

**Agreement between the Government of the Czech Republic and the Government of the Republic of Poland on Cooperation to Address the Impacts of Exploitation at the Turów Open-Pit Lignite Mine in the Republic of Poland on the Territory of the Czech Republic**

The Government of the Czech Republic and the Government of the Republic of Poland (hereinafter referred to as the “Parties”),

guided by an effort to address impacts of exploitation at the Turów open-pit lignite mine (hereinafter referred to as the “Turów mine”) in the Republic of Poland on the territory of the Czech Republic, taking into account the need to settle the dispute amicably regarding the Turów mine, while respecting the requirements of the European Union law,

convinced that the most appropriate form to resolve the matter and prevent future disputes is an Agreement between the two Governments on cooperation to address impacts of exploitation at the Turów mine in the Republic of Poland on the territory of the Czech Republic (hereinafter referred to as the “Agreement”),

have agreed as follows:

**Article 1**

**Purpose of the Agreement**

The purpose of the Agreement is:

- a) the cooperation between the Parties in the implementation and financing of measures to detect, mitigate and prevent impacts, including their monitoring, (hereinafter referred to as “addressing the impacts”) of exploitation, and subsequent reclamation works, at the Turów mine in the Republic of Poland on the territory of the Czech Republic,
- b) the amicable settlement of the dispute between the Parties brought before the Court of Justice of the European Union following the application in Case C-121/21 filed by the Czech Republic against the Republic of Poland on 26 February 2021 pertaining to the expansion of exploitation at the Turów mine.

**Article 2**

**Conditions for Withdrawal of the Application in Case C-121/21**

1. Within ten working days following the entry of this Agreement into force, the Polish Party, represented by the minister responsible for environmental protection, shall transfer:

- a) to the Ministry of Environment of the Czech Republic a total sum equivalent to EUR 15,000,000 to account number IBAN: CZ19 0710 0001 2300 0762 8001, SWIFT: CNBACZPP, and
- b) to the Liberec Region a total sum equivalent to EUR 35,000,000 to account number IBAN: CZ07 0100 0001 2331 1360 0217, SWIFT: KOMBCZPP,

to fully address the impacts of exploitation at the Turów mine on the territory of the Czech Republic as set out in this Agreement.

2. The Czech Party commits itself to allocate the above-mentioned resources according to the purpose of this Agreement.

3. The Czech Party shall provide the Polish Party with yearly reports on the realisation of the projects financed from the above-mentioned resources.

4. The Czech Party shall inform the Court of Justice of the settlement of the dispute and of the abandonment of its claims in the case C-121/21 in accordance with Article 147 of the Rules of Procedure of the Court of Justice within three working days following the date on which it receives the full amount referred to in Paragraph 1 to the above-mentioned accounts.

5. The Parties confirm that the Polish Party:

- a) allowed representatives of the Czech Party to conduct an on-site assessment mission in the Turów mine in order to determine the baseline situation,
- b) provided all the relevant information to the Czech Party on ongoing proceedings in accordance with Article 3, Paragraph 11,
- c) provided the preliminary project documentation to the Czech Party on the construction of the earth mound referred to in Article 4, and
- d) provided the Czech Party with information on the groundwater specified in Article 8, Paragraph 1, Subparagraphs a) through c) and Paragraphs 2 and 3.

### **Article 3**

#### **Basic Rules for Addressing Impacts of the Exploitation**

1. The Polish Party shall ensure that the exploitation at the Turów mine does not advance towards the border with the Czech Republic and that the mining open-pit is not to be deepened more than twelve metres below the sea level unless the Polish Party fulfils all of the following conditions:

- a) completes the construction of the groundwater barrier and proves its functionality (Article 3, Paragraphs 5 through 7) and provides the Czech Party with complete project documentation of the actual construction of the groundwater barrier (Article 8, Paragraph 1 Subparagraphs a) and c)),
- b) completes the construction of the earth mound (Article 4),
- c) complies with requirements for monitoring the impacts of exploitation at the Turów mine on the territory of the Republic of Poland referred to in Article 5, Paragraph 2, Article 6, Paragraph 3, Article 7, Paragraph 1 and Article 8, Paragraphs 1 through 6,
- d) establishes monitoring wells in accordance with Article 8, Paragraph 7.

2. Without prejudice to the fulfilment of the conditions set out in the previous paragraph, the Polish Party may advance towards the border with the Czech Republic in order to conduct works aimed at geotechnical safety and/or removing overburden provided that:

- a) the working area shall not exceed following coordinates:

A1 x= 5638423.268, y= 5492302.776

A2 x= 5638149.386, y= 5492718.628

A3 x=5638476.592, y= 5493254.289

A4 x=5638967.067, y= 5493644.543, and

- b) the works in the area pursuant to letter a) shall not go lower than +295 m above sea level.

3. If the Polish Party advances towards the border with the Czech Republic according to Paragraph 2 then:

- a) the material obtained, as far as possible, shall be used in the first place to construct the earth mound in accordance with Article 4 and then to implement other security measures arising from

the environmental decision;

b) the following obligations shall be fulfilled within two months:

- at least one of bi-annual measurements of the A-weighted equivalent sound pressure level shall be performed, by reference methods, with respect to the noise emitted from the Turów mine at the control point GC2 (the area on the border between the Republic of Poland and Czech Republic in alignment with the intersection of ul. Graniczna and ul. Bogatyńska) and the Polish Party shall provide the report including data to the Czech Party, through the Agents designated pursuant to Article 10, Paragraph 1 (hereinafter referred to as the "Agent" or "Agents");
- at least one PM<sub>10</sub> measurement round outside the Turów mine shall be performed (two days in each of ten monitoring points around Turów mine) and the Polish Party shall provide the report including data to the Czech Party, through the Agents; and
- at least one noise measurement monitoring round conducted by the Czech Party in the territory of Poland shall take place (as mentioned in Article 5 Paragraph 3). In case this measurement is not carried out until 30 November 2021 due to the reasons on the side of the Czech Party or obligation under Article 5 Paragraph 2 first sentence is fulfilled, this condition shall be deemed fulfilled.

4. The Polish Party shall, at the request of an Agent, no later than fourteen days after the receipt thereof, allow representatives of the Czech Party to access the Turów mine and to conduct an on-site assessment mission. The representatives of the Czech Party shall be accompanied by the representatives of the Polish Party. The Polish Party shall provide full cooperation to the on-site assessment mission. The Czech Party shall prepare a report of the assessment mission, which shall be submitted to the Polish Party for information. The Polish Party shall allow on-site assessment mission four times a year if requested by the Czech Party. The Czech Party shall provide the Polish Party with the names of the representatives at least two days before the mission.

5. Parties acknowledge that the construction of the two hundred wells of the groundwater barrier has been completed.

6. Following the completion of the barrier, the Polish Party shall conduct regular quarterly measurements of piezometers in boreholes *HPp – 29/49,5*, *HPp – 27/51*, *HS – 350*, *HPp – 23/56*. Based on the measurements conducted after the completion of the barrier during a testing period of twelve months (until 30 June 2023 at the latest), it shall be evaluated whether the groundwater barrier is fully functional, in particular with regard to prevention of the groundwater runoff from the territory of the Czech Republic.

7. The groundwater barrier shall be considered as fully functional when the filtration factor is equal or less than 0.0016 [m/d]. In order to confirm the functionality, the hydrodynamic analysis and research together with technical analysis shall be conducted.

8. In case within the deadline stated in Paragraph 6 the groundwater levels in monitored wells *HPp – 29/49,5*, *HPp – 27/51*, *HS – 350*, *HPp – 23/56* south of the groundwater barrier do not begin to rise or at least do not stop dropping in intercarbon aquifers, the Parties may, through the Agents, address a relevant independent authority or institution referred to in Article 11 in order to provide an assessment in this respect. If the assessment points at the attributability to the Turów mine of the decline of the groundwater's level, the Polish Party, after consultation with the Czech Party, shall take additional measures, such as the extension from borehole No. 1 to the west, from borehole No. 200 to the east, or tightening or deepening of the existing groundwater barrier, to provide the maximum protection against tertiary groundwater flow from the area in front of the mine open-pit in the area southeast and east of the eastern Białopolian Fault, in order to minimise the impact of the mine on groundwater level in the affected territory. The project documentation for the additional measures shall only be adopted by the Polish Party after consultation with the Czech Party. Any

subsequent alteration in the project documentation or construction compared to the approved version shall be consulted with the Czech Party. The Polish Party shall ensure that these additional measures are finalized within twenty-four months following the reception of the above-mentioned assessment. This period shall be extended by the length of time between the submission, through the Agents, of the complete project documentation to the Czech Party for consultation and the submission of the Czech Party's comments to the Polish Party. This period shall be further extended if the Agents so agree.

9. In case of drop of groundwater levels in monitored wells *HPp – 29/49,5*, *HPp – 27/51*, *HS – 350*, *HPp – 23/56* more than ten metres within six months, the Polish Party shall ensure that the exploitation at the Turów mine will immediately stop advancing towards the border with the Czech Republic and that the mining operation will not go deeper than twelve metres below the sea level.

10. The Polish Party shall introduce the following measures to improve energy efficiency in the Turów mine, that i.a. shall limit its light emission and minimize obtrusive effects of outdoor lighting:

a) review (audit) the Turów mine's facilities in terms of light emissions and make initial adjustments to lighting, in order to protect the night environment from the potential light pollution and to minimize obtrusive effects of outdoor lighting;

b) modernise lighting on basic machinery and introduce the functionality of switching off floodlights on masts when machinery is not in use, with respect to results of the review referred to in Subparagraph a);

c) implement the best possible technical solutions to minimize light emission, with respect to results of the review referred to in Subparagraph a);

d) replace old light sources and light fixtures with new directional ones (LEDs), with respect to results of the review referred to in Subparagraph a);

e) implement technical solutions to reduce unnecessary lighting when machinery and equipment is not in use, with respect to results of the review referred to in Subparagraph a);

f) analyse the availability and development trends of light sources in the context of reducing possible light pollution and the best possible technical solutions to improve energy efficiency and minimize obtrusive effects of outdoor lighting.

The measures referred to in Subparagraph a) shall be implemented without undue delay, but no later than within six months following the entry into force of this Agreement.

The measures referred to in Subparagraphs b) through e) shall be implemented without undue delay, but no later than within three years following the review referred to in Subparagraph a).

The measures referred to in Subparagraph f) shall be carried every five years following the entry into force of this Agreement. Should the result of the analysis point at certain measures, the Polish Party shall implement them if appropriate.

The Polish Party shall inform the Czech Party without undue delay, through the Agents, about the completion of the implementation of the respective measures referred to in Subparagraph a), jointly, in Subparagraphs b) through e) and, regularly, in Subparagraph f).

11. The Polish Party declares that the Decision of the Regional Director of Environmental Protection in Wroclaw of 21 January 2020 (reference WOOS.4235.1.2015.53) on environmental conditions, the Decision of the Minister of Climate of 20 March 2020 (reference DGK-V1.4770.35.2019.MN.19) on the extension of the decision governing mining operation until 30 May 2026 and the Decision of the Minister of Climate of 28 April 2021 (reference DGK-6.4771.34.2020.MN.23) on the extension of the decision governing mining operation to 27 April 2044 are under review. The Polish Party shall ensure that the Turów mine is at all times in possession of a decision governing mining operation that is in line with the legal framework

providing the public concerned with the right to initiate a judicial review. This review shall be carried out in accordance with the European Union law. The Polish Party shall, through the Agents, inform the Czech Party of commencement of the proceedings or other changes in the proceedings, including decisions of administrative authorities and courts, within ten working days since the day the Polish Party receives respective information.

12. The Polish Party shall inform the Czech Party, through the Agents, of the commencement of proceedings to amend the valid decision governing mining operation or of the commencement of proceedings for a new environmental permit or decision governing mining operation, of the adoption of any changes to the valid decision governing mining operation or of the issue of a new decision governing mining operation or new environmental permit related to any activities at the Turów mine, no later than ten working days following the act in question.

The Polish Party shall also provide the Czech Party, through the Agents, with all available documents from the above-mentioned proceedings requested by the Czech Party, within ten working days of the receipt of the request in question. Furthermore, the Polish Party shall ensure the rights of the public in accordance with the European Union law, in particular the right to initiate judicial review, in any proceedings concerning changes to the valid decision governing mining operation or a new decision governing mining operation for lignite mining at the Turów mine.

13. At least one year in advance of the initiation of the activities associated with the closing of the Turów mine (such as reclamation works, landscaping, flooding of the mining open-pit etc.), the Polish Party shall inform the Czech Party in order to give it the opportunity to decide whether it would like to participate in the transboundary environmental impact assessment process, if required in accordance with and pursuant to the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended, or Convention on Environmental Impact Assessment in a Transboundary Context, done at Espoo on 25 February 1991, as amended.

## **Article 4**

### **Construction of the Earth Mound**

1. Within one year after finalisation of all required formal procedures, the Polish Party shall build an earth mound with plantings along the Turów mine's southern border (along the Opolno-Zdrój - Sieniawka road) in order to take into account the concerns of the inhabitants of the Czech Republic regarding impacts of the Turów mine, in particular on noise, light and air pollution, as well as the landscape character.

2. The Polish Party shall within five months following the entry of this Agreement into force submit to the Czech Party, through the Agents, a draft of the project documentation for the construction of the earth mound, and, additionally, an acoustic and dispersion study, before submission of an application for permit thereto. The Czech Party may submit its comments to this draft that shall be duly taken into account by the Polish Party. The absence of comments from the Czech Party within two months shall be considered as consent. Any subsequent alterations to the project documentation or construction as compared to the approved documentation or any change in the permitted construction shall be subject to the same procedure.

3. The earth mound shall be at least one kilometre long and of such height that, on the basis of expert studies, it sufficiently minimises impacts referred to in Paragraph 1 on the territory of the Czech Republic, and shall be supplemented with a layer of soil suitable for planting trees.

The earth mound shall incorporate a green wall of fast-growing non-deciduous trees, medium to tall in size, professionally planted and plentiful in number.

The Polish Party shall ensure the subsequent care and protection of the planted trees.

The earth mound shall be constructed only during the day-time (from 6:00 a.m. to 10:00 p.m.).

4. The Polish Party may cut down the green wall on the earth mound or remove the earth mound only during the final phase of the Turów mine's reclamation and with the prior consent of the Czech Party.

## **Article 5**

### **Noise**

1. Within one month following the entry of this Agreement into force, the Parties, acting through the Agents, shall agree on the exact location of the noise technical measuring point (hereinafter referred to as the "TMP") in order to better distinguish the noise of the Turów mine technological equipment from other sources of background noise.

The TMP shall be located in the territory of the Republic of Poland at the edge of the Turów mine that is the closest to the border with the Czech Republic, if appropriate directly on the site of the PGE Górnictwo i Energetyka Konwencjonalna S.A., or its legal successor, or any other future operator of the Turów mine (hereinafter referred to as "PGE").

Any change of the TMP location requires consent of both Parties.

2. Within one year following the agreement on the location of the TMP, the Polish Party shall install and operate a permanent TMP in the location agreed according to Paragraph 1. The Polish Party shall inform the Czech Party, through the Agents, about the start of operation of the permanent TMP.

The Polish Party shall ensure continuous measurement of noise from mine operations at the TMP, in the form of second-based measurements of measured values (levels  $L_{Aeq}$ ,  $L_{Ceq}$ ,  $L_1$ ,  $L_{10}$ ,  $L_{50}$ ,  $L_{90}$ ,  $L_{99}$ ,  $L_{eq}$  levels, 1/3-octave frequency spectra) in accordance with ISO 1996-2 – Acoustics – Description, measurement and assessment of environmental noise – Part 2: Determination of sound pressure levels; the applicable methodology of their evaluation is set out by the Polish law. At the same time the Polish Party shall carry out measurements and recordings of meteorological data in the form of minute-based data of temperature, pressure, relative humidity, wind speed and direction.

The Polish Party shall provide the Czech Party with online access to the measured data, both relating to the noise measurements and to the meteorological measurements. The Polish Party shall ensure daily archiving of the data specified above and shall allow the Czech Party to download such archival data online.

3. Until the Polish Party informs about the start of operation of the permanent TMP, it shall, within one month following the receipt of a written request of the Czech Party submitted through the Agents, enable the Czech Party to install a temporary TMP in the location agreed according to Paragraph 1. At the request of the Czech Party, the Polish Party shall ensure its safety and continued presence for individual noise measurements over approximately one week.

The temporary TMP shall be operated by the Czech Party in accordance with the standard referred to in Paragraph 2. The Czech Party shall provide the Polish Party with the measured data without delay.

4. In order to monitor the impact of operation of the Turów mine and subsequent reclamation works on the noise levels in the Czech Republic, the Czech Party shall carry out noise monitoring in the Czech Republic in several monitoring rounds through the year in accordance with ISO 1996-2 – Acoustics – Description, measurement and assessment of environmental noise – Part 2: Determination of sound pressure levels and the applicable methodology of monitoring and its evaluation according to the Czech law.

The noise measurement shall not be carried out during the time of construction of the earth mound.

The Czech Party shall take into account all specific noise sources including the wind farm located in the territory of the Czech Republic along the Czech-Polish border.

After the end of each noise monitoring round the Czech Party shall send the record of primary noise and meteorological data from this monitoring round to the Polish Party.

The Czech Party shall provide the Polish Party with the protocol with results of collected data immediately after their processing and evaluation according to the methodologies and legal regulations of the Czech Republic in the case of every exceedance of the hygienic limits which the Czech Party deems attributable to the activities at the Turów mine.

5. The Parties shall utilize the primary noise and meteorological data only for the purpose of the analyses carried out under this Agreement.

6. The Polish Party shall ensure that on the territory of the Czech Republic noise from the operation of the Turów mine does not exceed the hygienic limits. The hygienic limits for plots of land intended for housing, recreation, pre-school and school education and training, health and social purposes, as well as functionally similar land, and for buildings intended for housing, pre-school and school education and training, health and social purposes, as well as functionally similar buildings are deemed to be exceeded if the hygienic limits during the day time of an individual calendar day  $L_{Aeq,8h}$  for broadband noise  $L_{Aeq,8h} = 50$  dB, for tonal noise  $L_{Aeq,8h} = 45$  dB, for impulse noise  $L_{Aeq,8h} = 38$  dB or during the night time of an individual calendar day  $L_{Aeq,1h}$  for broadband noise  $L_{Aeq,1h} = 40$  dB, for tonal noise  $L_{Aeq,1h} = 35$  dB and for impulse noise  $L_{Aeq,1h} = 28$  dB is exceeded. If the European Union law requires stricter limits, such limits shall apply instead.

7. In case an isolated exceedance, i.e. exceedance of any of the hygienic limits of equivalent sound pressure levels  $L_{Aeq,T}$  once during the monitoring period, is found, the Polish Party shall inform in writing the Czech Party, through the Agents, and within fourteen days from the receipt of the protocol indicated in Paragraph 4, about an assumed cause of the exceedance and on measures taken to prevent further exceedances.

8. The exceedance can be considered serious if it occurs more than once within the monitoring period. The severity of the serious exceedance is assessed on the basis of the frequency of exceedance, the degree of exceedance, the specific characteristics of noise and the total night noise burden.

In case a serious exceedance of hygienic limits is detected on the territory of the Czech Republic in accordance with Paragraph 4, the Polish Party shall inform in writing the Czech Party, through the Agents, within fourteen days from the receipt of the protocol indicated in Paragraph 4, about an assumed cause of the exceedance and it shall, without delay, take appropriate measures to prevent further exceedances and inform the Czech Party about such measures.

If, within aforementioned period of fourteen days, the Polish Party on the basis of the expert arguments concludes that the detected exceedance is not attributable to the activities at the Turów mine and assigns it to another particular noise source, the Polish Party shall send, through the Agents, the conclusion in writing to the Czech Party. Within seven days following the receipt of the conclusion, the Parties shall establish, through the Agents, an ad hoc expert commission in order to identify whether the limits' exceedance is attributable to the activities at the Turów mine. Each Party shall nominate two members of the commission that shall operate on the basis of consensus. The commission shall submit its report to the Agents within twenty-one days since the commission is established, unless the Parties, through the Agents, agree otherwise.

If the report is not submitted within the abovementioned deadline or if the commission does not find consensus on whether the limits' exceedance is attributable to the activities at the Turów mine, Article 11 applies.

## **Article 6**

### **Ambient Air Quality**

1. Within six months following the entry of this Agreement into force, the Polish Party shall, through the Agents, submit to the Czech Party information about anti-dust measures in the Turów mine and subsequently shall implement these measures. Within the same deadline the Polish Party shall provide to the Czech Party all input data (excel files, shape files and .m3d) from 2018 used for the calculations of the dispersion study in the environmental impact assessment report which was the basis for the Decision of the Regional Director of Environmental Protection in Wrocław of 21 January 2020 (reference WOOŚ.4235.1.2015.53) on environmental conditions.

2. In order to indirectly minimise impacts on air quality in the Czech Republic resulting from the combustion of coal from the Turów mine, the Polish Party shall, as soon as possible:

a) ensure that all eligible applicants from Voivodships at the border with the Czech Republic aiming to exchange an obsolete boiler via the *Czyste Powietrze* program and the *STOP SMOG* program are supported without delay; and

b) implement, no later than 2025, all measures, relevant to the purpose of this Agreement, that are to be carried out until 2025, according to the *Krajowy program ograniczania zanieczyszczenia powietrza* in the version valid on the date of entry into force of this Agreement. Any planned changes of this program, as well as yearly reports about the implementation of the program, shall be discussed within the Czech-Polish Air Quality Working Group.

3. The Polish Party shall ensure continuous monitoring of PM<sub>10</sub> and PM<sub>2,5</sub>, wind speed and wind direction, temperature and humidity in the northern and southern vicinity of the Turów mine, by establishing two automatic air pollution monitoring stations in locations where no other significant sources are located between the Turów mine and the monitoring station for the duration of the operations at the Turów mine and during the subsequent reclamation works, unless the Parties agree otherwise. If it is not possible to find a proper location at the north of the mine, the Parties shall consider other areas in the vicinity of the mine.

4. In order to monitor the impact of the operations in Turów mine and the subsequent reclamation works on air quality in the Czech Republic, the Czech Party shall install two automatic air pollution monitoring stations on the territory of the Czech Republic measuring PM<sub>10</sub> and PM<sub>2,5</sub>, wind speed and wind direction, temperature and humidity.

5. The location of the monitoring stations mentioned in Paragraphs 3 and 4 shall be chosen in accordance with the European Union law applicable at that time.

Within forty-five days following the entry of this Agreement into force, the Parties will share proposals for the location of the aforementioned monitoring stations for consultation in order to ensure methodologically proper gathering of the data. Within thirty days after receiving the proposal from the other Party, each Party shall approve or comment proposed location; any objections shall be accompanied with proper justification on the basis of the expert arguments.

The Parties shall reach consensus on the location of the monitoring stations mentioned in Paragraph 3 and 4 no later than ninety days following the aforementioned thirty-days period; if not, Article 11 applies. The monitoring shall start within nine months after the consent of the Parties or following the assessment of the independent authority or institution according to Article 11.

The Czech Party reserves its right to make final decision on the location of the monitoring stations according to Paragraph 4.

The same procedure applies in the case of possible relocation of the aforementioned monitoring



stations.

6. The measurement and evaluation of the data gathered by the stations referred to in Paragraph 3 and 4 shall be carried out in accordance with the data quality objectives for air quality assessment set out in the European Union law applicable at that time. The meteorological parameters mentioned in Paragraph 3 and 4 shall be measured as follows, unless the Parties agree otherwise: wind speed at 10 m height and with the uncertainty not exceeding 0,5 m/s for wind speed up to 5 m/s or 10% for wind speed above 5 m/s; wind direction at 10 m height and with the uncertainty not exceeding 5°; temperature at height between 3,5 and 4 m and with the uncertainty not exceeding 1 K; humidity at height between 3,5 and 4 m and with the uncertainty not exceeding 15% of relative humidity.

The Parties shall transmit operational hourly data from automated measurements online in near real time format compliant with the standard applicable to the *EU Air Quality e-Reporting* in force at that time. The validated data shall then be provided to the other Party regularly once for each calendar year, no later than on 31 March of the following year.

## **Article 7**

### **Terrain Movements**

1. Within six months following the entry of this Agreement into force, the Polish Party, through the Agents, shall provide the Czech Party with all relevant measurement data on terrain movements in the affected area between the southern edge of the Turów mine and the border with the Czech Republic since 2010 until April 2021.

2. Once every two years, and no later than on 31 March of the following year, both Parties, through the Agents, shall submit to each other their own measurements. On this basis, the Polish Party shall submit to the Czech Party an evaluation of terrain movements in the territory concerned.

3. The Parties acknowledge that claims (including the supporting documents) concerning damages to property incurred in the territory of the Czech Republic caused by the terrain movements attributable to the activities at the Turów mine, prior to the submission to the competent court may be presented directly, in the Czech language, to the PGE, with the aim of amicable settlement. The Parties also acknowledge that in case the claim is presented in the Czech language, the amicable settlement should be conducted in the Czech language.

## **Article 8**

### **Groundwaters**

1. The Polish Party shall, through the relevant contact point (Article 10, Paragraph 2, hereinafter referred to as the "Contact Point"):

a) provide the Czech Party with construction design for groundwater barrier prepared in accordance with the law of the Republic of Poland and information about the methods used to build the barrier, information about the parameters of the groundwater barrier, including specification of the method used to secure it and checks on its effectiveness including hydrodynamic tests from each test hole, a filter coefficient that determines its permeability and a maintenance plan for its operation,

b) provide the Czech Party with full available data regarding functionality of the groundwater barrier (piezometers), i.e. borehole passports (information on lithological profiles of these wells and the construction of the wells concerned, i.e. the depth section in which these boreholes have a perforation (open section), the depth section in which the

seal is made (between the borehole stem and the equipment) and the location of the backfill), and monitoring results in time lines from 2015 until April 2021), located along the groundwater barrier (boreholes in front and behind, specifically *HPp-29/49,5*, *HPp-27/49*, *HPp-27/51*, *HPp-23/53*, *HPp-25/50*, *HPp-25/49*, *HPp-26/53*, *HPp-21/53*, *HPp-23/56*, *HPp-25/51*, *HPz-25/58*, *HPz-31/53bis*, *HS-350*, *HSp-60*, *HSp-68*),

c) provide the Czech Party with information about assessment of the current groundwater barrier functionality,

d) include any new wells drilled in the intercarbon and/or undercarbon aquifers for the purpose of the ground water barrier functionality monitoring into the list of wells mentioned in Subparagraph b),

e) include the wells mentioned in Subparagraphs b) and d) in the Czech-Polish groundwater monitoring network, and

f) provide the Czech Party with information about analysed assumptions for its corrections, if they are necessary.

2. The Polish Party shall submit to the Czech Party detailed available data, including a list of the wells, their locations and pumping rates, on all mine water abstractions from the Turów mine in the area south of the Southern Fault and in the area west of the Białopolian Fault since 2015 until April 2021 and available information on quantities of water pumped since 2015 until April 2021 from the southern hydraulic barrier and in Rów Rybarzowic.

3. The Polish Party shall further provide information on water inflows into the southern part of the Turów mine in the form of combined spontaneous groundwater discharges and surface water, as well as the magnitude of these discharges, including their location and altitudes since 2015 until 2020 (last data available).

4. The Polish Party shall also provide the Czech Party with information on uncertainties and possible deviations in effectiveness of the groundwater barrier, should they occur, starting April 2022 and then every three months, as well as information on technical measures to be implemented to seal this barrier to meet the project specifications.

5. The Polish Party shall ensure documentation of the current state of spontaneous groundwater discharges, including the measurement of their yield in the southern part of the Turów mine, with the participation of geological and hydrogeological experts from the Czech Republic appointed by the Agent, within one month following the entry of this Agreement into force, subsequently three months after full completion of the groundwater barrier, and afterwards every twelve months.

6. The Polish Party shall continue to monitor groundwater levels in the wells mentioned in Paragraph 1 Subparagraphs b) and d), and submit the data to the Czech Party every three months, and the data on water abstractions mentioned in Paragraphs 2 and 3 every twelve months.

7. Within six months after finalisation of all required formal procedures under the law of the Republic of Poland, the Polish Party shall establish four borehole sites to monitor all existing aquifers, one of them drilled down to the crystalline basement to monitor the undercarbon and intercarbon aquifers and the remaining ones down to the upper aquifer, located from the north to the east of Uhelná in the direction of the advancing exploitation on the territory of the Republic of Poland in sites specified on the map attached to this Agreement, and ensure their inclusion in the Czech-Polish groundwater monitoring network, and that data are provided in accordance with the requirements set out above.

The Polish Party shall allow the presence of geological and hydrogeological experts from the Czech Republic appointed by the Agent during the drilling of these wells and the performance of well logging measurements and hydrodynamic tests on new monitoring wells. The Polish Party shall inform the Czech Party of the date of execution of these works at least fourteen days before

the date. The Polish Party shall provide information about the drilling of these wells prepared in accordance with the law of the Republic of Poland, the performance of well logging measurements and hydrodynamic tests of these wells.

The Czech Party shall allow the presence of geological and hydrogeological experts from the Republic of Poland appointed by the Agent during the drilling of boreholes in the Hrádek part of the Zittau basin.

8. In case:

a) a hydraulic connection is demonstrated between the newly excavated monitoring wells in the Republic of Poland referred to in Paragraph 7 and the monitoring wells in the Czech Republic, and

b) a declining trend due to effects of the Turów mine in intercarbon aquifer level recorded by piezometers of the Czech-Polish monitoring network is demonstrated,

the Polish Party, within three months from the date such demonstration has been confirmed through the Agents by the Parties, shall, after consultation with the Czech Party, take additional measures (such as the extension from borehole No. 1 to the west, from borehole No. 200 to the east, or tightening or deepening of the existing groundwater barrier, to provide the maximum protection against tertiary groundwater flow from the area in front of the mine open-pit in the area southeast and east of the eastern Białopolian Fault) in order to minimise the impact of the mine on deep (tertiary) groundwater level in the affected territory of the Czech Republic. The project documentation for the additional measures shall only be adopted by the Polish Party after consultation with the Czech Party. Any subsequent alteration in the project documentation or construction compared to the approved version shall be consulted with the Czech Party. The Polish Party shall ensure that these additional measures are finalized within twenty-four months following the demonstration of effects indicated in Subparagraphs a) and b). This period shall be extended by the length of time between the submission, through the Agents, of the complete project documentation to the Czech Party for consultation and the submission of the Czech Party's comments to the Polish Party. This period shall be further extended if the Agents so agree.

In case the Parties do not agree on whether a situation indicated in Subparagraphs a) and/or b) has been demonstrated, any Party may propose, through the Agents, the establishment of an ad hoc expert commission in order to assess whether the decline is attributable to the activities at the Turów mine. The commission shall be established within seven days following such a proposal. Each Party shall nominate two members of the commission that shall operate on the basis of consensus. The commission shall submit its report to the Agents within three months since the proposal of its establishment, unless the Parties, through the Agents, agree otherwise. If the report is not submitted within the abovementioned deadline or if the commission does not reach consensus on whether the decline is attributable to the activities at the Turów mine, Article 11 applies.

9. The Czech Party shall provide the Polish Party, if available, with:

a) the data on the amount of water intake from the Uhelná source and the Uhelná U-1A sources, as well as other sources supplying the Hrádek nad Nisou and Frýdlant regions since 2015 until April 2021 and subsequently on a yearly basis,

b) a valid water permit for water intake from the Uhelná source together with all hydrogeological documentation determining operational water resources,

- c) the data on water usage in the Grabštejn gravel open-pit, including the quantities of water pumped in the gravel open-pit and the amount of water intake from the Grabštejn HV-11/02 source, since 2015 until April 2021, and subsequently on a yearly basis,
- d) environmental impact assessment documentation for the Grabštejn gravel open-pit,
- e) current and planned scope of the Grabštejn gravel open-pit, including its depth, the amount of planned exploitation and planned quantity of water pumped until the end of its exploitation,
- f) a valid water permit for water usage in the Grabštejn gravel open-pit, including the amount of water intake from the Grabštejn HV-11/02 source, together with all hydrogeological documentation determining operational water resources,
- g) measurements of dynamic and static level of groundwater in above-mentioned sources, as well as the specification of wells for water intake, including the coordinates, borehole passports and filter coefficients that determine their permeability,
- h) information on other sources, installations or objects having an impact on groundwater in the Hrádek nad Nisou region, next to Grabštejn and Uhelná, as well as in the vicinity of the border between the Czech Republic and the Republic of Poland, and
- i) the data on the above-mentioned objects, including newly built piezometers, including their measurements, as well as their locations with the coordinates, according to the Coordinate System 2000, and their passports,

within six months following the entry into force of this Agreement. The Czech Party shall provide the Polish Party with the information referred to in Subparagraphs a) through e) for every new user of each aquifer and in case of any change.

10. To ensure the required monitoring of groundwater and surface water and terrain movement in the Republic of Poland, the Contact Points shall each year organize a joint assessment of groundwater and surface water status and terrain movement and regular exchange of data covering all southern water tributaries flowing to the Turów mine.

## **Article 9**

### **Small Projects Fund**

1. The Parties shall invite the Liberec Region and the Dolnośląskie Voivodship, within the framework of the Euroregion Neisse-Nisa-Nysa, to establish the Small Projects Fund (hereinafter referred to as the "Fund") in order to strengthen environmental protection of the Czech Republic and the Republic of Poland in the vicinity of the Turów mine, through which local and regional environmental projects shall be financed.

2. The following entities, in the course of the operation of the Agreement, but not after 31 January 2044, shall contribute to the Fund, at the latest by 31 January of each year:

- a) the Polish Party, represented by the minister responsible for environmental protection - the equivalent of EUR 250,000, and
- b) the Czech Party, represented by the Ministry of the Environment – the equivalent of EUR 250,000.

3. The contribution of the Polish Party shall be spent exclusively on the projects financed by the Fund according to its purposes set out in the founding act.

4. The Parties shall encourage the Liberec Region, the Dolnośląskie Voivodship and the PGE to contribute to the Fund. The amount of the contribution of the Liberec Region shall diminish the

contribution of the Czech Party indicated in Paragraph 2, Subparagraph b). The amount of the contribution of the Dolnośląskie Voivodship and the PGE shall diminish the contribution of the Republic of Poland indicated in Paragraph 2, Subparagraph a).

5. The entities both from the Czech Republic and the Republic of Poland may apply for the resources from the Fund to finance respective projects.

6. The applications submitted to the Fund shall be assessed by the Evaluation Committee composed in the equal number of the representatives of:

- a) the Liberec Region,
- b) the Dolnośląskie Voivodship.

7. As long as the funds provided by the Parties according to this Article are not exhausted, the Parties shall be provided with yearly financial statement of the Fund and the detailed information on the realisation of the purposes of the Fund.

8. In the event of termination of this Agreement in accordance with Article 14, unless the Parties agree otherwise, the Projects accepted for financing from the Fund shall be financed according to the respective schedules. The remaining not allocated resources shall be returned in proportionate amounts to the bank accounts of the entities that contributed to the Fund. The Parties shall provide necessary details of the bank accounts through the Agents.

## **Article 10**

### **Agents of the Parties and Contact Points**

1. Within [two] working days following the entry of this Agreement into force, each Party shall, through diplomatic channels, designate an Agent for exchange of information according to the Agreement and to perform other tasks entrusted to them under this Agreement and inform each other of his or her contact details. The Parties shall use the same method to notify each other immediately of any change in the person or contact details of the Agent.

2. Within one month following the entry of this Agreement into force, each Party shall, through the Agents, designate a competent State authority as a Contact Point to perform the obligations under Article 8, unless specified otherwise. The Parties shall use the same method to inform each other without undue delay of any change of the Contact Points.

## **Article 11**

### **Independent Expert Mechanism**

1. In case the report of the ad hoc expert commission is not submitted within the prescribed deadline or the commission does not reach consensus in accordance with Article 5 Paragraph 8, Article 6 Paragraph 5, Article 8 Paragraph 8, any Party may, through the Agent, address a relevant independent authority or institution listed in the List of Independent Authorities and Institutions (hereinafter referred to as the "List"). In such a case, the recourse to the relevant independent authority or institution is obligatory before initiating a procedure under Article 13 Paragraph 2 whenever a dispute would concern provisions referred to in the first sentence above.

2. The Parties acknowledge that the List has been agreed prior to the entry into force of this Agreement. The Agents may review and update the List upon mutual agreement. The authorities or institutions on the List must always be able to guarantee a fair and qualified assessment of the respective issues.

3. If none of the authorities or institutions on the List is able or willing to provide an opinion on the matter in dispute, the Agents shall agree on a different body, authority or institution. In case of lack of agreement by the Agents on a different body, authority or institution, the obligation referred to in Paragraph 1 Sentence 2 does not apply.

4. The Parties shall fully take into account the assessment of the designated body, authority or institution and shall further proceed in accordance with the respective provisions of this Agreement.

5. The costs of activity of the designated body, authority or institution shall be borne by the Party whose position was not confirmed. If both Parties' positions are partly confirmed or none of their positions is confirmed, the costs shall be borne equally.

## **Article 12**

### **Joint Commission**

1. The Parties shall establish a Joint Commission (hereinafter referred to as the "Commission"). The Parties shall invite to the Commission the Governor of the Liberec Region, one joint representative of the towns and municipalities of the Hrádek nad Nisou, Chrastava and Frýdlant Regions, the Marshal of the Dolnośląskie Voivodship, one joint representative of the town of Bogatynia and the County of Zgorzelec and the Agents, who shall meet as required, but at least once a year.

2. The task of the Commission shall consist of preparing a just transition strategy for the region. The Commission meetings shall be co-chaired by the Agents.

3. The Commission may request an expert opinion concerning a particular matter from an expert group in which experts of both Parties participate.

## **Article 13**

### **Dispute Settlement**

1. Any disputes concerning the application or interpretation of this Agreement shall be settled by negotiations by the Agents.

2. In the event of failure to reach an agreement through the negotiations referred to in Paragraph 1, the disputes shall be settled by the Parties through diplomatic channels. In order to do so, the points of divergence shall be submitted to the other Party in writing. In the event of failure to reach an agreement within three months following the receipt of the points of divergence, unless otherwise agreed in writing, any Party may refer the matter to the Court of Justice of the European Union.

3. In accordance with Article 273 of the Treaty on the Functioning of the European Union, the Court of Justice is competent to issue final decisions on all disputes concerning this Agreement.

4. In case the Court finds that there has been a breach of this Agreement, the Court shall be also competent to decide on a lump sum payment and/or penalty payment, taking into account the seriousness of the breach (encompassing the importance of the breached provision or provisions of this Agreement, the consequences of the breach for public and private interests and the conduct of the breaching Party) and its duration. This payment shall be revenue for the budget of the other Party.

5. In case the Court finds a breach of the Agreement, the Party responsible for the breach is obliged, without delay, to take all necessary measures to remedy the breach and to pay the

imposed lump sum payment and/or penalty payment. At the request of a Party, the Court is competent to decide whether these obligations have been complied with. In case the Court finds that the Party responsible for the breach failed to comply with these obligations, the Court shall be competent to decide on a lump sum and/or penalty payment. This payment shall be revenue for the budget of the European Union.

## Article 14

### Final Provisions

1. The Agreement shall enter into force on the date of signature.
2. Without delay following the entry of this Agreement into force, the Czech Party shall register this Agreement with the Secretary General of the United Nations in accordance with Article 102 of the Charter of the United Nations. The Polish Party shall be informed about the registration through notification of the United Nations serial number as soon as the registration is confirmed by the United Nations Secretariat.
3. This Agreement may be amended by the written consent of the Parties.
4. This Agreement shall terminate five years after the expiry of the decision authorizing mining operation at the Turów mine, unless a new decision authorizing mining operation at the Turów mine is issued in the meantime.

The Parties may agree to terminate the Agreement earlier. In case the decision authorizing mining operation terminates earlier than on [27 April 2044], the Polish Party shall notify the Czech Party, through the diplomatic channels, at least 6 months in advance.

Notwithstanding the termination of this Agreement, Articles [5, 6, 7, 12 and *enforcement provision*] shall continue to apply ten years after the termination of the Agreement.

Notwithstanding the previous paragraphs, both Parties shall continue to monitor terrain movements and exchange relevant data until the end of flooding of the mine, if applicable.

5. Each Party shall protect the information, identified by the other Party as the information, the disclosure of which could adversely affect state security, public security, intellectual property rights, the confidentiality of commercial or industrial information, or professional secrecy, upon the transmission of such information, making full use of and to the extent permitted by applicable laws and regulations.
6. The Czech Party shall not bring any other infringement procedure concerning the Turów mine within the scope of this Agreement on the basis of Article 259 of the Treaty on the Functioning of the European Union.

Done at ..... on ..... 2021, in two originals, each in the Czech, Polish and English languages. All three texts are equally authentic. In case of any divergence in interpretation, the English text shall prevail.

For the Government of  
the Czech Republic

For the Government of  
the Republic of Poland