\frac{ActualCalCont_d - RefCalCont}{RefCalCont} \times LignitePrice_d \times Tonnes_d \right)$$

Where:

CalContOffsetPmt_m means the amount, expressed in Euros, owed from KEK Mining to GenCo or from GenCo to KEK Mining, as the case may be, as a result of the aggregate variance in calorific content of Lignite delivered during Month ‘m’, as calculated in accordance with Section 4.1(b);

dm means the number of Days occurring during Month ‘m’;

ActualCalCont_d means the calorific content, expressed in GJ/t (LHV), of Lignite delivered during Day ‘d’, as determined by sampling and analysis conducted in accordance with Section 4.2 of the Agreement;

RefCalCont means a nominal calorific content of 8.548 GJ/t (LHV);

LignitePrice_d means the Lignite Price, per Tonne, applicable to the Lignite delivered during Day ‘d’, as set forth in Article 2; and

Tonnes_d means the number of Tonnes of Lignite delivered during Day ‘d’.

- (b) In the event that ‘*CalContOffsetPmt_m*’ calculated with respect to a Month ‘m’ is:
- (i) a positive amount, then such amount shall indicate the amount that GenCo shall pay to KEK Mining for the aggregate excess calorific content of Lignite delivered during Month ‘m’;
 - (ii) a negative amount, then such amount shall indicate the amount that KEK Mining shall pay (in absolute value terms) to GenCo for the aggregate deficiency in calorific content of Lignite delivered during Month ‘m’; or
 - (iii) zero, then neither Party shall be entitled to a payment from the other Party for variance in calorific content in respect of Month ‘m’.

Article 5

Adjustment of Target Debt to Equity Ratio

5.1 Adjustment of Target Debt to Equity Ratio

In the event that conditions in the market for debt of the type borrowed by KEK Mining in order to finance any asset of KEK Mining in relation to its participation in the Kosovo e Re Project change such that either:

- (a) it would be possible for KEK Mining to achieve a debt to equity ratio that is higher than the Target Debt to Equity Ratio; or
- (b) it is not possible for KEK Mining to achieve a debt to equity ratio that at least equals the Target Debt to Equity Ratio,

then, in either case, either Party may propose an equitable adjustment to the Target Debt to Equity Ratio (including the Target Equity Ratio (as defined in the Power Purchase Agreement)) so that the Target Debt to Equity Ratio shall reflect actual conditions in the market for such debt. Such adjustment shall be made if the requesting Party demonstrates that the adjustment is necessary to make the Target Debt to Equity Ratio reflect actual market conditions. Neither Party may propose such an adjustment more frequently than once every five (5) Agreement Years.

Article 6
Lignite Quantities

6.1 Maximum Daily Test Lignite Quantity

The “**Maximum Daily Test Lignite Quantity**” shall be calculated in accordance with the following formula:

$$MaxDTestLignite = \frac{MaxConsRate \times hours \times 1,000 \times ContractCapacity}{LigniteCalVal}$$

Where:

MaxDTestLignite means the Maximum Daily Test Lignite Quantity, stated in GJ per Day;

hours means 28;

MaxConsRate means the amount, in GJ per kWh, of Lignite consumed to produce 1 kWh at the Bid Case (as defined in the Power Purchase Agreement) that requires the greatest amount of Lignite per 1 kWh; and

ContractCapacity means the Contract Capacity (as defined in the Power Purchase Agreement), stated in MW; and

LigniteCalVal means the reference calorific value of Lignite, which is equal to 8.548 GJ/Tonne.

6.2 Maximum Daily Lignite Quantity

The “**Maximum Daily Lignite Quantity**” shall be calculated in accordance with the following formula:

$$MaxDailyLignite = \frac{MaxConsRate \times 24 \times 1,000 \times ContractCapacity}{LigniteCalVal}$$

Where:

MaxDailyLignite means the Maximum Daily Lignite Quantity, stated in GJ per Day;

MaxConsRate means the amount, in GJ per kWh, of Lignite consumed to produce 1 kWh at the Bid Case (as defined in the Power Purchase Agreement) that requires the greatest amount of Lignite per 1 kWh; and

ContractCapacity means the Contract Capacity (as defined in the Power Purchase Agreement), stated in MW; and

LigniteCalVal means the reference calorific value of Lignite, which is equal to 8.548 GJ/Tonne.

6.3 Start-Up Maximum Monthly Test Lignite Quantity

The “**Start-Up Maximum Monthly Test Lignite Quantity**” shall be calculated for each Month during the six (6) Month period prior to the Scheduled Commercial Operations Date (as may be delayed from time to time) of the KRPP Facility in accordance with the following formula:

$$StartUpMaxMTestLignite = Percentage_m \times MaxDTestLignite \times Days_m$$

Where:

StartUpMaxMTestLignite means the Start-Up Maximum Monthly Test Lignite Quantity, stated in GJ per Month;

MaxDTestLignite means the Maximum Daily Test Lignite Quantity, stated in GJ per Day, as calculated in accordance with Section 6.1;

Days_m means the number of Days in the applicable Month ‘m’; and

Percentage_m means the percentage for the applicable Month ‘m’ as set forth in the table below:

| Number of Months Prior to the Scheduled Commercial Operations Date | Percentage |
|---|-------------------|
| Six | 10% |
| Five | 20% |
| Four | 30% |
| Three | 40% |
| Two | 80% |
| One | 100% |

**Annex 1
Reference Prices**

Reference prices below to be established based on input from independent mining consultant to be engaged by KEK Mining.

| Reference Prices | | |
|--|--|---|
| Reference Base Commodity Price Component | | as determined by KEK Mining as a GenCo Transfer Condition Precedent (as defined in the Site Transfer Agreement) to the Financial Closing (as defined in the Power Purchase Agreement), in €/Tonne |
| Reference Coal Yard Management Price Component | | as determined by KEK Mining as a GenCo Transfer Condition Precedent (as defined in the Site Transfer Agreement) to the Financial Closing (as defined in the Power Purchase Agreement), in €/Tonne |
| Reference Common Lignite Transportation Price Component | | as determined by KEK Mining as a GenCo Transfer Condition Precedent (as defined in the Site Transfer Agreement) to the Financial Closing (as defined in the Power Purchase Agreement), in €/Tonne |
| Reference Agreement Lignite Transportation Price Component | | as determined by KEK Mining as a GenCo Transfer Condition Precedent (as defined in the Site Transfer Agreement) to the Financial Closing (as defined in the Power Purchase Agreement), in €/Tonne |

Schedule 2
Insurance

Article 1
Insurance Coverages

1.1 Insurance Coverages

In respect of its obligations under Article 14 of the Agreement, KEK Mining will maintain or cause to be maintained in full force and effect the following insurances:

(a) Commercial General Liability Insurance

Coverage: The insurance shall include coverage for bodily injury, personal injury, property damage, products and completed operations, contractual liability (including coverage specifically applicable to the undertakings in this Agreement), independent contractors, and sudden/accidental pollution liability. Each such coverage may be part of the policy (or a separate policy) or provided through an endorsement. The insurance shall not exclude explosion, collapse, or underground hazards.

Sum Insured: Not less than **twenty-five million Euros (€25,000,000)** per occurrence (such limit to apply without reference to the type of covered claim) and **one hundred million Euros (€100,000,000)** in the aggregate per Year.

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **five hundred thousand Euros (€500,000)** per event.

Term: This insurance shall be in effect from the Transfer Date and throughout the Supply Period.

Insureds: KEK Mining, together with the KEK Mining Parties.

Additional Insured: GenCo, together with the GenCo Parties. Coverage of an additional insured shall be substantially similar to that of the insured.

Other: Such policy shall include a severability of interest clause providing that in the event of a claim by one insured for which another insured covered by the same policy may be held liable, the insured against whom the claim is made is covered in the same manner as if separate policies had been issued (recognizing that such clause shall not operate to increase the limit of coverage).

Such insurance shall be primary with respect to the interests of GenCo and the GenCo Parties, such that the insurer shall not call upon any other insurance procured by other parties for defense, payment, or contribution.

The amounts of insurance required in this Section 1.1(a) may be satisfied by KEK Mining purchasing any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified in this Section 1.1(a).

(b) Automobile Liability Insurance

Coverage: This insurance shall include coverage for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no fault insurance provisions or similar endorsements to the extent required under the Laws of Kosovo.

- Sum Insured: A combined single limit of not less than **one million Euros (€1,000,000)** per person and **one million Euros (€1,000,000)** per accident.
- Term: This insurance shall be in effect from the Transfer Date and throughout the Supply Period.
- Insureds: KEK Mining, together with the KEK Mining Parties.
- Additional Insured: GenCo, together with the GenCo Parties. Coverage of an additional insured shall be substantially similar to that of the insured.
- Other: The amounts of insurance required in this Section 1.1(b) may be satisfied by KEK Mining purchasing any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified in this Section 1.1(b).
- (c) Employers Liability**
- Coverage: Employers liability.
- Sum Insured: A **one million Euro (€1,000,000)** minimum limit per occurrence and per Year.
- Term: This insurance shall be in effect from the Transfer Date and throughout the Supply Period.
- Insureds: KEK Mining, together with the KEK Mining Parties.
- Other: The amounts of insurance required in this Section 1.1(c) may be satisfied by KEK Mining purchasing any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified in this Section 1.1(c).
- (d) Worker's Compensation Insurance**
- Coverage: As required by the Laws of Kosovo.
- Sum Insured: As required by the Laws of Kosovo.
- Term: As required by the Laws of Kosovo.
- Insureds: As required by the Laws of Kosovo.
- (e) Property Insurance; Boiler and Machinery Breakdown Insurance**
- Coverage: The Mining Assets. The insurance shall include coverage for all risks of physical loss or damage, including for fire, flood and earthquake, as well as volcano, tsunami, storm, cyclone, inundation, land slip, machinery breakdown, and electrical breakdown.
- The policy shall provide for twelve (12) to fifteen (15) months' business interruption insurance and contingent business interruption insurance with respect to any key supplier, each to include any amount of the potential losses of KEK Mining under Section 3.10 of the Agreement arising as a result of a Force Majeure Event that KEK Mining opts not to self-insure.
- Sum Insured: **Full replacement cost** basis, as such replacement cost may be reviewed to avoid underinsurance from time to time.

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **five million Euros (€5,000,000)** per event and a deductible of forty-five (45) to sixty (60) Days for business interruption or contingent business interruption.

Term: From commencement of the Supply Period and throughout the Supply Period.

Insureds: KEK Mining.

(f) **Ocean Marine, Air, Land Cargo Insurance**

Coverage: Loss of or damage to materials, machinery or equipment of all Contractors, and all subcontractors, to be used at or installed into the Mining Assets while in transit by wet marine conveyances or by air transportation and/or by land conveyances.

Sum Insured: Not less than the value of the **largest single cargo shipment, including** coverage for loss of or damage to materials, machinery or equipment of all Contractors, and all subcontractors, to be used at or installed into the Mining Assets while in transit by wet marine conveyances or by air transportation and/or by land conveyances.

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **fifty thousand Euros (€50,000)** per occurrence.

Term: Any time during which cargo is being shipped in connection with this Agreement.

Insureds: KEK Mining.

(g) **Environmental Impairment Liability Insurance**

Coverage: The insurance shall include coverage for the entire Coal Yard (KRPP, Kosovo B) with respect to Environmental Conditions first occurring on and after the Transfer Date. For the avoidance of doubt, the environmental impairment liability insurance shall include pollution legal liability insurance covering costs, damages and Losses arising from pollution incidents, including, but without limitation, with respect to bodily injury and property damage arising from exposure to Hazardous Materials, the discharge, emission, seepage, migration, dispersal, release, or escape of any Hazardous Materials, or the presence of any Hazardous Materials that have been illegally disposed of or abandoned at the Site by any party other than GenCo, and including, but without limitation, the costs of environmental investigations, remediation, and monitoring associated with or arising from and Environmental Condition

Sum Insured: Not less than **fifteen million Euros (€15,000,000)** per claim and in the aggregate.

Deductible: The deductible and/or co-pay associated with this insurance shall not exceed **five hundred thousand Euros (€500,000)** per event.

Term: This insurance shall be in effect from the Transfer Date and throughout the Term.

Insureds: KEK Mining, together with the KEK Mining Parties.

Additional Insured: GenCo, together with the GenCo Parties. Coverage of an additional insured shall be the same as that of the insured.

Other: Such policy shall include a severability of interest clause providing that in the event of a claim by one insured for which another insured covered by the same policy may be held liable, the insured against whom the claim is made is covered in the same manner as if separate policies had been issued (recognizing that such clause shall not operate to increase the limit of coverage).

Such insurance shall be primary with respect to the interests of GenCo and the GenCo Parties such that the insurer shall not call upon any other insurance procured by other parties for defense, payment, or contribution.

1.2 General Conditions

- (a) To the extent consistent with the provisions of Article 14 of the Agreement, KEK Mining shall obtain “occurrence” form policies rather than “claims made” form coverage. If any policy must be written on a “claims-made” basis and such policy is not renewed or the retroactive date of such policy is to be changed, such policy shall contain the broadest basis and supplemental extended reporting period coverage or “tail” reasonably available in the commercial insurance market for each such policy and KEK Mining shall provide proof that such basic and supplemental extended reporting period coverage or “tail” has been obtained.
- (b) Each policy issued in accordance with Section 1.1 shall:
 - (i) provide that it shall not be canceled or non-renewed by the insurer except upon thirty (30) Days’ prior written notice; and
 - (ii) require the insurer to promptly (but in any event within ten (10) Days of any such event) advise the insured party of any failure to pay any premium that is due and payable within thirty (30) Days following the due date.
- (c) In each policy issued in accordance with Section 1.1, or in an endorsement thereto, the insurer shall provide that GenCo shall be a cancellation notice recipient, and any such notice shall be delivered by fax and confirmed in writing delivered by first class mail or, if sent from an office outside Kosovo, by international courier.
- (d) The terms, conditions, and limits of any insurances required to be provided pursuant to this Schedule 2 and those like insurances that may be required to be provided by any other agreement into which KEK Mining enters, may be satisfied by the purchase of a single insurance program or by inclusion into KEK Mining’s parent company’s global insurance program, without any accumulation of the limits required to be obtained pursuant to this Agreement with the limits of similar policies to be obtained under other contracts.
- (e) In each policy issued in accordance with Section 1.1, the insurer shall waive all rights of subrogation against GOK and each of its ministries, officers and employees and GenCo and the GenCo Parties.
- (f) The amount of the coverage required to be provided under Section 1.1 shall be adjusted from time to time to reflect material changes in coverage arising as a result of inflation.
- (g) Lenders’ security agent shall be the loss payee in respect of insurance proceeds before all KEK Mining debt in relation to KEK Mining’s assets is paid. KEK Mining shall be the loss payee in respect of insurance proceeds after all debt is paid.

**Schedule 3
Contract Lignite Quality**

Heating values

| | | Range | |
|-----|------|-------------------|-------|
| | | 15-minute average | |
| | | Min | Max |
| LHV | GJ/t | 8.000 | 9.500 |

Ultimate analysis

| | | Range | |
|---------|---|-----------------|------|
| | | 12-hour average | |
| | | Min | Max |
| Sulphur | % | 0.65 | 1.98 |

| | | Range | |
|-----|---|-------------------|------|
| | | 15-minute average | |
| | | Min | Max |
| Ash | % | 10.9 | 28.7 |

| | | Range | |
|----------|---|-----------------|------|
| | | 12-hour average | |
| | | Min | Max |
| Moisture | % | 33.8 | 47.1 |

| | | Range | |
|-----------|---|-----------------|------|
| | | 12-hour average | |
| | | Min | Max |
| Volatiles | % | 21.2 | 28.0 |

| | | Range | |
|---------------------|-----------------|-----------------|------------|
| | | 12-hour average | |
| | | Min | Max |
| Ash softening point | degrees Celsius | 1175 | No maximum |

Size

| | | Range |
|------------------------------------|----|-------|
| Size of Lignite to Delivery Points | mm | <50 |

Schedule 4
Procedures for Determining Weight of Delivered Lignite

1.1 Lignite Scales

- (a) The weight of the Lignite delivered to GenCo from the Sibovc South Mine Field shall, unless otherwise agreed by the Parties, be determined by scales properly installed on conveyor belts located as close as reasonably possible to the Delivery Points (the “**Lignite Scales**”), which scales shall have an accuracy of plus or minus one-half percent (0.5%). KEK Mining shall consult with GenCo as to the design, selection, and installation of the Lignite Scales, and GenCo shall have the right to approve the same.
- (b) The quantity of Lignite determined in accordance with this Section 1.1 shall be accepted as the quantity of Lignite delivered under this Agreement and for which invoices are to be rendered and payments made in accordance with Article 11 of the Agreement.

1.2 Operation of Lignite Scales

The Lignite Scales shall be owned, operated, and maintained by KEK Mining at its sole risk and expense. The Lignite Scales shall be operated, maintained, and tested in accordance with the manufacturer’s recommended standards, as such standards may be amended from time to time, and as otherwise agreed by the Parties.

1.3 Installation of Back-Up Lignite Scales

GenCo may, at its sole cost and expense, install back-up lignite scales (the “**Back-up Scales**”), and KEK Mining shall grant GenCo access for the installation and permanent placement of the Back-up Scales at a location to be agreed by KEK Mining and GenCo.

1.4 Testing of Lignite Scales

- (a) KEK Mining and GenCo shall initially test the Lignite Scales for accuracy by no later than ten (10) Days prior to the commencement of the Supply Period, and thereafter during the Supply Period at intervals of not less than six (6) Months.
- (b) KEK Mining shall also test the Lignite Scales at any other time reasonably requested by GenCo, such additional testing to be at GenCo’s expense unless the test indicates that the Lignite Scales are inaccurate by more than one-half percent (0.5%), in which case KEK Mining shall bear the cost of the additional test.
- (c) All testing of the Lignite Scales and the Back-up Scales shall be done based on methodology provided by the manufacturer, and performed by a laboratory certified to ISO 9001 and experienced in the calibration of measurement devices, including the calibration of belt scales with specifications similar to the Lignite Scales and the Back-up Scales.
- (d) Prior to each test administered pursuant to Section 1.4(a) or Section 1.4(b), KEK Mining shall give GenCo no less than forty-eight (48) hours advance written notice. GenCo may have a representative present during any such testing, as well as during any inspection of the Lignite Scales or adjustment thereof.
- (e) KEK Mining shall, for each test administered pursuant to Section 1.4(a) or Section 1.4(b), issue to GenCo a written report of the test, including the results thereof.
- (f) KEK Mining shall retain records of each test administered pursuant to Section 1.4(a) or Section 1.4(b) for seven (7) Years following the date of the test.
- (g) If at any time the Lignite Scales are found to differ by more than one percent (1%) from the Back-up Scales and such difference persists for fifteen (15) consecutive days, then the Parties

shall each cooperate with respect to the calibration of the scales, and KEK Mining shall be responsible for calibration of the Lignite Scales and GenCo shall be responsible for the calibration of the Back-up Scales.

1.5 Records of Weight Determinations

GenCo shall be given a record of all weight determinations made by KEK Mining no later than the second (2nd) Business Day of each Month for all quantities of Lignite delivered to GenCo during the preceding Month.

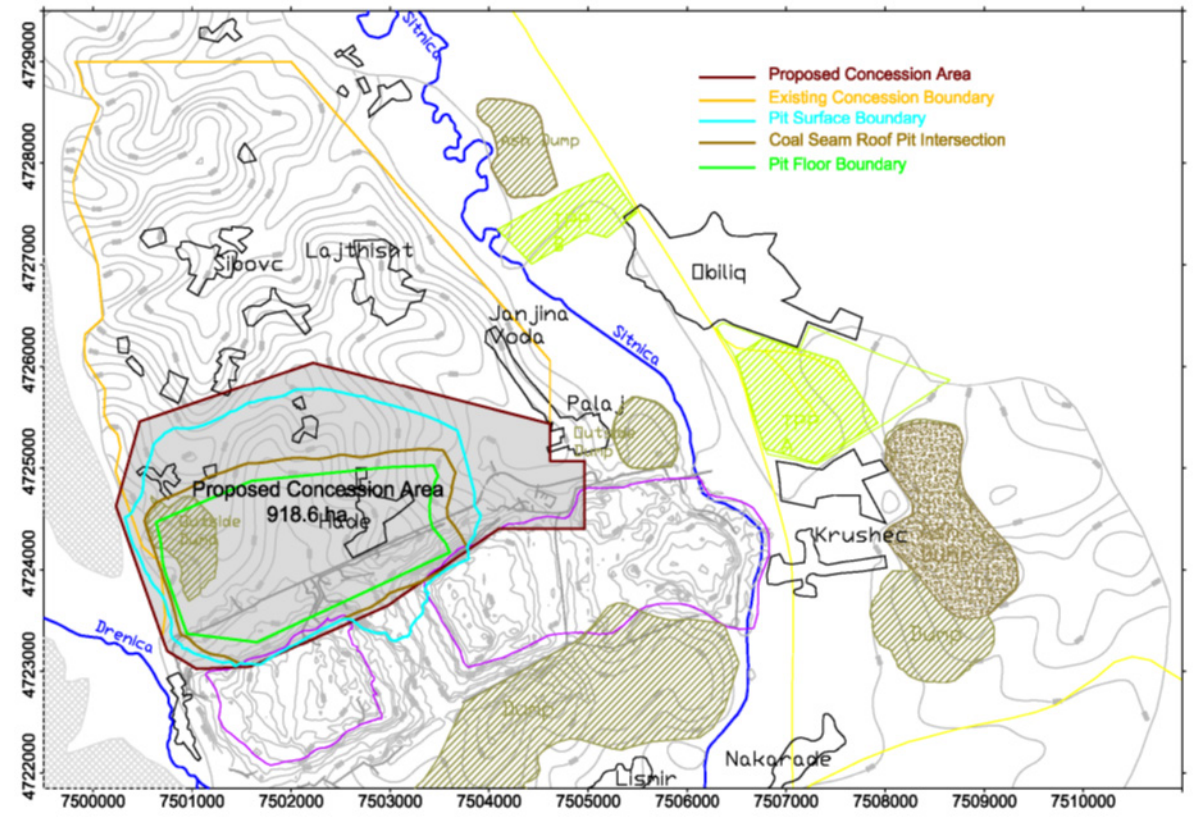
1.6 Reconciliation of Inaccurate Measurements

When, as a result of any test pursuant to Section 1.4(a), the Lignite Scales are found to be inaccurate by more than one-half percent (0.5%), or are otherwise functioning improperly, then the correct amount of Lignite delivered to GenCo for the actual period during which inaccurate measurements were made, if any, shall be determined as follows:

- (a) first, the readings of the Back-up Scales, if any, may be utilized to calculate the correct amount of Lignite delivered, unless a test of such Back-up Scales, as required by either Party, reveals that the Back-up Scales are inaccurate by more than one-half percent (0.5%) or are otherwise functioning improperly;
- (b) if there are no Back-up Scales or if the Back-up Scales are found to be inaccurate by more than one-half percent (0.5%) or is otherwise functioning improperly, then KEK Mining and GenCo shall jointly prepare an estimate of the correct weight on the basis of the Fuel Demand Model and all available information and such guidelines as may have been agreed to between KEK Mining and GenCo;
- (c) in the event that GenCo and KEK Mining fail to agree upon an estimate for the correct weight, GenCo shall make any payments to KEK Mining required as a result of its estimate of the correct reading, and such failure to agree shall qualify as a Technical Dispute for purposes of Dispute resolution proceedings under Article 20 of the Agreement; and
- (d) the difference between the previous payments by GenCo for the period of inaccuracy and the recalculated amount as agreed or determined shall be offset against or added to the next payment to KEK Mining under this Agreement, as appropriate. If the period of inaccuracy cannot be accurately determined, it shall be deemed to have begun on the date that is midway between the date the Lignite Scales were found to be inaccurate and the date of the last Lignite Scale weight determination reading accepted by KEK Mining and GenCo as accurate. In no event, however, shall any such adjustment be made for any period prior to the date on which the Lignite Scales were last tested and found to be accurate within plus or minus one-half percent (0.5%) and not otherwise functioning improperly.

**Schedule 5
Sibovc South Mine Field**

The area bordered by the red line below represents the Sibovc South Mine Field.



Schedule 6
Take or Pay Quantities; Annual TOPQ Deficiency Payments

Article 1
Definitions

1.1 Definitions

Capitalized terms used but not defined in this Schedule 6 shall have the meaning given to them in the body of the Agreement or in the other Schedules, and if such terms are not defined therein, in the Power Purchase Agreement.

Article 2
Take or Pay Quantity

2.1 Take or Pay Quantity

In the event that the KRPP Facility has been Commissioned (as defined in the Power Purchase Agreement) and the Term (as defined in the Power Purchase Agreement) of the Power Purchase Agreement has not expired, the Take or Pay Quantity each Agreement Year shall be calculated as follows:

$$TOPQ_y = 70\% \times ExAvailFactor_y \times h_y \times ContractCapacity \times 1,000 \times LigDemand_y \times LHV$$

where:

| | |
|----------------------------------|--|
| <i>TOPQ_y</i> | means the Take or Pay Quantity for Agreement Year 'y'; |
| <i>ExAvailFactor_y</i> | means the average Expected Availability Factor (as defined in the Power Purchase Agreement) for Agreement Year 'y'; |
| <i>h_y</i> | means 8,760, or such other number of hours as there may be in the relevant Agreement Year 'y'; |
| <i>ContractCapacity</i> | means the Contract Capacity (as defined in the Power Purchase Agreement); |
| <i>LigDemand_y</i> | means the "Lignite Demand" as applicable for the Average Consumption Rate (as defined in the Power Purchase Agreement), adjusted for degradation for Agreement Year 'y'; and |
| <i>LHV</i> | means 8.546 GJ/t. |

Article 3
Calculation of Adjusted Take or Pay Quantity

3.1 Adjusted Take or Pay Quantity

The Adjusted Take or Pay Quantity for each Agreement Year 'y' shall be calculated in accordance with the following formula:

$$AdjTOPQ_y = TOPQ_y - Adj_y - CarryForward_y$$

Where:

| | |
|---------------------------------|--|
| <i>AdjTOPQ_y</i> | means the Adjusted TOPQ for Agreement Year 'y'; |
| <i>TOPQ_y</i> | means the Annual TOPQ for Agreement Year 'y'; |
| <i>CarryForward_y</i> | means the amount of any Carry Forward Quantity that is available to be applied against the Take or Pay Quantity during Agreement Year 'y'; and |
| <i>Adj_y</i> | means the sum of all quantities of Lignite that: |

- (i) KEK Mining failed to deliver in accordance with the terms of the Agreement; or
- (ii) GenCo rejected as Non-Conforming Lignite pursuant to Section 7.3 of the Agreement.

Article 4
Calculation of Adjusted Lignite Price

4.1 Adjusted Lignite Price

The Adjusted Lignite Price for each Agreement Year ‘y’ shall be calculated in accordance with the following formula:

$$AdjLigP_y = (BasePrice_{Ref,y} + TrnspPrice_{Ref,y} + CYManPrice_{Ref,y}) \times IAF_y$$

Where:

- AdjLigP_y* means the Adjusted Lignite Price for Agreement Year ‘y’;
- BasePriceRef_y* has the meaning given thereto in Section 2.1 of Schedule 1;
- TrnspPriceRef_y* has the meaning given thereto in Section 2.1 of Schedule 1;
- CYManPriceRef_y* has the meaning given thereto in Section 2.1 of Schedule 1; and
- IAF_y* has the meaning given thereto in Section 2.1 of Schedule 1.

Article 5
Calculation of Annual TOPQ Deficiency Payment

5.1 Annual TOPQ Deficiency Payment

If during any Agreement Year GenCo fails to take delivery of and pay for a quantity of Lignite at least equal to the Adjusted TOPQ, then the Annual TOPQ Deficiency Payment shall be the amount calculated in accordance with the following formula; provided, however, that if the supplier of Lignite under this Agreement is not a Publicly Owned Enterprise that the Annual TOPQ Deficiency Payment shall be an amount equal to the lesser of (a) the Annual TOPQ Deficiency Payment received by GenCo under the Power Purchase Agreement for such Agreement Year, or (b) an amount calculated in accordance with the following formula:

$$AnnTOPQDefPmt_y = (AdjTOPQ_y - ActDelLig_y) \times AdjLigP_y$$

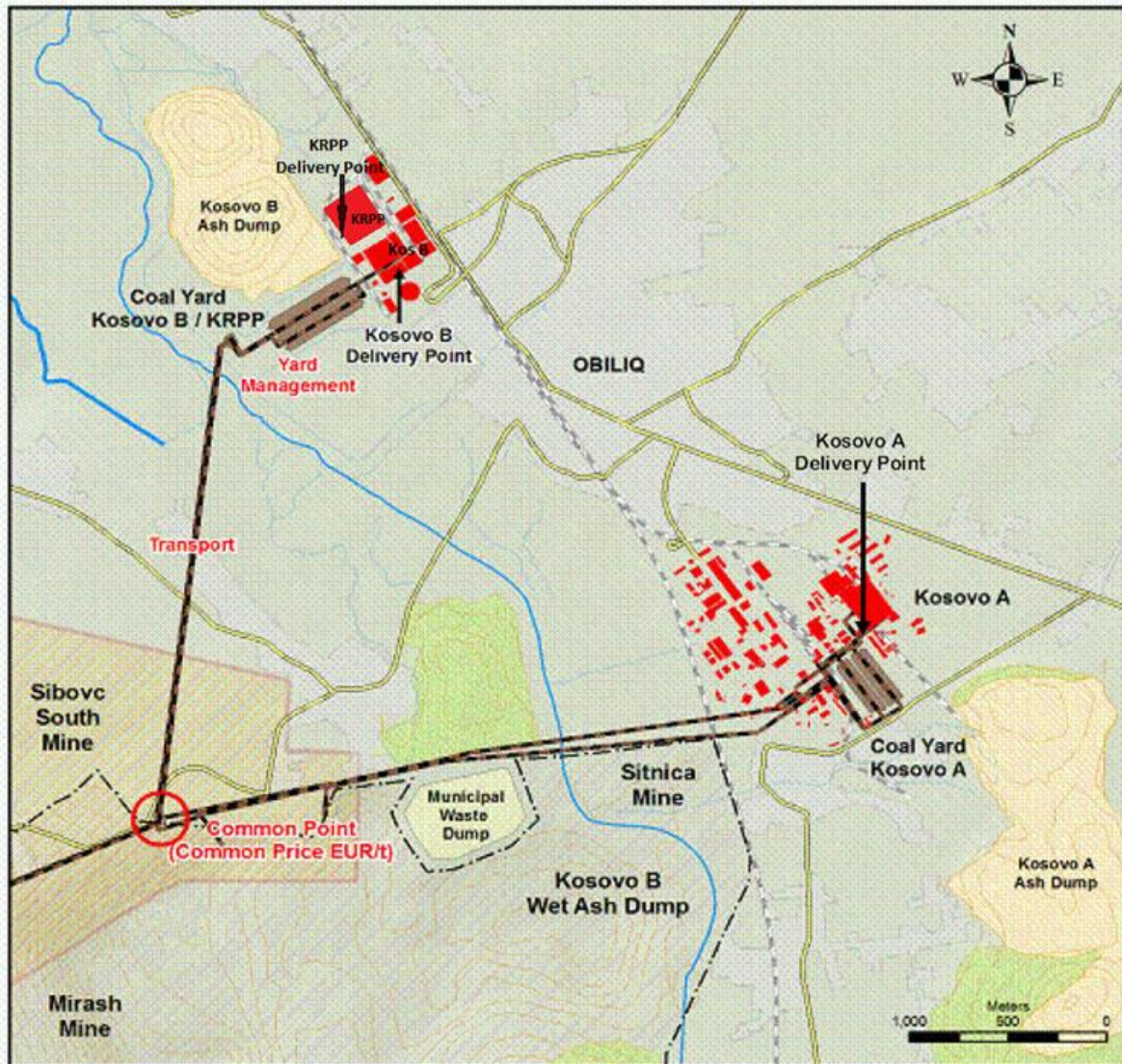
Where:

- AnnTOPQDefPmt_y* means the amount of the Annual TOPQ Deficiency Payment for Agreement Year ‘y’;
- AdjTOPQ_y* means the Adjusted TOPQ for Agreement Year ‘y’ as calculated in accordance with Section 3.1 of this Schedule 6;
- ActDelLig_y* means the actual quantity of Lignite delivered by KEK Mining and accepted by GenCo during Agreement Year ‘y’; and
- AdjLigP_y* means the Adjusted Lignite Price, in Euros per Tonne, for Agreement Year ‘y’ as calculated in accordance with Section 4.1 of this Schedule 6.

Schedule 7 Description of the Delivery Points

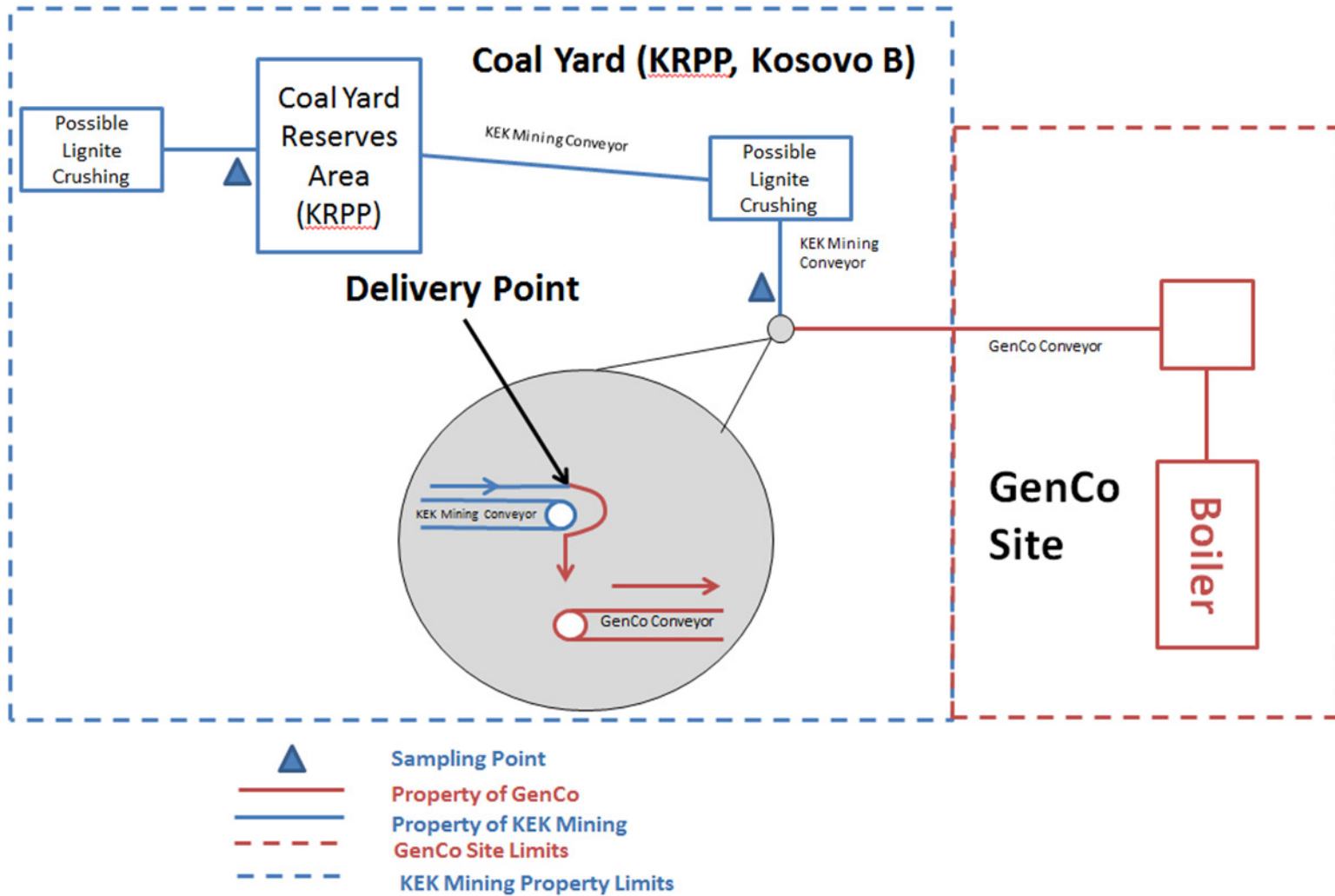
The Lignite Delivery Point shall be located on such point of the Coal Yard (KRPP, Kosovo B) as shown below and as more specifically selected by KEK Mining prior to the Transfer Date.

A diagram of the KEK Mining delivery system and the Delivery Point is below.



The Delivery Point is represented schematically in finer detail below:

Lignite Delivery Point Schematic



Schedule 8
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.