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SEP 01 2015

PUBLIC SERVICE  
COMMISSION

September 1, 2015

***Via Hand-Delivery***

Mr. Jeffrey Derouen  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, KY 40602

Re: *In the Matter of: The Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities form Bluegrass Generation Company, LLC at the Bluegrass Generating Station in LaGrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness*  
PSC Case No. 2015-00267

Dear Mr. Derouen:

Enclosed please find for filing with the Commission in the above-referenced matter an original and ten (10) copies of East Kentucky Power Cooperative, Inc.'s Motion to Withdraw and Replace Document and Supplemental Motion for Confidential Treatment. Please return a file-stamped copy of the Motion to me.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

David S. Samford

Enclosures

M:\Clients\4000 - East Kentucky Power\7700 - Bluegrass Station CPCN\  
Correspondence\Ltr. to Jeff Derouen - 150901.docx

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

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COMMISSION

In the Matter of:

THE APPLICATION OF EAST KENTUCKY POWER )  
COOPERATIVE, INC. FOR APPROVAL OF THE )  
ACQUISITION OF EXISTING COMBUSTION TURBINE )  
FACILITIES FROM BLUEGRASS GENERATION ) Case No. 2015-00267  
COMPANY, LLC AT THE BLUEGRASS GENERATING )  
STATION IN LAGRANGE, OLDHAM COUNTY, KENTUCKY )  
AND FOR APPROVAL OF THE ASSUMPTION OF CERTAIN )  
EVIDENCES OF INDEBTEDNESS )

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**MOTION TO WITHDRAW AND REPLACE DOCUMENT  
AND  
SUPPLEMENTAL MOTION FOR CONFIDENTIAL TREATMENT**

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Comes now East Kentucky Power Cooperative, Inc. ("EKPC"), by and through counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, and for its motion requesting that the Kentucky Public Service Commission ("Commission") permit it to withdraw and replace a document previously filed in this matter, as well as its motion requesting that the Commission afford confidential treatment to a portion of said document, respectfully states as follows:

1. EKPC's Application requests that the Commission issue a Certificate of Public Convenience and Necessity ("CPCN") for the acquisition and operation of the existing simple cycle combustion turbine facilities in LaGrange, Oldham County, Kentucky ("Bluegrass Station"), from Bluegrass Generation Company, LLC ("Bluegrass"), and for approval to assume certain evidences of indebtedness related to such acquisition.

2. On August 18, 2015, Commission Staff propounded its first request for information upon EKPC in this matter. EKPC filed its response to Commission Staff's request for information on August 28, 2015.

3. In response to Item 10(a) of Commission Staff's first request for information, EKPC filed an unredacted copy of the Operations and Maintenance Agreement for the Bluegrass Facility between Bluegrass and NAES Corporation, dated as of October 1, 2012 (the "O&M Agreement"). EKPC did not file the O&M Agreement under seal and did not request that the Commission afford confidential treatment to any portion of the document.

4. The O&M Agreement, which itself contains confidentiality provisions,<sup>1</sup> includes detailed, proprietary information related to pricing and terms (hereinafter, the "Confidential Information") that, if publicly disclosed, would permit an unfair commercial advantage to market participants offering or purchasing similar services. As a party to the O&M Agreement, Bluegrass has requested that EKPC seek confidential treatment of the Confidential Information and has tendered to EKPC a redacted version of the O&M Agreement.<sup>2</sup>

5. The Kentucky Open Records Act, and specifically KRS 61.878(1)(c)(1), protects "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." Moreover, the Kentucky Supreme Court has stated, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary'" *Hoy v. Kentucky Industrial*

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<sup>1</sup> See O&M Agreement, at Article 12.

<sup>2</sup> See Email from D. Marshall (LS Power) to D. Samford, et al., dated September 1, 2015, a copy of which is attached hereto as Exhibit I.

*Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). If disclosed, the Confidential Information within the O&M Agreement would give market participants insights into the business operations and strategies of NAES and Bluegrass that are otherwise publicly unavailable. Accordingly, the Confidential Information satisfies both the statutory and common law standards for affording confidential treatment.

6. With regard to EKPC, the Confidential Information consists of proprietary information that is retained by EKPC on a “need-to-know” basis. The Confidential Information is distributed within EKPC only to those employees who must have access for business reasons, and is generally recognized as confidential and proprietary in the energy industry.

7. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to intervenors with a legitimate interest in reviewing same for the sole purpose of participating in this case. EKPC has entered into a confidentiality and nondisclosure agreement with the Attorney General and Nucor Steel Gallatin, respectively, and the Confidential Information described herein has been or will be provided to those intervenors consistent with said agreements. EKPC continues to negotiate an acceptable confidentiality and nondisclosure agreement with intervenors Kentucky Utilities Company/Louisville Gas & Electric Company (“KU/LG&E”); however, it is likely that the Confidential Information described herein will be excluded from the materials that are to be produced under the terms of the utilities’ confidentiality and nondisclosure agreement.<sup>3</sup> EKPC reserves the right to object to providing the Confidential Information to any intervenor if said provision could result in liability to EKPC under any Confidentiality Agreement or Non-Disclosure Agreement.

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<sup>3</sup> In light of the similar positions of EKPC and KU/LG&E as Kentucky generation and transmission utilities, they will likely agree that the Confidential Information is inappropriate for disclosure to KU/LG&E.

8. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing separately under seal one (1) unredacted copy of the O&M Agreement with the Confidential Information highlighted or otherwise appropriately denoted. EKPC is also filing ten (10) copies of the O&M Agreement with the Confidential Information redacted or removed.

9. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for ten (10) years.

10. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment, EKPC will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10).

11. EKPC respectfully requests that the Commission immediately remove from the record the unredacted O&M Agreement that was filed by EKPC on August 28, 2015, in conjunction with its response to Commission Staff's first request for information. Even if the Commission later denies EKPC's motion for confidential treatment of the Confidential Information described herein, the unredacted O&M Agreement should not be publicly available pending such a determination.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests that the Commission immediately remove from the record the unredacted O&M Agreement that was filed by EKPC on August 28, 2015, and classify and protect as confidential the Confidential Information described herein for a period of ten (10) years.

This 1<sup>st</sup> day of September, 2015.

Respectfully submitted,



---

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*Counsel for East Kentucky Power Cooperative, Inc.*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing was deposited in the custody and care of the U.S. Mail, postage prepaid, on this the 1<sup>st</sup> day of September, 2015, addressed to the following:

Jennifer Black Hans  
Lawrence W. Cook  
Stephanie J. Kingsley  
Assistant Attorneys General  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204

Allyson C. Sturgeon  
Senior Corporate Attorney  
LG&E and KU Services Company  
220 West Main Street  
Louisville, Kentucky 40202

Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202



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*Counsel for East Kentucky Power Cooperative, Inc.*

## David Samford

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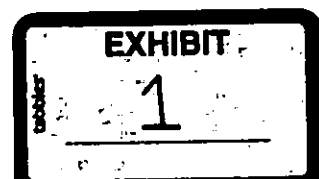
**From:** David J. Marshall <DMarshall@LSPower.com>  
**Sent:** Tuesday, September 01, 2015 2:12 PM  
**To:** Mark Strength; David Samford; Mark David Goss  
**Cc:** Don Mosier (Don.Mosier@ekpc.coop); David Crews (David.Crews@ekpc.coop); David Smart (david.smart@ekpc.coop); John King; Adam Gassaway; John Staikos; Roger Cowden 'roger.cowden@ekpc.coop'  
**Subject:** RE: Confidential Info - KPSC  
**Attachments:** MX-5111N\_20150901\_120116.pdf

David –

Following our conversation yesterday, attached is the redacted version of the O&M agreement that we approve providing to the KPSC. Please provide this version in connection with the motion to remove the unredacted version. Can you confirm the process and timing for removal?

Thanks.

David Marshall  
LS Power  
1700 Broadway, 35<sup>th</sup> Floor  
New York, NY 10019  
(212) 547 2808 (office)  
(786) 457 3192 (cell)



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**SEP 01 2015**

**PUBLIC SERVICE  
COMMISSION**

**AMENDED AND RESTATED OPERATION AND MAINTENANCE AGREEMENT**

**for the**

**BLUEGRASS FACILITY**

**by and between**

**BLUEGRASS GENERATION COMPANY, LLC**

**and**

**NAES CORPORATION**

**Dated as of October 1, 2012**



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AMENDED AND RESTATED OPERATION AND MAINTENANCE AGREEMENT

for the

Bluegrass Facility

This AMENDED AND RESTATED OPERATION AND MAINTENANCE AGREEMENT (as the same may be modified, amended or supplemented from time to time in accordance with the provisions hereof, this "Agreement"), dated as of October 1, 2012 (the "Effective Date"), by and between Bluegrass Generation Company, LLC, a Delaware limited liability company ("Owner"), and NAES Corporation, a Washington corporation ("NAES") (both Owner and NAES being sometimes referred to collectively herein as the "Parties", or individually as a "Party").

RECITALS

WHEREAS, Owner owns an approximately 531 megawatt electric generating facility (the "Facility," as further defined herein) located in or near LaGrange, Kentucky (capitalized terms used herein have the meanings assigned to them in Article 2);

WHEREAS, under the Operation and Maintenance Agreement between Port River, LLC and NAES, dated as September 15, 2009 (the "Former Agreement"), NAES has performed and continues to perform operation and maintenance to the Facility;

WHEREAS, Port River, LLC assigned the Former Agreement to Owner as of the Effective Date;

WHEREAS, Owner desires to retain the services of NAES for continued operation and maintenance of the Facility;

WHEREAS, the Parties desire to amend the terms and conditions under which NAES will provide continued operation and maintenance services and to consolidate such changes into a single document, in each case on terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the Parties hereby agree as follows:

ARTICLE 1.

AGREEMENT

1.1. Agreement. This Agreement consists of the general terms and conditions set forth in Articles 1 through 13, together with the following appendices, each of which is incorporated herein and made a part hereof:

- Appendix A -- Home Office Personnel Rates
- Appendix B -- Scope of Operational Services
- Appendix C -- Owner Responsibilities
- Appendix D -- Facility Agreement List
- Appendix E -- Incentive Payment

1.2. Relationship of the Parties. NAES has been retained by Owner as an independent contractor to operate and maintain the Facility on behalf of Owner. Owner has delegated to NAES the overall responsibility of maintaining and operating the Facility for the production of electricity for sale by Owner, as more specifically described in Article 3. Owner and NAES agree that the scope of delegation is strictly limited to the matters set forth in the Agreement. Without limiting the generality of the foregoing, Owner retains the ultimate authority and obligation to determine whether and to what extent the Facility operates, and NAES shall never cause the Facility to generate power except as expressly directed to do so by Owner or any dispatching authority specified by Owner. Except as otherwise set forth herein, NAES has no obligation to upgrade or replace Facility systems except as expressly directed by Owner, nor shall it be obligated to spend funds outside the Operating Account or otherwise employ its own credit to support the Facility.

1.3. Order of Priority. In the event of a conflict, variation or inconsistency between the exhibits and appendices hereto and the general terms and conditions hereof, the general terms and conditions herein shall control and be given priority. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior written or oral negotiations, undertakings and agreements.

1.4 Operator under Environmental Law. Notwithstanding anything to the contrary in this Agreement, NAES and Owner agree (i) in the course of performing Services under this Agreement, neither NAES nor any of its officers, directors, employees, agents, representatives or Affiliates (collectively, the "NAES Parties") is, has been or will be asserted by Owner to be, nor will any such Person have responsibility as, in each case before an environmental protection government agency, an "operator" of the Facility for purposes of, and as that term is used in, Environmental Law; and (ii) Owner shall not assert before any environmental protection governmental agencies that a NAES Party is the operator of the Facility for purposes of Environmental Law; provided, however, that this Section 1.4 shall not in any way limit or reduce NAES's obligations or Owner's remedies under this Agreement. Owner agrees to use its commercially reasonable efforts to take or cause to be taken all reasonable actions, to do or cause to be done and to assist and cooperate with NAES in doing all reasonable things to establish before such environmental governmental protection agencies that no NAES Party is the "operator" of the Facility if required for purposes of Environmental Law.

## ARTICLE 2.

### DEFINITIONS

Unless otherwise required by the context in which any defined term appears, the following defined terms used throughout this agreement shall have the meanings specified in this Article 2. The singular shall include the plural and the masculine shall include the feminine and neuter, as the context requires. "Includes" or "including" shall mean "including, but not limited to".

"Administrative Procedures" shall mean the administrative procedures described in Section 5.3 and more fully described and set forth in Appendix B.

"Affiliate" shall mean, with respect to any Person, any entity at least 10% owned by, owning, controlled by, controlling or under common control or ownership of such Person or any partner of such Person.

"Agreement" shall mean this Operation and Maintenance Agreement, as the same may be modified, amended or supplemented from time to time in accordance with the provisions hereof.

"Annual Budget" shall mean the annual budget described in Section 5.5 and more fully described and set forth in Appendix B.

"Annual Operating Plan" shall mean the annual operating plan described in Section 5.5 and more fully described and set forth in Appendix B.

"Annual Report" shall have the meaning set forth in Section 5.9.2.

"Bankruptcy" shall mean a situation in which (i) a party shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer or consent seeking any reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency, or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of such party or of all or any substantial part of its properties (the term "acquiesce" as used in this definition, includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree within thirty (30) days after entry of such order, judgment or decree), (ii) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against any party seeking a reorganization, arrangement, moratorium, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, and such party shall acquiesce and such decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or a trustee, receiver, conservator or liquidator of such party shall be appointed with the consent or acquiescence of such party and such



appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days whether or not consecutive, (iii) a party shall admit in writing its inability to pay its debts as they mature, (iv) a party shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of business operations, or (v) a party shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors (other than in the ordinary course of such party's business).

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which commercial banks are authorized to be closed in the State of New York or New York City.

"Commercial Operation Date" shall mean the date on which the Facility began commercial operation.

"Construction Contract" shall mean any contract for the engineering, design, procurement, and construction of the Facility and related infrastructure, including gas interconnection facilities, electrical interconnection facilities, and water intake/discharge facilities.

"Construction Contractor" shall mean any contractor responsible for the engineering, design, procurement, and construction of the Facility and related infrastructure, including gas interconnection facilities, electrical interconnection facilities, and water intake/discharge facilities.

"Effective Date" shall have the meaning assigned in the preamble.

"Electrical Interconnection Agreement" shall have the meaning set forth in Appendix D.

"Electrical Interconnection Facilities" shall mean the switching yard and other facilities and equipment that are required to connect the Facility to the electrical supply system operated by the entities specified in the Electrical Interconnection Agreement, and which will be maintained by the entities specified in the Electrical Interconnection Agreement.

"Emergency" shall have the meaning set forth in Section 3.15.

"Energy Management Agreement" shall have the meaning set forth in Appendix D.

"Energy Manager" shall mean any party providing for the purchase and delivery of fuel for the Facility and for the sale of electrical energy and ancillary services from the Facility pursuant to the Energy Management Agreement.

"Environmental Laws" means any applicable Law relating to protection of human health or the environment or emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment, including ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling

of pollutants, contaminants, chemicals, or industrial, toxic or hazardous materials or wastes, as now or may at any time hereafter be in effect.

"Environmental Standards" means (a) all applicable Environmental Laws and (b) any other standards or guidelines required by any of the Lenders or by Owner's insurer relating to protection of human health or the environment or emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment including ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous materials or wastes.

"Escalation Index" shall mean the Gross Domestic Product Implicit Price Deflator published in the National Income and Product Account by the U.S. Department of Commerce, or if such Escalation Index is discontinued, the replacement index for the Escalation Index as published by the United States Government.

"Facility" shall mean the approximately 531 megawatt electric generating facility located in or near LaGrange, Kentucky, together with all equipment and facilities associated therewith, including the fuel gas interconnection facilities and the water supply and wastewater discharge facilities, also known as the Bluegrass Facility.

"Facility Agreements" shall mean this Agreement, each agreement listed on Appendix D and any other agreement reasonably designated by Owner as a Facility Agreement. The term "Facility Agreement" also includes all exhibits, schedules and attachments to such agreements. In the event a Facility Agreement is amended, modified or supplemented or entered into after the Effective Date, the term "Facility Agreement" (and the reference to any individual such agreement) shall refer to the applicable agreement as so amended, modified or supplemented, or to the new Facility Agreement, as the case may be.

"Financing Agreements" shall mean any and all loan agreements, notes, bonds, indentures, security agreements, reimbursement agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, participation agreements and other documents entered into at any time by Owner or its Affiliates or assignees to provide financing and credit support to finance or refinance the Facility, including any and all modifications, supplements, extensions, renewals and replacements thereof.

"Force Majeure" shall mean any act or event which is (i) the cause of a delay in or prevention of performance or the meeting of an obligation of NAES or Owner hereunder, (ii) beyond the reasonable control of the party relying upon the act or event for excuse from performance, and (iii) not reasonably foreseeable and preventable through the exercise of reasonable care and Prudent Industry Practice by the party relying upon such act or event for excuse from performance. Such acts or events shall specifically include, but shall not be limited to the following, provided however, that in each case clauses (i), (ii), and (iii) above are satisfied: acts of God; unusually severe actions of the elements; failure of facilities or equipment due to

drought, flood, earthquake, unusually severe storm, fire, lightning, epidemic, war, riot, civil disturbance, or sabotage (except any such sabotage involving NAES's personnel); strike or labor difficulty (except any such strikes or labor difficulties involving NAES's site or off-site personnel); and inability to obtain and maintain rights-of-way, permits, licenses and other required authorizations from any local, state or federal agency or Person for any of the facilities or equipment necessary to provide Services hereunder. Force Majeure shall not mean any act or event to the extent resulting from the fault or negligence of any party claiming Force Majeure.

"Former Agreement" shall have the meaning assigned in the Recitals.

"Gas Interconnection Agreements" shall have the meaning set forth in Appendix D.

"Governmental Authority" shall mean any federal, state or local governmental agency, authority, instrumentality or regulatory or legislative body.

"Hazardous Materials" shall mean any "hazardous substance" or "petroleum" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801, et seq.), "hazardous wastes" as defined in the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601, et seq.), "toxic substances" as defined in the Toxic Substance Control Act as amended (15 U.S.C. §§ 2601 et seq.), "contaminants" as defined in the Environmental Protection Act, R.S.O. 1990., C.E. 19, "toxic substances" as defined in the Environmental Protection Act, S.C. 1991 c. 15.3, as amended and in the regulations adopted, published, and promulgated pursuant thereto, or in any other Laws.

"Home Office Personnel" means those employees of NAES directly providing Services to the Facility who are not assigned to the Facility site.

"Incentive Payment" shall mean the annual payment that NAES may earn, if certain goals are attained, as a bonus, as more fully described in Section 7.6.

"Indemnified Party" shall have the meaning set forth in Section 10.2.

"Law" shall mean any applicable constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, permit, specified standards or objective criteria contained in any applicable permit or approval of any governmental authority having jurisdiction, all as in effect from time to time, including without limitation Environmental Laws pertaining to air and water emissions relating to the Facility and the operation thereof, which standards or criteria must be met in order for the Facility to be operated lawfully, or other legislative or administrative action of the United States of America or the State of Kentucky or any agency, department, authority, political subdivision or other instrumentality of either thereof, or a final decree, judgment or order of a court, or any rule or standard of SERC Reliability Corporation or the independent system operator.

“Lender” shall mean any entity or entities providing construction or permanent financing or refinancing for the Facility (which may include, but shall not be limited to, debt, equity, lease and/or bond financing), or providing credit support or credit enhancement for such financing, and their successors and permitted assigns.

“Maximum Incentive Payment” shall mean an amount equal to [REDACTED] as adjusted pursuant to Section 7.8.

“NAES” shall have the meaning assigned to such term in the introductory paragraph of this Agreement, or its permitted successors or assigns in accordance with Section 13.1.2.

“NAES Indemnified Party” shall have the meaning set forth in Section 10.1.

“NAES Parties” shall have the meaning set forth in Section 1.4.

“NAES Payment” shall mean the Operating Fee and the Incentive Payment, if positive.

“NERC Standards” shall mean the “Reliability Standards for the Bulk Electric Systems of North America” published by the North American Electric Reliability Corporation, as currently in effect or as may be amended from time to time.

“Operating Account” shall mean the bank account established by Owner pursuant to Section 7.3.1.

“Operating Costs” shall have the meaning set forth in Section 7.3.

“Operating Fee” shall mean an amount equal to [REDACTED], as adjusted pursuant to Section 7.8.

“Operating Year” shall mean the twelve (12) month calendar year, provided however, the first Operating Year shall begin on the Effective Date and end on December 31 of that year and the last Operating Year shall begin on January 1 of the applicable calendar year and end on the date of expiration or termination of this Agreement.

“Operational Services” shall mean the services, duties, and responsibilities set forth in Appendix B.

“Operations and Maintenance Procedures” shall mean the operations and maintenance procedures described in Section 5.2 and more fully described and set forth in Appendix B.

“Operations Phase” shall mean the period beginning upon the Effective Date through the termination or expiration of this Agreement.

“Owner” shall have the meaning set forth in the first paragraph, or its permitted successors or assigns in accordance with Section 13.1.1.

"Owner Indemnified Party" shall have the meaning set forth in Section 10.1.

"Party" shall have the meaning set forth in the first paragraph.

"Person" shall mean any individual, partnership, corporation, association, business, trust, governmental body or political subdivision thereof, governmental agency or other entity.

"Personal Property" shall mean all personal property of Owner located at the Facility that is tangible and movable, specifically including, without limitation, gas turbines, steam turbines, transformers and generators.

"Personnel" shall have the meaning set forth in Section 3.6.

"Plant Manager" shall have the meaning set forth in Section 3.7.

"Preventive Maintenance Program" mean the preventative maintenance program described and set forth in Appendix B.

"Prudent Industry Practice" shall mean the practices, standards, methods and acts (including but not limited to the practices, methods, and acts generally engaged in and connected with similar power generating facilities in the electric utility industry in the United States) that, at a particular time, in the exercise of reasonable judgment at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Facility, Prudent Industry Practice(s) include, but are not limited to, taking reasonable steps to ensure that:

- (1) equipment is received, materials are obtained and all necessary work is performed in accordance with the design documents in a safe manner to operate the Facility, including start-up and testing;
- (2) equipment, materials, resources, and supplies, including fuel, are available to meet the Facility's needs;
- (3) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly, efficiently, and in coordination with the purchasers of power from the Facility and are capable of responding to reasonably foreseeable emergency conditions whether caused by events on or off the site of the Facility;
- (4) preventive, routine and non-routine maintenance and repairs are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- (5) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; and

(6) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, the control area host's system, or contrary to Environmental Laws or regulations, or without regard to defined limitations such as steam pressure, temperature and moisture content, chemical content of make-up water, flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits.

"Reference Rate" shall mean the rate published in the Wall Street Journal from time to time as the "prime rate" plus one percent (1%).

"Reimbursable Costs" shall have the meaning set forth in Section 7.2.

"Services" shall have the meaning set forth in Section 3.1.

"Staffing Plan" shall have the meaning set forth in Section 5.1.

"Unit" shall mean any one of the electric generating trains that make up the Facility from which net electric energy is generated.

"Vendor Manuals" shall mean the operations and maintenance instructions and technical specifications provided by the vendors of the Facility equipment, as such manuals may be updated from time to time by NAES in consultation with Owner.

### ARTICLE 3.

#### NAES RESPONSIBILITIES

3.1. Scope of Services. NAES will operate and maintain the Facility and perform certain other duties, as hereinafter set forth (the "Services"). NAES shall perform the Services in a clean, safe, efficient and environmentally acceptable manner consistent with Prudent Industry Practice, and in accordance with all other terms of this Agreement.

3.2. Former Agreement. The Parties acknowledge that, under the Former Agreement, NAES provided to Owner services similar to the Services. The execution of this Agreement shall cause the simultaneous termination of the Former Agreement, other than the rights and obligations that survive termination of the Former Agreement. The Parties shall work cooperatively to ensure a seamless transition from the Former Agreement to this Agreement. NAES shall be compensated for services performed under the Former Agreement up to the Effective Date, without duplication of compensation due under this Agreement. The rights and obligations of NAES and Owner arising before the Effective Date shall be governed by the Former Agreement.

3.3. Not Used.

3.4. Operational Services. Commencing on the Effective Date, NAES shall perform the Operational Services. NAES shall be in complete charge of, and have care, custody and control over, the Facility. NAES shall perform or cause to be performed, on behalf of Owner, all operation and maintenance of the Facility whatsoever (except as expressly reserved to Owner under this Agreement), and shall supply or cause to be supplied all services, goods and materials required to operate and maintain the Facility in accordance with the provisions of this Agreement and the standards set forth in Section 3.5 hereof (subject to the limitations on NAES's authority set forth in Article 6 hereof and except as expressly reserved to Owner under this Agreement).

3.5. Standards For Performance of the Services. NAES shall perform the Services in a prudent, efficient and careful manner and in accordance with (i) the Vendor Manuals, the Operations and Maintenance Procedures, the Administrative Procedures, and the applicable Construction Contractor and vendor warranties, (ii) the applicable Annual Budget and Annual Operating Plan, (iii) all applicable Laws (including without limitation the Facility's certification as an "exempt wholesale generator" under the Public Utility Regulatory Policies Act of 1978), (iv) Prudent Industry Practice, (v) the applicable Facility Agreements (including dispatch instructions provided by the Energy Manager), (vi) the Financing Agreements, (vii) requirements under the Facility's insurance policies, (viii) procedures that shall not adversely affect the long term reliability of the Facility in favor of short term performance, and (ix) this Agreement. Should the rules, standards or guidelines derived from the foregoing sources be inconsistent in any regard, NAES shall revert to Owner for direction, but in the interim shall follow the most stringent of such inconsistent standards. NAES shall obtain all licenses and permits required to allow NAES to do business and perform the Services in the jurisdictions where the Services are to be performed. Subject to the foregoing, NAES shall not permit or suffer any liens or encumbrances on the Facility arising from the Services hereunder. NAES shall use commercially reasonable efforts to maximize net profit, energy production, and Facility efficiency; to optimize the useful life of the Facility; to utilize NAES's personnel in the performance of the Services; and to minimize Facility downtime, Operating Costs, and Reimbursable Costs.

3.6. Personnel Standards. Subject to the limitations of the Staffing Plan described in Section 5.1, NAES shall provide and make available as necessary all such labor and professional, supervisory, and managerial personnel as are required to perform the Services (the "Personnel"). Such Personnel shall be qualified (including the possession of appropriate licenses) and experienced in the operation and/or maintenance of power generation facilities and duties to which they are assigned and shall meet the requirements for Facility personnel under the applicable Facility Agreements and in accordance with Prudent Industry Practice. All individuals utilized by NAES in the performance of the Services shall either be the employees of NAES or its Affiliates or, subject to Owner's prior sole written approval, workers or independent contractors under NAES's direction. Working hours and all other matters relating to such personnel shall be determined solely by NAES (subject to Owner's reasonable approval with respect to the Annual Budget and Annual Operating Plan). With respect to hiring and employment of Personnel and its employment policy, NAES shall be solely responsible for paying all wages, overtime, bonuses, severance pay and other amounts due to Personnel and

shall comply with all applicable federal and state labor and employment Laws and shall exercise control over labor relations in a reasonable manner consistent with the intent and purpose of this Agreement. NAES shall retain sole authority, control, and responsibility with respect to labor matters in connection with the Personnel and the performance of the Services. NAES acknowledges and agrees that it does not have the authority to enter into any contracts or collective bargaining agreements with respect to labor matters that purport to bind or otherwise obligate Owner.

3.7. Plant Management. NAES shall provide Owner with the name of the individual responsible for the daily management of the operation and maintenance of the Facility (the "Plant Manager"). Owner shall have the right to approve the appointment of any replacement Plant Manager or other management. NAES shall promptly comply with any request by Owner to replace the Plant Manager or other management for any reason not prohibited by Law, including inability of Plant Manager or other management to effectively work with Owner, in Owner's sole judgment. NAES shall provide Owner not less than sixty (60) days advance written notice of any proposed replacement Plant Manager or other management, which notice shall include a resume of the educational and work experience of the proposed replacement Plant Manager or other management (it being acknowledged and agreed that the replacement of any Plant Manager or other management or support staff shall be subject to the prior approval of Owner and shall be subject to the foregoing notice requirements). Owner shall inform NAES of any objection to the proposed replacement Plant Manager or other management within thirty (30) days after receipt of such notice. NAES shall ensure that the transition of Plant Manager or other management occurs seamlessly and without interruption of the operation and maintenance of the Facility.

3.8. Billing and Payment of Invoices. NAES shall read meters, collect data, create databases for tracking operational parameters, and assist Owner in the preparation of invoices and review of invoices, and shall verify payments of amounts due.

3.9. Compliance with Facility Agreements. NAES shall abide by all terms in the existing and to be entered into Facility Agreements and Financing Agreements applicable to the operation and maintenance of the Facility while performing any Services under this Agreement. This Section 3.9 shall not be deemed to make NAES a party to such Facility Agreements or Financing Agreements. NAES and Owner acknowledge that this Agreement is intended, in part, to fulfill Owner's operating and maintenance requirements under the Facility Agreements and Financing Agreements, and, consistent with such Facility Agreements and Financing Agreements, to optimize operation of the Facility consistent with Owner's objective to maximize its net profit reasonably attainable under such Facility Agreements and Financing Agreements. NAES acknowledges that it has received copies of the Facility Agreements and Financing Agreements referred to in Appendix D hereto. NAES further acknowledges that it has familiarized itself with the terms and conditions of such Facility Agreements and Financing Agreements so as to enable NAES to perform its obligations under this Agreement in accordance with the applicable terms and conditions of such Facility Agreements and Financing



Agreements. Owner shall provide NAES with copies of any new Facility Agreement or Financing Agreements and any amendments thereto.

3.10. Licenses and Permits. NAES shall review all applicable Laws containing or establishing compliance requirements in connection with the operation and maintenance of the Facility and shall (i) assist Owner, at Owner's request, in securing and complying with, as appropriate, all necessary permits, licenses, and approvals (and renewals of the same), including without limitation those relating to air emissions, NERC Standards, boiler operation, water usage, septic system operation, wastewater discharge, chemical and other waste (including Hazardous Material) storage and disposal, emissions testing, and safety, and (ii) initiate and maintain precautions and procedures necessary to comply with applicable Laws, including without limitation those related to prevention of injury to persons or damage to property at the Facility.

3.11. Operating Records and Reports. NAES shall maintain operating logs, records, and reports documenting the operation and maintenance of the Facility in form acceptable to Owner as set forth in Article 5 and as may be required by any Facility Agreement or permit. NAES shall maintain current revisions of the drawings, specifications, lists, and other materials provided to NAES by Owner and/or Construction Contractor. NAES shall be responsible for determining from the existing permits and Law (as may be amended or modified from time to time) all reporting requirements of such permits and Law so as to ensure compliance with all such requirements. NAES shall prepare and submit all reports on time to the respective agency or authority and if required to be submitted by Owner, NAES shall provide to Owner within a reasonable time to allow Owner to process such reports and meet the required filing dates or other requirements.

3.12. Plans and Procedures. NAES shall produce and provide plans, procedures, manuals, and programs described in Article 5, at the times and in the manner set forth in such Article.

3.13. No Liens or Encumbrances. NAES shall keep and maintain the Facility free and clear of all liens and encumbrances resulting from acts or omissions of NAES's performance under this Agreement including, without limitation, all liens and encumbrances placed by subcontractors to NAES. NAES shall immediately remove any and all such liens or encumbrances and Owner shall assume no liability thereof.

3.14. No Action. NAES shall not take any action that would (i) relieve any Construction Contractor from any obligation or liability under any Construction Contract, (ii) give rise to any claim by Construction Contractor against Owner or NAES, or (iii) otherwise cause a default under any Facility Agreement or a violation of any applicable Law.

3.15. Emergency Action. In the event of an incident affecting the safety or protection of Persons or endangering the Facility or property located at the Facility ("Emergency"), NAES shall take prompt action to attempt to prevent such threatened damage, injury or loss or minimize the adverse consequences thereof and shall promptly notify Owner.

3.16. Confidentiality Procedures. NAES shall institute and maintain procedures and practices reasonably satisfactory to Owner to maintain the confidentiality of confidential information provided to NAES in accordance with Article 12. Such procedures and practices shall include the creation of a “firewall” between NAES and its Affiliates whereby such Affiliates have access to such information only to the extent necessary to perform the Services hereunder.

#### ARTICLE 4.

##### OWNER OBLIGATIONS, RIGHTS AND REPRESENTATIVES

4.1. General. Owner shall furnish to NAES, at Owner’s expense, the information, services, materials, and other items described in this Article 4 and in Appendix C. All such items shall be made available at such times and in such manner as may be reasonably required for the expeditious and orderly performance of the Services by NAES.

4.2. Facility. Owner shall continue to provide to NAES access to the Facility.

4.3. Payment. Owner shall fund certain accounts and make payments to NAES in accordance with Article 7 hereof.

4.4. Not used.

4.5. Direct Purchases by Owner. Notwithstanding any other provision in this Agreement to the contrary, Owner shall at any time and from time to time have the right to directly purchase services, spare parts, materials, equipment, supplies, and consumables for the Facility.

4.6. Energy Manager. NAES acknowledges that Owner may engage the Energy Manager to provide energy management services for the Facility, including provision of dispatch directions; arrangements for the sale of electrical capacity, energy, and ancillary services; and arrangements for the delivery of fuel gas, including management of transportation nominations and transportation imbalances. NAES shall cooperate with Energy Manager and provide information to Energy Manager, subject to approval of Owner, required to fulfill Energy Manager’s responsibilities with respect to the Facility.

#### ARTICLE 5.

##### PROCEDURES, PLANS AND REPORTING

5.1. Staffing Plan. The existing staffing plan (the “Staffing Plan”) for the Facility shall remain in effect throughout the term of this Agreement, subject to updating, revision, and amendment as may be agreed in writing by both Parties. Owner and NAES will endeavor in good faith to agree on changes to the Staffing Plan as are suggested by the other Party.

5.2. Operations and Maintenance Procedures. NAES shall utilize the operations and maintenance procedures existing under the Former Agreement (the "Operations and Maintenance Procedures"). Such Operations and Maintenance Procedures shall remain in effect for the term of this Agreement, subject to such updating, revision and amendment as may be agreed in writing by both Parties.

5.3. Administrative Procedures. NAES shall utilize the administrative procedures existing under the Former Agreement (the "Administrative Procedures"). Such Administrative Procedures shall remain in effect for the term of this Agreement, subject to such updating, revision and amendment as may be proposed by either Party and consented to in writing by the other Party.

5.4. Facility Books and Records. NAES shall maintain complete purchasing, inventory, accounts payable and vendor files.

5.5. Budget for Operational Services. For the first Operating Year, NAES shall implement the budget approved under the Former Agreement. Not later than ninety (90) days before the first day of each Operating Year commencing thereafter, NAES shall prepare and submit to Owner a proposed annual budget for such year, established on a monthly basis. Such budget shall include an itemized estimate of all Operating Costs and Reimbursable Costs, and shall be in form and detail acceptable to Owner. Such proposed annual budget shall be accompanied (and included, for purposes of the revisions and approval process set forth below) by a proposed annual operating plan setting forth the underlying assumptions and implementation plans in connection with the proposed annual budget, including anticipated operations, maintenance, repairs and capital improvements, scheduled outages, procurement, staffing (including wages, salaries, holidays, estimated overtime, and vacation hours), personnel and labor activities, training plans, program enhancements, administrative activities, and expected environmental performance. Owner shall promptly review NAES's proposed annual budget and proposed annual operating plan and may, by written request, seek changes, additions, deletions, and modifications thereto. If NAES does not concur with any or all of Owner's proposed changes, Owner and NAES will discuss the open issues and shall use good faith efforts to resolve such issues. After such consultations, NAES shall submit a revised proposed annual budget and a revised proposed annual operating plan to Owner incorporating any agreed-upon revisions. Owner shall thereafter either (i) approve the revised proposed annual budget and proposed annual operating plan or (ii) return such revised proposed annual budget and revised proposed annual operating plan together with proposed changes, additions, deletions, or modifications thereto for NAES's approval, which approval shall not be unreasonably withheld. The final documents resulting from this process shall be the "Annual Budget" and the "Annual Operating Plan". Such Annual Budget and Annual Operating Plan shall remain in effect throughout the applicable Operating Year, subject to updating, revision, and amendment as may be proposed by either Party and consented to in writing by the other Party, which consent shall not be unreasonably withheld. If a cost overrun is reasonably anticipated, such cost overrun shall be handled as set forth in the last sentence of Section 7.3.1.

D.

Any actions proposed under the Annual Operating Plan shall be consistent with the Vendor Manuals, the Operations and Maintenance Procedures, Prudent Industry Practice, and NAES's other obligations set forth in this Agreement.

5.6. Deviations from Annual Operating Plan and Annual Budget. NAES shall notify Owner as soon as reasonably possible of any actual or anticipated significant deviations or discrepancies from the projections contained in the Annual Operating Plan or the Annual Budget.

5.7. Failure to Adopt. If by the first Business Day of any Operating Year the Parties are unable to reach agreement concerning any portion of the Annual Budget or Annual Operating Plan for such Operating Year, the Annual Budget or Annual Operating Plan, as applicable, for such Operating Year shall be based on the corresponding items of the Annual Budget or Annual Operating Plan for the preceding Operating Year, if any, and the cost of any such items shall be adjusted to reflect escalation by appropriate application of the Escalation Index until the Parties can reach agreement.

5.8. Operating Data and Records. NAES shall monitor and record all operating data as would be expected using Prudent Industry Practice and as required by the applicable Facility Agreements, Facility permits or otherwise required by Owner. NAES shall make such operating data available to Owner upon Owner's request at any time, on the Business Day immediately following such request. Such operating data shall include, without limitation, operating logs, records, reports, meter and gauge readings, maintenance records, fuel usage and electrical output information, and cost information.

5.9. Reports. NAES shall cooperate with Owner in complying with the reporting requirements set forth in the Financing Agreements and in the applicable Facility Agreements and shall, from and after the Effective Date, furnish or cause to be furnished to Owner the following reports (and any other reports reasonably requested by Owner) concerning the Facility operations and the Services:

5.9.1 Monthly Reports. Within seven (7) Business Days after the end of each calendar month, NAES shall submit: (i) a progress report, in detail acceptable to Owner, covering all operations and maintenance conducted during such calendar month including without limitation information regarding power generation, availability, heat rates and fuel consumption (each on a monthly and year-to-date basis), procurement, capital improvements, major maintenance, labor relations, training activities, safety issues, significant interactions with governmental authorities, significant environmental and permit issues including any notices of violation, significant operating problems along with remedial actions planned, a brief summary of major activities planned for the next two reporting periods, and other significant matters, which report shall include (with respect to quantitative items) a comparison of actual values to corresponding values in the Annual Operating Plan, and (ii) a statement setting forth all Operating Costs and Reimbursable Costs paid or incurred, which statement shall itemize in detail acceptable to Owner the computation of such Operating Costs and Reimbursable Costs and shall state whether or not the Facility operations have conformed to the applicable Annual Budget and

Annual Operating Plan during such reporting period and if not, the extent and reasons for such deviation and any remedial action, if remediable.

5.9.2 Annual Reports. As soon as available, and in any event within twenty-one (21) days after the end of each Operating Year, NAES shall submit to Owner an annual report ("Annual Report") certified by the Plant Manager describing, in detail substantially similar to that contained in the monthly reports referred to in Section 5.9.1 above, all of the Facility operations for such Operating Year and presenting a comparison of such Facility operations with the plan set forth in the Annual Operating Plan and the budget set forth in the Annual Budget for such Operating Year and with those obtained for the preceding Operating Year, if any. Such report shall also include computation of the Incentive Payment, if any. Upon request of Owner, NAES shall also submit a summary of such Annual Report to Lender, including therein such information specified by Owner. Within thirty (30) days after the submission of each Annual Report, if requested by Owner, the Plant Manager shall meet with Owner to review and discuss the report and to report upon any other aspects of the Facility operations that Owner may request.

5.10. Production Statistics. Following the Effective Date, at the end of each week NAES shall prepare and submit to Owner a report summarizing the production statistics for each Unit on an hourly basis during the preceding week. Such production statistics for the Facility shall include power generation, fuel consumption, heat rate, energy revenue, fuel expense, ambient temperature, emissions, availability, and any other information reasonably requested by Owner.

5.11. Litigation; Permit Lapses; Community Relations. Upon obtaining knowledge thereof, NAES shall submit prompt written notice to Owner of: (i) any litigation, or material claim, dispute or action, threatened or filed, concerning the Facility or the Services, including, without limitation, any liens filed against the Facility, (ii) any refusal or threatened refusal to grant, renew or extend, or any pending or threatened action that might affect the granting, renewal or extension of, any license, permit, approval, authorization or consent concerning the Facility or the Services, (iii) any dispute with any governmental authority concerning the Facility or the Services, and (iv) any dispute with members of the local community.

5.12. Other Information. NAES shall promptly submit to Owner any material information concerning new or significant aspects of the Facility operations and, upon Owner's request, shall promptly submit any other information concerning the Facility or the Services. Such information may include any information and certifications required by Lender with respect to the Services.

5.13. Records Retention. NAES shall retain and preserve all records, reports, documents and data, including all data retrievable from an electronic data storage source, created in connection with the operation and maintenance of the Facility, for a period of five (5) years (unless otherwise directed by Owner) from the date of the creation of such record, report, document or datum, provided that NAES shall notify Owner in writing at least thirty (30) days prior to the destruction or other disposition of any record, report, document or data. If Owner gives written notice to NAES prior to the expiration of the 30-day period, NAES will maintain

custody of such material until such time as Owner notifies NAES to dispose of such material, provided that Owner shall make storage space available at the Facility for storage of all such materials. If Owner does not provide written notice to NAES prior to the expiration of the 30-day period, NAES may destroy or dispose of such material and shall provide Owner with a certificate confirming such destruction or disposition.

## ARTICLE 6.

### LIMITATIONS ON AUTHORITY

6.1. General Limitations. Notwithstanding any provision in this Agreement to the contrary, unless previously expressly approved in the Annual Budget or Annual Operating Plan or otherwise approved in writing by Owner, NAES or any agent, representative or contractor of NAES shall not:

6.1.1 Disposition of Assets. Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of Owner, including any property or assets acquired by NAES hereunder the cost of which is an Operating Cost or Reimbursable Cost; *provided* that, subject to the Financing Agreements, the foregoing shall not apply to the disposal by NAES of worn-out Facility parts that have been replaced by NAES in accordance with the terms of this Agreement (including, without limitation, the Annual Operating Plan and the Annual Budget), it being acknowledged and agreed that the proceeds of any such sale or disposition shall be for the account or benefit of Owner;

6.1.2 Contract. Make, enter into, execute, amend, modify, supplement or give or accept any waivers under, any contract or agreement (including any labor or collective bargaining agreement) on behalf of or in the name of Owner or hold itself out as having the authority to do so or enter into or initiate any dispute resolution under any Facility Agreement;

6.1.3 Expenditures. Make or commit to make any expenditure or acquire on an Operating Cost basis or a Reimbursable Cost basis any equipment, materials, services, assets or other items, except in conformity with the Annual Budget, or consent or agree to do any of the foregoing; *provided*, however, that Owner and NAES shall within a reasonable period of time after the date hereof (and, to any extent, prior to the Effective Date) agree on a matrix of the types and amounts of unbudgeted expenditures that NAES will be permitted to make without Owner's prior approval; *provided*, further, that in the event of an emergency affecting the safety or protection of Persons or endangering the Facility or property located at the Facility, NAES, without approval from Owner, shall be authorized to take all reasonable actions to prevent such threatened damage, injury or loss or minimize the adverse consequences thereof;

6.1.4 Other Actions. Take or agree to take any other action that materially conflicts with the applicable Annual Operating Plan or Annual Budget or with any Facility Agreement;

6.1.5 Lawsuits and Settlements. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, Owner or NAES, the cost of which, in the case of NAES, would be payable or reimbursable by Owner hereunder, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same; *provided*, however, that Owner shall not unreasonably withhold its approval of any settlement, compromise, arbitration or litigation of any claim, suit, demand, debt or judgment involving a liability or potential liability against NAES; or

6.1.6 Transactions on Behalf of Others, etc. Engage in any other transaction on behalf of Owner or any other Person that violates this Agreement or any Facility Agreement or Financing Agreement.

6.2. Execution of Documents. Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of Owner) to be executed by NAES shall be executed by the Plant Manager or, subject to prior written notice to Owner, such other individual representative of NAES who is authorized and empowered by NAES to execute such documents.

## ARTICLE 7.

### COMPENSATION AND PAYMENT

7.1. General. As compensation to NAES for the performance of the Services hereunder, Owner shall pay NAES, in the manner and at the times specified in this Article 7, all Reimbursable Costs, the Operating Fee, and, to the extent earned by NAES, the Incentive Payment, all as further described herein.

7.2. Reimbursable Costs. Subject to the limitations on expenditures set forth elsewhere in this Agreement, Owner shall reimburse NAES for the following costs incurred by NAES in performing the Services (the "Reimbursable Costs"): (i) the actual payroll cost for all of NAES's on-site personnel involved directly in the performance of the Services, plus the actual cost of associated payroll taxes, unemployment and disability insurance, worker's compensation, vacation, holidays, fringe benefits, required severance payments, incentive bonuses, and other statutory compensation, provided, however, that wages, benefits, and incentive bonuses shall be consistent with the Annual Budget, (ii) upon NAES's request and subject to Owner's approval, the actual cost incurred by NAES for workers and independent contractors under NAES's direction, provided such costs were previously approved in writing by Owner or are included in the Annual Budget, (iii) upon Owner's request and subject to Owner's approval, the actual cost of services performed by NAES (other than the Services) at mutually agreed upon prices, terms, and conditions, (iv) Personnel recruitment and relocation, (v) reasonable costs incurred in response to an Emergency; (vi) during the Operations Phase, with prior approval by Owner, reasonable time at the applicable rates set forth in Appendix A, and reasonable travel and materials costs incurred by Home Office Personnel other than for payroll and human resources work, which shall be included in the Operating Fee, (vii) reasonable costs of insurance

maintained in accordance with Section 9.1, and (viii) any other cost designated as a Reimbursable Cost pursuant to the terms of this Agreement. Notwithstanding the foregoing, Owner shall only be responsible for paying or reimbursing to NAES the amount of any Reimbursable Costs to the extent that such costs (A) have not previously been paid by Owner, (B) conform to the applicable Annual Budget and Annual Operating Plan, and (C) are reasonably substantiated by NAES.

Beginning on the Effective Date, on or before the fifth (5<sup>th</sup>) Business Day of each month (or with respect to the initial invoice, as soon as is practicable after the Effective Date), NAES shall invoice Owner for Reimbursable Costs as follows: (a) for those Reimbursable Costs identified in item (i) above, such invoice shall include the costs that are reasonably expected to be incurred in the subsequent month, (plus, with respect to the initial invoice, the costs that are reasonably expected to be incurred in the month containing the Effective Date) and (b) for all other Reimbursable Costs, such invoice shall include the actual costs incurred during the preceding month. Each invoice shall include a true-up adjustment (either positive or negative, as the case may be) to reconcile the actual Reimbursable Costs with the invoiced Reimbursable Costs for the preceding month. Owner shall make payment to NAES of the invoiced amount by the last day of the month in which the invoice is received (or with respect to the initial invoice, within ten (10) Business Days of receipt).

7.3. Operating Costs. Subject to the limitations on expenditures set forth elsewhere in this Agreement, NAES shall be responsible for making payment pursuant to the procedure set forth in Section 7.3.1 for the following costs incurred by NAES as agent for Owner in performing the Services (the "Operating Costs"): (i) the actual delivered cost of equipment, material, supplies, consumables, spare parts, replacement components, tools, office equipment and supplies, office expenses, services, and utilities, (ii) the actual costs for special training of on-site personnel by non-NAES personnel conducted on-site or off-site and associated travel and living expenses, as approved in advance by Owner, (iii) the actual costs of suppliers, goods and services providers, subcontractors, attorneys, certified accountants, consultants, and other third party advisors as approved by Owner, (iv) the actual cost of plant insurance, property taxes, and permit fees, and (v) any other cost NAES is required to incur under this Agreement for the benefit of the Facility or is designated as an Operating Cost pursuant to the terms of this Agreement. Owner shall have no obligation to pay any handling fee or administrative fee or markup with respect to any Reimbursable Costs or Operating Costs.

7.3.1 Payments. Not later than the Effective Date, Owner shall establish a bank account (the "Operating Account") for the funding of Operating Costs. The Operating Account shall be in the name of the Owner. NAES acknowledges that it has no right, title, or interest in or to such Operating Account and hereby waives all rights to claim a security interest in, or take a lien against, such account. Any interest accruing on such Operating Account shall be for the benefit of Owner. NAES shall nominate officers or employees of NAES, to be approved by Owner, who shall have the written authority to sign checks against the Operating Account, subject to maximum amounts established by Owner. NAES shall monitor the Operating Account. In the event that NAES reasonably anticipates that there may be insufficient funds in



the Operating Account to satisfy expenses within the current month, NAES shall immediately notify Owner of such condition. No Operating Costs shall be incurred by NAES unless they were incurred in accordance with the applicable Annual Budget or in accordance with Section 6.1.3. If at any time during the performance of the Services, NAES becomes aware that for any monthly period Operating Costs exceed or could be reasonably anticipated to exceed the amount provided therefor in the Annual Budget, NAES shall promptly notify Owner of such budget overrun and shall not, without the written approval of Owner amending such Annual Budget or authorizing a specific expenditure, perform any further Operational Services that will increase such budget overrun, except as provided in Section 6.1.3.

7.4. Adjustments and Conditions. No payment made pursuant to the foregoing provisions shall be considered as approval or acceptance of Services performed hereunder and Owner shall remain entitled to conduct a subsequent audit and review of NAES's records with respect to all Reimbursable Costs and Operating Costs together with any supporting documentation in accordance with the provisions of Sections 5.8 or 5.9 for a period of three (3) years from and after the close of the payment. If, pursuant to such audit and review, it is determined that any amount previously paid to or by NAES did not constitute a due and payable item of Reimbursable Cost or Operating Cost, Owner may recover such amount from NAES or deduct or cause to be deducted such amount from any payment that thereafter may become due to NAES.

7.5. Fee. Owner shall pay to NAES the Operating Fee, as adjusted pursuant to Section 7.9, for each Operating Year commencing on the Effective Date. Each annual Operating Fee shall be earned in monthly increments of one-twelfth (1/12) of such fee. On the last Business Day of each month in which Services are performed (after the Effective Date), NAES shall submit a monthly invoice to Owner for payment of one-twelfth (1/12) of the Operating Fee (prorated for the initial and final month of service). Owner shall pay NAES within thirty (30) days of receipt of such invoice.

7.6. Incentive Payment. During each Operating Year, NAES is eligible to earn a bonus in an amount not to exceed the Maximum Incentive Payment, as adjusted pursuant to Section 7.9. The Incentive Payment shall be calculated by comparing actual Facility and NAES performance to defined performance goals as described in Appendix E or such performance goals as may be set forth, revised, amended or updated from time to time by written agreement of both Parties. NAES shall submit to Owner an invoice for the bonus, if any, at the time of submittal of the Annual Report. Owner shall pay NAES the undisputed portion of the bonus, if any, within thirty (30) days of receipt of such invoice and Annual Report.

7.7. Confirmation. Owner reserves the right to confirm and/or to dispute any computation referred to in this Section 7.

7.8. Escalation. Each NAES Payment shall be escalated (provided that the calculation of such amount shall be made within a reasonable period of time after the commencement of each Operating Year and applied retroactively to the first day of each Operating Year) in accordance with the following formula:

$$\text{EscPay} = \text{BasePay} \times (\text{A} / \text{B})$$

where:

“EscPay” shall be the applicable NAES payment.

“Base Pay” shall be the applicable unescalated NAES Payment as set forth in Article 7.

“A” shall equal the annual Escalation Index value for the year prior to the Operating Year to which such payment relates.

“B” shall equal the annual Escalation Index value for the year containing the Effective Date.

In the event that A is not available, the Escalation Index for the most recent quarter shall be used to calculate escalation of any NAES Payment. The invoice submitted by NAES in the month after A has been made available shall include a true-up adjustment (positive or negative, as the case may be) to reconcile the difference between NAES Payments calculated and paid using the quarterly Escalation Index and NAES Payments that would have been paid using A.

7.9. Proration of Payments. In the event that any Operating Year is less than a full twelve (12) months in duration, the Operating Fee and the Maximum Incentive Payment for such Operating Year shall be prorated based on the actual number of days in such Operating Year divided by 365 days.

7.10. Interest. Any amount owed to either Party hereunder by the other Party shall accrue interest each day from the date that such amount is due until the date paid at the Reference Rate per annum, computed and compounded daily.

7.11. Disputes. If Owner disputes any amounts included in any invoice submitted to Owner by NAES, Owner shall give written notice to NAES of such dispute (specifically the amount that is the subject of such dispute) within twenty (20) days of receipt of such invoice (such notice, a “Dispute Notice”), and shall pay the undisputed amounts (if any) under such invoice at the time and in the manner otherwise specified herein. If a Dispute Notice is timely given, NAES and Owner shall promptly meet and work in good faith to resolve the dispute as expeditiously as possible after NAES receives a Dispute Notice. In the event that Owner and NAES are unable to agree on a resolution of the disputed amounts within thirty (30) days after NAES receives a Dispute Notice, either party may submit the matter for resolution under the dispute resolution procedures provided in Section 13.19 of this Agreement.

7.12. Operations Period Home Office Personnel Work. To the extent provided in Section 7.2(vi) of this Agreement, activities of Home Office Personnel during the Operations Period are reimbursable at cost.

7.12.1 Included in Operating Fee. In addition to payroll and human resources work, which is included in the Operating Fee per Section 7.2(vi), the Operating Fee also includes Owner's receipt of the benefit of the general knowledge of Home Office Personnel that is relevant to the Facility. Although not capable of exhaustive definition, such Home Office Personnel support included in the Operating Fee consists of the following: (i) development of standard tools and templates; (ii) transmission of know-how/lessons-learned developed in NAES's fleet; (iii) development and coordination of O&M conferences and webinars; (iv) publication and delivery of general O&M guidance materials; and (v) monitoring regulatory developments in human resources, federal environmental law, and safety, and provision of periodic updates regarding these compliance matters to on-site personnel.

7.12.2 Extra Work. For the avoidance of doubt, Home Office Personnel work that is in the nature of consulting, customized research, analysis, adaptation or population of general NAES materials specifically for the Facility is extra work and shall be separately negotiated by the parties. Although not capable of exhaustive definition, examples of such extra work or items that Owner may elect to have performed by Home Office Personnel for additional compensation include: (i) environmental consulting, compliance and reporting services, program development, auditing, permitting, legacy or pre-existing issues support, and monitoring of state environmental law; (ii) safety consulting or audits of safety practices; (iii) engineering or other support for plant emergencies, operational events, capital projects or other Facility improvement initiatives; (iv) drafting of O&M Manuals; (v) input of Facility data into Facility information systems; (vi) labor union consulting, bargaining and grievance procedures; (vii) NERC consulting, functional registration, audits or audit preparation; (viii) recruiting and staffing services; and (ix) asset management functions. NAES may recommend such work or offer to perform such work to Owner. If approved, such additional work shall be performed under Section 7.2(iii) at the applicable rates set forth in Appendix A, unless the Parties agree to another method of compensation.

## ARTICLE 8.

### TERM

8.1. Term. The term of this Agreement shall be from and including the Effective Date to and including [REDACTED]; *provided* that the term shall be automatically extended for successive three-year periods unless and until either Party has delivered written notice that this Agreement will not be extended for an additional term (such notice to be received at least (60) days prior to the end of the current term). Notwithstanding the foregoing, this Agreement is subject to earlier termination pursuant to Sections 8.2, 8.3, 8.4, and 8.6.

8.2. Immediate Termination. This Agreement shall terminate immediately upon the Bankruptcy of either Party, without notice or any other action of the Parties.

8.3. Termination Upon Notice by Owner. Owner shall have the right to terminate this Agreement:

(i) in the event of a work stoppage by NAES's on-site personnel and failure by NAES to provide a complement of workers within ten (10) days as necessary to operate the Facility and perform the Services in all material respects as required by this Agreement; or

(ii) upon thirty (30) days prior written notice to NAES in the event: (a) that NAES violates any Law applicable to NAES, the Services or the Facility, which violation has or could reasonably be expected to have a material adverse effect on the maintenance or operations (including financial performance) of the Facility or result in a material liability of Owner or its affiliates, and NAES does not cure such violation within thirty (30) days from the date of receipt of a notice from Owner demanding such cure (or, if curable, within such additional period of time as is reasonably necessary to accomplish such cure, and NAES diligently commences and continues to pursue such cure in such period and Owner is not, in its sole discretion, adversely affected thereby), (b) of a material breach by NAES in the performance of any of its obligations in accordance with the requirements of this Agreement, or a breach by NAES of any representation or warranty furnished hereunder, if NAES does not cure such breach within thirty (30) days from the date of receipt of a notice from Owner demanding such cure (or, if curable, within such period of time as is reasonably necessary to accomplish such cure, and NAES diligently commences and continues to pursue such cure in such period and Owner is not, in its reasonable discretion, adversely affected thereby), (c) that damage to, or destruction of, a substantial portion of the Facility occurs, which damage or destruction cannot reasonably be expected to be repaired or rebuilt within one (1) calendar year, (d) that the equivalent availability factor calculated in accordance with the definitions and equations published by the North American Electric Reliability Council for use in the Generating Availability System when using only those outages and derates resulting from operator error, NAES's failure to follow the Operations and Maintenance Procedures, the Preventive Maintenance Program, the Vendor Manuals or Prudent Industry Practice, or NAES's willful misconduct or negligence, is less than 97% for any twelve (12) consecutive month period, or (e) the Budget Variance, as defined in Section E.3.1 of Appendix E, is greater than positive ten percent (+10%) for two (2) consecutive Operating Years. The termination payment shall be equal to any unpaid Reimbursable Costs plus any unpaid Operating Fee applicable to the months prior to the month in which the termination notice was provided plus, in the case of a termination pursuant to clause (c) above (and provided that the damage or destruction contemplated in clause (c) is not the result of NAES's willful misconduct or negligence), any earned (and prorated) Incentive Payment to date and such termination payment may be reduced by any amounts then payable by NAES to Owner hereunder.

8.4. Termination by Owner for Convenience. Owner shall have the right to terminate this Agreement upon three (3) months prior written notice to NAES for any reason at Owner's convenience. In the event of a direct or indirect sale of the Facility, Owner may terminate this Agreement upon thirty (30) days prior written notice. The termination payment shall be equal to any unpaid Reimbursable Costs plus any unpaid but earned Operating Fee and Incentive Payment prorated to the date of termination plus reasonable severance as described herein. Severance (if any) payable pursuant to the preceding sentence shall be determined in accordance

with NAES's internal policies (as such policies have been previously disclosed to Owner prior to the date hereof).

8.5. Successor Contractor. In the event this Agreement is terminated by Owner pursuant to Section 8.2, 8.3 or 8.4 hereof, NAES shall cooperate with Owner and its agents and representatives in the training of a new contractor and the turnover of the Facility to the new contractor. Prior to the effective date of termination, NAES shall provide the new contractor reasonable access to the Facility to facilitate the orderly transition of responsibilities from NAES to the new contractor. Until the effective date of termination, NAES shall continue to operate the Facility in compliance with the terms of this Agreement during which time NAES and the new contractor shall prepare for the transition of responsibilities from NAES to the new contractor; *provided*, however, that NAES shall not be obligated to indemnify Owner under Sections 10.1 and 11.2 hereof for any liability or damages arising out of the acts or omissions of such new contractor. NAES shall be reimbursed for reasonable costs associated with training of the new contractor. Upon request of Owner, NAES shall also be available to assist new contractor for a period not to exceed sixty (60) days beyond the effective date of termination. NAES shall be reimbursed for reasonable costs incurred while providing any services requested by Owner during the post-termination period. Upon the expiration or termination of this Agreement, Owner or its designee shall assume, as applicable, the obligations of NAES under Facility collective bargaining agreements, from and after such expiration or termination of this Agreement.

8.6. Termination by NAES. NAES shall have the right to terminate this Agreement for cause upon thirty (30) days prior written notice to Owner and Lender in the event Owner materially fails to perform in a timely manner any material obligation required to be performed by Owner hereunder and such failure is not cured by or on behalf of Owner within thirty (30) days of the date of a notice from NAES to Owner and Lender demanding such cure (or, if curable, within such period of time as is reasonably necessary to accomplish such cure and Owner diligently commences and continues to pursue such cure in such period and NAES is not, in its sole discretion, adversely affected thereby). Except in the case of a failure to pay NAES amounts due hereunder and not disputed in good faith or failure to fund the Operating Account, NAES shall be required to continue performing the Services during such cure period. In the event of any such termination by NAES, Owner shall pay to NAES, a termination payment equal to any unpaid Reimbursable Costs and earned (and prorated) Incentive Payment and Operating Fee to date. Severance (if any) payable pursuant to the preceding sentence shall be determined in accordance with NAES's internal policies (as such policies have been previously disclosed to and approved by Owner). The termination payment set forth in this Section 8.6 shall be NAES's sole and exclusive remedy whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from the termination of this Agreement in accordance with Section 8.6.

8.7. Facility Condition at End of Term. Upon expiration or termination of this Agreement, if and to the extent requested by Owner, NAES shall remove its personnel from the Facility. NAES shall leave the Facility in as good condition as on the Effective Date (taking into

account any latent or design defects related to the construction of the Facility), except for normal wear and tear, punch list items under the Construction Contracts and damage caused by Force Majeure. All tools, improvements, inventory of supplies, spare parts, safety equipment, Vendor Manuals, Operations and Maintenance Procedures, Administrative Procedures, operating logs, records and reports, and any other items furnished on an Operating Cost or Reimbursable Cost basis under this Agreement will be left at the Facility and will become or remain the property of Owner without additional charge. Owner shall also have the right, in its sole discretion, to directly assume and become liable for any contracts or obligations that NAES may have undertaken with third parties in connection with the Services. NAES shall execute all documents and take all other reasonable steps requested by Owner that may be required to assign to and vest in Owner all rights, benefits, interests and title in connection with such contracts or obligations.

8.8. Audit. Notwithstanding the payment of any amount under this Article 8, Owner shall remain entitled to conduct a subsequent audit and review, and NAES shall reasonably cooperate in the same, of all costs incurred and paid by Owner pursuant to this Article 8, together with any supporting documentation requested by Owner, for a period of two (2) years from and after the date of such payment. If, pursuant to such audit and review, it is determined that any amount previously paid by Owner did not constitute a due and payable item pursuant to this Article 8, Owner may recover such amount from NAES or deduct or cause to be deducted such amount from any payment that may be due to NAES. Audit rights will not include NAES internal records identified by NAES as private financial records.

## ARTICLE 9.

### INSURANCE

9.1. NAES Insurance. NAES shall obtain and maintain on and after the Effective Date, the insurance described below.

(i) Workers' Compensation insurance with statutory limits, including an all states' endorsement and USL&H Act coverage and Jones Act coverage on an "if any" basis, and (b) employer's liability insurance for all employees of NAES with a minimum limit of [REDACTED] bodily injury for each accident; [REDACTED] disease for each employee, and [REDACTED] bodily injury disease aggregate.

(ii) Comprehensive General Liability insurance on an occurrence basis covering bodily injury, death, and property damage in connection with operations at the Facility with limits of [REDACTED] per occurrence and [REDACTED] in aggregate. Such insurance shall have the customary exclusion for Personal Property under the care, custody or control of NAES deleted. Such coverage shall include products-completed, operations, premises, blanket contractual, explosion, collapse and underground coverage, broad form property damage, personal injury and independent contractors.

(iii) Comprehensive Automobile Liability insurance covering claims for bodily injury, death, and property damage arising out of the use or operation by NAES of all owned,

leased, non-owned and hired motor vehicles utilized in the performance of NAES's services hereunder including loading and unloading with a [REDACTED] combined single limit.

(iv) Excess or Umbrella Liability insurance in excess of the liability insurance described in clauses (i)(b), (ii), and (iii) of this Section 9.1 with limits of [REDACTED] per occurrence and aggregate. In the event that coverage is obtained on a claims-made basis, NAES shall maintain such coverage for a minimum period of three years following termination of the Services, and ensure that a corresponding minimum three year extended reporting period is maintained.

9.1.1 Subcontractor Insurance. NAES shall require all subcontractors to procure and maintain, at no cost to Owner, such insurance of the same types and limits as set forth in Section 9.1. NAES shall require subcontractors to furnish certificates of such coverage for inspection by Owner. Where applicable, subcontractor shall include Owner and other entities designated by Owner as additional insureds under subcontractor's policies.

9.2. Owner Insurance. Owner shall obtain and maintain at its expense the insurance described below under individual or blanket policies effective as of the Effective Date.

(i) "All Risks" Property insurance, including physical damage, property damage, boiler and machinery coverage, business interruption and extra expense with a deductible not to exceed [REDACTED] for gas turbines, steam turbines, generators, and transformers, and [REDACTED] for other plant equipment and property. Business interruption shall have a waiting period of not greater than ninety (90) days. This insurance shall not contain an exclusion for NAES error in the performance of its services hereunder.

(ii) Comprehensive General Liability insurance covering third party claims for bodily injury, death, and property damage arising from premise operations with a [REDACTED] limit per occurrence and a [REDACTED] annual aggregate limit.

(iii) Comprehensive Automobile Liability insurance, for Owner's protection, covering claims for bodily injury, death, and property damage arising out of the use of all owned (if any), leased (if any), non-owned and hired motor vehicles including loading and unloading with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage.

(iv) To the extent required by applicable law, Workers' Compensation insurance with statutory limits, including an all states' endorsement, and (b) employer's liability insurance for all employees of Owner with a minimum limit of [REDACTED] per occurrence.

(v) Umbrella Liability insurance on an occurrence basis in an amount resulting in total coverage when combined with primary layers required by 9.2(ii), (iii), and (iv)(b) of no less than [REDACTED] per occurrence, covering claims in excess of and following the terms of the underlying insurance as set forth in 9.2(ii), (iii), and (iv)(b).

9.3. Form and Content. All policies, binders or interim insurance contracts with respect to insurance maintained by either NAES or Owner pursuant to this Article 9 shall:

9.3.1 Be placed with insurance companies that are acceptable to Owner, NAES and Lender, are licensed or authorized to do business in the State of Kentucky and are rated "A-" with a minimum size rating of "VII" or better by A.M. Best or otherwise acceptable to Owner.

9.3.2 With respect to the insurance described in Sections 9.1 (other than 9.1(i)) and Section 9.2 (other than 9.2(i) and 9.2(iv)), include as additional insured Owner or NAES (as the case may be), Lender, and the officers, directors and employees of each of them but only to the extent of Owner's and NAES's respective obligations assumed under this Agreement.

9.3.3 With respect to coverage provided per Section 9.1 (other than Section 9.1(ii)) and Section 9.2 (other than Section 9.2(i)), but only to the extent of Owner's and NAES's respective obligations assumed under this Agreement, state that insurance coverage is primary, or in excess to the specific primary policy provided for such coverage, and not in excess or contributing as with respect to any other insurance (or self-insurance) available to Owner, NAES or the additional insured and that all provisions thereof, except the liability limits, shall operate in the same manner as if there were a separate policy covering each insured under each such policy. With respect to Facility property damage claims caused by the gross negligence, fraud or willful misconduct of NAES: (i) NAES's insurance coverage under Section 9.1(ii) shall be primary and (ii) Owner's coverage under Section 9.2 shall be non-contributory. In all other instances of Facility property damage no matter the cause or monetary amount: (i) Owner's coverage under Section 9.2(i) shall be primary; and (ii) NAES's coverage under Section 9.1 shall be non-contributory.

9.3.4 Provide that there will be no recourse against the additional insured for the payment of premiums or commissions or (if such policies provide for the payment thereof) additional premiums or assessments, it being understood that these are obligations of the party providing such insurance pursuant to this Agreement.

9.3.5 With respect to the insurance described in this Article, waive any right of subrogation of the insurers thereunder against Owner, NAES, Lender and the officers, directors and employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under such policy.

9.3.6 Provide that it may not be cancelled or materially changed without giving Owner, Lender and NAES thirty (30) days prior written notification thereof, except in cases of non-payment, for which ten (10) days prior notice shall be provided (unless a longer notice period for non-payment is agreed to by the relevant insurer).

9.4. Certificates; Proof of Loss. Each Party shall furnish certificates of insurance to the other Party evidencing the insurance required of such Party pursuant to this Agreement. The Party maintaining each insurance policy hereunder shall make all proofs of loss under each such



policy and shall take all other action reasonably required to ensure collection from insurers for any loss under any such policy, except that Owner may require NAES to provide such proof of loss and take such other action on behalf of Owner in the case of physical damage or property damage under the insurance maintained by Owner pursuant to Sections 9.2.(i).

9.5. Payment of Deductible Amounts. All deductibles or self-insured retentions for the insurance coverages specified in this Article 9 shall be the responsibility of the Party purchasing such insurance coverage; *provided*, however, that NAES shall be responsible for the payment of any deductible amount, subject to the limits set forth in Section 11.1, under any insurance policy described in this Article 9 related to any claim against or other cost to Owner covered under any such insurance policy arising out of any acts or omissions of NAES, including, without limitation, willful misconduct and negligence; *provided*, however, that for any coverage specified in this Article 9 for which a deductible amount is not specified, such deductible amount shall be assumed to be no more than \$100,000 for the purposes of this Section 9.5.

## ARTICLE 10.

### CROSS INDEMNIFICATION

#### 10.1. Cross Indemnity.

10.1.1 NAES hereby agrees to indemnify and hold harmless Owner, and its managers, members, agents, representatives and employees and all Affiliates thereof, and the Lender (each a "NAES Indemnified Party"), from all claims, liabilities, or damages to third parties' property (excluding the Facility) or injury to third persons (including death) to the extent resulting from, arising out of or relating to the negligence or willful misconduct of NAES or subcontractors, vendors, agents and employees of NAES, while engaged in activities under this Agreement.

10.1.2 Owner shall likewise indemnify and hold harmless NAES, and its managers, members, agents and employees and all Affiliates thereof (each an "Owner Indemnified Party") from any damage to third parties' property or injury to third persons (including death) resulting from, arising out of or related to the negligence of Owner, its managers, members, agents or employees (or any subcontractors or vendors specifically engaged by Owner (and not by NAES)), in each case, while engaged in activities relating to this Agreement.


10.1.3 In the event such damage or injury is caused by the joint or concurrent negligence or willful misconduct of an Owner Indemnified Party and a NAES Indemnified Party, the loss shall be borne by each Party in proportion to its negligence.


10.2. Cooperation Regarding Claims. If any Party hereto (each an "Indemnified Party") shall receive notice or have knowledge of any claim that may result in a claim for indemnification by such Indemnified Party against a party pursuant to this Article 10 or Section

11.3, such Indemnified Party shall, as promptly as possible, give the indemnifying Party notice of such claim, including a reasonably detailed description of the facts and circumstances relating to such claim, and a complete copy of all notices, pleadings and other papers related thereto, and the basis for its potential claim for indemnification with respect thereto in reasonable detail; *provided*, however, that failure promptly to give such notice or to provide such information and documents shall not relieve the indemnifying Party from the obligation hereunder to respond to or to defend the Indemnified Party failing to give such notice against such claim. The party against whom indemnification is claimed shall, upon its acknowledgement in writing of its obligation to indemnify the Indemnified Party seeking indemnification, be entitled to assume the defense or to represent the interests of the Indemnified Party seeking indemnification in respect of such claim, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost.

## ARTICLE 11.

### LIMITATIONS ON LIABILITY

11.1. Total Limitation of Liability. Excluding NAES's liability for payment of amounts pursuant to Section 10.1, NAES's total liability to Owner 



11.2. Consequential Damages Excluded. In no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence, gross negligence, fraud or willful misconduct), strict liability, or otherwise, shall either Party or its members, employees, directors, affiliates, subcontractors or suppliers be liable for loss of profit or revenues, loss of use of the Facility or any associated equipment, cost of capital, or replacement power, cost of substitute equipment, facilities or services, downtime costs, claims of customers for such damages, or for any special, consequential, incidental, indirect or exemplary damages.

11.3. Environmental Liability.

11.3.1 Owner's Environmental Indemnity. NAES shall have no liability for, and Owner agrees to indemnify, defend and hold each Owner Indemnified Party harmless against and from, any and all damages, losses, liabilities, claims, litigation, demands, proceedings,

judgments, or suits of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against any Owner Indemnified Party arising out of or relating to the presence of any Hazardous Materials which are (i) present on the Site prior to the commencement of NAES's services under the Former Agreement, or (ii) improperly handled or disposed of by Owner or parties under Owner's direct supervision (other than NAES) or (iii) brought on to the Site or produced thereon by parties other than NAES, its subcontractors or parties under NAES's supervision.

11.3.2 NAES's Environmental Indemnity. Owner shall have no liability for, and NAES agrees to indemnify, defend and hold each NAES Indemnified Party harmless against and from, any and all damages, losses, liabilities, claims, litigation, demands, proceedings, judgments, or suits of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements incurred in investigating, defending against, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against any NAES Indemnified Party arising out of or relating to the presence of any Hazardous Materials which are released, generated, discharged or improperly handled or disposed of as a result of the negligence, willful misconduct or breach of this Agreement by NAES. Notwithstanding anything to the contrary herein, the indemnity set forth in this Section 11.3.2 shall not be subject to any of the other limitations on liability set forth herein.

11.4. Governing Provision. The provisions of this Article 11 shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the Agreement, except to the extent that such provisions further restrict Party liability.

11.5. No Warranties or Guarantees. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OR GUARANTEES TO THE OTHER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND BOTH PARTIES DISCLAIM AND WAIVE ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW.

11.6. Non-Recourse. NAES specifically acknowledges and agrees that there shall be no personal liability on the part of any partners or members of Owner or their respective officers, employees or directors for the payment of any amounts due hereunder, or the performance of any obligations hereunder, and NAES shall look solely to Owner and to the assets of Owner for the satisfaction of Owner's obligations.

11.7 Governmental Actions. During the term of this Agreement, NAES shall cooperate and assist Owner with Owner's acquisition of data and information, and preparation and filing with appropriate Governmental Authorities of any notices, plans, submissions, or other materials and information necessary for compliance with applicable Environmental Laws and the requirements of any permits related to the Facility. All out-of-pocket costs associated therewith, including the costs of any outside consultants, legal services, Governmental Authority charges,

sampling and remedial work, shall be paid by Owner as an Operating Cost or reimbursed to NAES, unless such costs are incurred arising out of or associated with NAES's obligations pursuant to Section 11.3.2 hereof. Any action taken by NAES pursuant to any such applicable Environmental Law, including proceedings and filings made in connection therewith, shall be undertaken, and any Reimbursable Costs associated with any such compliance action shall only be incurred, by NAES with Owner's prior consent, unless a Governmental Authority or Law requires NAES to incur such costs and expenses prior to obtaining such consent.

## ARTICLE 12.

### PROPRIETARY INFORMATION AND CONFIDENTIALITY

12.1. General. Each Party agrees to hold in confidence for a period of five (5) years from the date of disclosure any proprietary or confidential information supplied by the other Party or its contractors and designated in writing as proprietary or confidential by the supplier thereof (including, without limitation, the terms and conditions hereof). NAES may supply such proprietary or confidential information to its employees, agents, Affiliates, and advisors but only to the extent necessary for NAES to perform the Services. NAES further agrees, to the extent requested by the supplier of such information, to require its subcontractors, vendors, suppliers and employees to enter into appropriate nondisclosure agreements relative to such information, prior to the receipt thereof.

12.2. Exceptions. The provisions of this Article shall not apply to information within any one of the following categories or any combination thereof:

12.2.1 Information that was in the public domain prior to the receiving Party's receipt or that subsequently becomes part of public domain by publication or otherwise, except by the receiving Party's wrongful act.

12.2.2 Information that the receiving Party can show was in its possession prior to receipt thereof from the disclosing Party.

12.2.3 Information received by a Party from a third party having no obligation of secrecy with respect thereof.

12.2.4 Information disclosed by Owner to lenders or prospective lenders, equity investors or prospective equity investors, prospective purchasers, consultants, attorneys, accountants and other designated agents in connection with any financing relating to the Facility, in each case, on a confidential and need-to-know basis.

12.2.5 Information disclosed by Owner to any regulatory authority in connection with the financing of the Facility, including any disclosures which Owner may make to the Securities Exchange Commission; *provided*, however, that Owner shall make a good faith

effort to protect the confidentiality of the pricing for the Services set forth herein. Owner shall be deemed to have satisfied its good faith effort if Owner submits a redacted version of this Agreement, or summary of this Agreement, excluding such pricing terms, whether or not such redaction is acceptable to any such regulatory authority. The Owner agrees to consult with NAES, prior to disclosure, in good faith determine the language to be redacted or summary of this Agreement.

12.2.6 Information disclosed by Owner in connection with any required regulatory or administrative filings, including, without limitation, filings with the Federal Energy Regulatory Commission; *provided*, however, that Owner shall make a good faith effort to protect the confidentiality of the pricing for the Services set forth herein. Owner shall be deemed to have satisfied its good faith effort if Owner submits a redacted version of this Agreement, or summary of this Agreement, if permitted by applicable Law, excluding such pricing terms, whether or not such redaction is acceptable under any such regulatory or administrative filings. The Owner agrees to consult with NAES, prior to disclosure, in good faith determine the language to be redacted or summary of this Agreement.

12.3. Required Disclosure. Any Party may respond to a lawful and valid subpoena or other similar legal process regarding information that is otherwise required to be maintained in confidence pursuant to Article 12, but shall give the other Party the earliest possible notice thereof, and shall, as much in advance of the return date as possible, make available to the other Party and its counsel the documents and other information sought and shall assist such counsel in resisting or otherwise responding to such process. If the Party is requested to disclose such information it shall use all reasonable efforts to obtain proprietary or confidential treatment of such information by the third party to whom the information is disclosed, and to the extent such remedies are available, shall seek protective orders, limiting the dissemination and use of the information. Moreover, this Agreement does not alter the rights of either Party to object to the rule, regulation, order or proceedings requiring the disclosure. Nothing contained in these confidentiality procedures shall require a Party to incur any fines, penalties or other similar civil or criminal liabilities.

12.4. Documents and Data. Subject to Section 12.5 below, all materials and documents prepared or developed by NAES or its employees, representatives or subcontractors in connection with the Facility or the performance of the services hereunder, including all manuals, data, designs, drawings, plans, specifications, reports and accounts, shall become the property of Owner when prepared. All such materials and documents, together with any materials and documents furnished by NAES or to its subcontractors by Owner, and any and all copies thereof shall be delivered to Owner not less than thirty (30) days prior to the expiration or termination of this Agreement. In addition, all such materials and documents shall be available for review by Owner at all reasonable times during development and promptly upon completion. All such materials and documents required to be submitted for the approval of Owner shall be prepared and processed in accordance with the requirements and specifications set forth herein. However, Owner's approval of materials and documents submitted by NAES shall not relieve NAES of its responsibility to perform its obligations under this Agreement. Notwithstanding anything to the

contrary in this Article 12, Owner shall be permitted to provide all such materials and documents to any and all prospective replacement contractors in anticipation of any such expiration or termination.

## ARTICLE 13.

### MISCELLANEOUS PROVISIONS

#### 13.1. Assignment.

13.1.1 Assignment by Owner. This Agreement shall not be assigned by Owner without the prior written consent of NAES, which consent shall not be unreasonably withheld, except that this Agreement may be assigned by Owner without such consent (i) to Lender as security for Lender's financing of the Facility, (ii) to the successor of Owner, or to a Person acquiring all or a controlling interest in the business assets of Owner or to an Affiliate of Owner, (iii) in connection with a sale or transfer of the Facility and (iv) to any Affiliate of Owner that directly or indirectly owns or controls the Facility. NAES agrees to execute any consent to assignment and such other documents in connection with any assignment to Lender that Owner may request, in a form reasonably acceptable to NAES; *provided*, however, that NAES shall not be required to forego any rights to payments for amounts due and owing under this Agreement in connection with such consent to assignment.

13.1.2 Assignment by NAES. The Parties acknowledge that this Agreement is an agreement for professional services to be provided by NAES, and that this Agreement or any part hereof or any obligation of NAES hereunder shall not be assigned without the prior written consent of Owner, which consent may be withheld by Owner in its sole discretion; *provided*, however, that NAES may assign this Agreement without the consent of Owner (i) to the successor entity in connection with a merger, consolidation or other corporate reorganization of NAES, (ii) to the purchaser, in connection with the sale of all or substantially all of the business or assets of NAES, or (iii) to an Affiliate of NAES, provided such transfer to an Affiliate shall not in any manner release NAES from its obligations hereunder and that NAES shall provide a guaranty of the performance of such Affiliate satisfactory to Owner; and provided, in each of the cases (i), (ii), and (iii), that such successor or purchaser or Affiliate is at least as experienced as NAES in the operation and maintenance of electric generating facilities similar to the Facility. Any assignment in violation of this Agreement shall be null and void.

13.1.3 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties.

#### 13.2. Owner's Representative.

13.2.1 Agency. Owner may appoint and authorize one or more individuals or entities to act as its agent or agents hereunder and may delegate to such individuals or entities the powers necessary to act on behalf of Owner pursuant to the terms of this Agreement, together

with such other powers as are reasonably incidental thereto. NAES acknowledges and consents to the Owner's right to appoint such individuals or entities as Owner's agent hereunder and to such agent's authority to act on Owner's behalf in accordance with the terms of this Agreement. Owner shall provide notice to NAES of the appointment of such agent or agents, which notice shall include sufficient information enabling NAES to determine the scope of such agent's responsibilities.

13.2.2 Appointment of Representative. Not later than five (5) days following the Effective Date, Owner shall designate an authorized individual (who may be an individual identified in Section 13.2.1) to act on behalf of Owner in connection with this Agreement. Owner may change such authorized individual from time to time by written notice to NAES. Owner shall designate in writing to NAES the scope of authority of such individual. Owner and Owner's authorized individual shall respond in a timely manner to inquiries and requests of NAES.

13.3. Cooperation in Financing. NAES shall cooperate with Owner in the negotiation and execution of any reasonable amendment or addition to this Agreement required by Lender and shall execute and deliver to Lender a consent to assignment or direct agreement in form and substance satisfactory to Lender. NAES shall promptly respond to requests by Owner and prospective Lenders for information regarding the qualifications, experience, past performance and financial condition of NAES. NAES further agrees to cooperate with Lender in connection with the resolution of any claim for indemnification asserted by Lender pursuant to Section 10.1 hereof.

13.4. Access.

13.4.1 Owner. Owner and its agents and representatives shall have access at all times to the Facility, all Facility operations and any documents, materials and records and accounts relating to the Facility operations for purposes of inspection and review. Upon the request of Owner and its agents and representatives, NAES shall make available to such Persons and provide them with access to any operating data and all operating logs.

13.4.2 Lender. Upon Owner's prior approval, Lender and its respective agents and representatives, at all reasonable times, shall have access to the Facility, all Facility operations and any documents, materials, records and accounts relating to the Facility operations for purposes of inspection and review. NAES shall cooperate with Lender in its review of such documents, materials, records and accounts.

13.4.3 Cooperation. During any such inspection or review of the Facility, Owner, Lender and their respective agents and representatives shall comply with all of NAES's reasonable safety and security procedures, and Owner, Lender and their agents and representatives shall conduct such inspection and reviews in such a manner as to cause minimum interference with NAES's activities. NAES also shall cooperate with Owner in allowing other visitors access to the Facility.

13.5. Subcontractors. Any subcontracting of the Services shall require the prior consent of Owner, in its sole discretion, and shall not relieve NAES of any of its duties, liabilities or obligations hereunder, nor shall any such subcontract operate to vary any of the terms or conditions of this Agreement. Notwithstanding any consent of Owner in respect of any subcontractor, NAES shall at all times be responsible for all actions, omissions and errors on the part of any of its subcontractors. NAES shall ensure that the terms and conditions of any subcontract for performance of Services under this Agreement are not inconsistent with those of this Agreement.

13.6. Third Party Beneficiaries. Except with respect to Lender, or as otherwise expressly stated herein, this Agreement is for the sole and exclusive benefit of the parties hereto and nothing expressed or implied herein is intended to benefit any other Person not a party hereto. None of such other Persons shall have any legal or equitable right, remedy or claim under this Agreement or under any provision hereof.

13.7. Force Majeure. Except for the obligations of either Party to make payments under this Agreement, either Party shall be excused from performance and shall not be considered to be in default in respect to any obligation hereunder if failure of performance shall be due to an event of Force Majeure. In addition, neither Party shall be relieved of any obligations under this Agreement solely because of increased costs or other adverse economic consequences that may be incurred through the performance of such obligations of the Parties hereunder.

13.7.1 Notice. If either Party's ability to perform its obligations under this Agreement is affected by an event of Force Majeure, such Party shall (i) promptly (and in no event later than 48 hours after its occurrence) upon learning of such event of Force Majeure and ascertaining that it will affect its performance hereunder, give notice to the other Party stating the nature of the event of Force Majeure, its anticipated duration and any action being taken to avoid or minimize its effect, (ii) work diligently to minimize the effects of the event which caused the Force Majeure, and (iii) continue to satisfy all obligations arising prior to or not affected by the event of Force Majeure. The Party asserting Force Majeure shall suspend its performance hereunder only for the term of the Force Majeure and only to the extent of the Force Majeure. The burden of proof shall be on the Party asserting excuse from performance due to an event of Force Majeure.

13.7.2 Scope. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. The excused Party shall use its commercially reasonable efforts to remedy its inability to perform.

13.8. Right of Intervention. If NAES fails to deliver electricity as requested by Owner for any period exceeding twenty-four (24) consecutive hours, Owner or its representative may, at Owner's option, intervene and immediately attempt to remedy such failure, and NAES shall assist Owner or its representative in such efforts. In connection therewith, Owner and NAES shall cooperate in the transfer of responsibilities hereunder in a manner consistent with Section 8.7.



13.9. Strikes. In the event of a whole or partial non-operation of the Facility due to a strike or other form of labor action by NAES's personnel, Owner shall have the right to continue operating the Facility and to retain such other personnel or agents as Owner in its sole discretion deems necessary or advisable for such purposes.

13.10. Amendments. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

13.11. Survival. Notwithstanding any provision herein to the contrary, the obligations set forth in Articles 7, 10 and 12 and Sections 11.2 and 13.20 and the limitations on liabilities set forth in Article 11 shall survive in full force after the expiration or termination of this Agreement.

13.12. No Waiver. It is understood and agreed that any delay, waiver or omission by Owner or NAES to exercise any right or power arising from any breach, default, or failure to perform any obligation by Owner or NAES with respect to any of the terms, provisions, or covenants of this Agreement shall not be construed to be a waiver by Owner or NAES of any subsequent breach or default of the same or other terms, provisions or covenants on the part of Owner or NAES.

13.13. Notices. Any written notice required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be either delivered personally to the Party to whose notice is given, or mailed to the Party to whom notice is to be given, by first class registered, nationally recognized courier service or certified mail, return receipt requested, postage prepaid, and addressed to the addressee at the address indicated below, or at the most recent address specified by written notice given to the other Party in the manner provided in this Section 13.13.

If to Owner:

Bluegrass Generation Company, LLC  
1700 Broadway, 35<sup>th</sup> Floor  
New York, New York 10019  
Attention: Senior Counsel  
(732) 249-6750  
fax (732) 249-7290

If to NAES:

NAES Corporation  
1180 NW Maple St., Suite 200  
Issaquah, WA 98027  
Attention: General Counsel  
(425) 961-4700  
fax (425) 961-4646

13.14. Representations and Warranties. Each Party represents and warrants to the other Party that: (i) such Party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby and perform its obligations hereunder, (ii) the execution and delivery of this Agreement by such Party and the carrying out by such Party of the transactions contemplated hereby and the performance of its obligations hereunder have been duly authorized by all requisite corporate (or, if applicable, partnership or limited liability company) action, and this Agreement has been duly executed and delivered by such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with the terms hereof, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors rights generally and general principles of equity, (iii) none of the execution, delivery and performance by such Party 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 any of the terms, conditions, or provisions of any law, governmental rule or regulation or the charter document (or partnership agreement, if applicable), as amended, or bylaws, as amended, of such Party or any applicable order, writ, injunction, judgment or decree of any court or governmental authority against such Party or by which it or any of its properties is bound, or any loan agreement, indenture, mortgage, bond, note, resolution, contract or other agreement or instrument to which such Party is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties, and (iv) there are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of such Party) threatened against such Party or any of its subsidiaries that if adversely determined, could reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations under this Agreement.

NAES further represents and warrants to Owner that: (i) it has substantial experience in the operation and maintenance of comparable electric generating facilities in the State in which the Facility is located and is fully qualified to operate and maintain the Facility in accordance with the terms hereof, (ii) it shall not take any action that would cause a default under any Facility Agreement and (iii) no authorization, consent, approval or order, or notice to or registration, qualification, declaration or filing with, any governmental authority, is required for the execution, delivery and performance by NAES of this Agreement or the carrying out by NAES of the transactions contemplated hereby.

Owner further represents and warrants to NAES that no authorization, consent, approval or order, or notice to or registration, qualification, declaration or filing with, any governmental authority, is required for the execution, delivery and performance by Owner of this Agreement or the carrying out by Owner of the transactions contemplated hereby, other than regulatory and similar approvals that (i) have already been obtained and (ii) will be obtained during operation of the Facility (and Owner has no reason to believe that such regulatory and similar approvals will not be obtained in the ordinary course).

13.15. Counterparts. The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument; and, thereafter, each counterpart shall be deemed an original instrument as against any Party who has signed it. Delivery of an executed counterpart of this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

13.16. Governing Law. This Agreement is executed and intended to be performed in the State of New York and the laws of that state shall govern its construction, interpretation and effect without regard to its conflicts of law rules.

13.17. Partial Invalidity. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, and the invalidity or unenforceability of such term, provision, covenant or condition does not materially adversely alter the rights, obligations, liabilities, duties or benefits of either Party hereto, then the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

13.18. Captions; Exhibits. Titles or captions of sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof. All exhibits and appendices attached hereto shall be considered a part hereof as though fully set forth herein.

13.19. Dispute Resolution.

13.19.1 Negotiation. All disputes arising in connection with this Agreement shall be settled, if possible, by negotiation of the Parties. If the matter is not resolved by negotiations, either Party may, by the giving of written notice, cause the matter to be referred to a meeting of appropriate higher management of the Parties. Such meeting shall be held within ten (10) business days following the giving of such written notice.

13.19.2 Other Remedies. If the matter is not resolved within twenty (20) business days after the date of the notice referring the matter to appropriate higher management, or such later date as may be unanimously agreed upon, the Parties may then seek all available remedies available in equity or law, subject to the terms of this Agreement. **EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY OR ON BEHALF OF ANY PARTY RELATED TO OR ARISING OUT OF THIS AGREEMENT.**

13.20. Title. Title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by NAES as an Operating Cost or on a Reimbursable Cost basis hereunder shall pass immediately to and vest in Owner upon the passage of title from the vendor or supplier thereof; *provided*, however, that such transfer of title shall in no way affect NAES's obligations as set forth in the other provisions of this Agreement. Title to services shall pass to Owner upon completion of the services by NAES.

13.21. Relationship of the Parties. In performing its activities hereunder, NAES (i) shall be an independent contractor and not an agent of Owner or any Affiliate of Owner and (ii) shall not be deemed to be a servant, employee or representative of Owner or any Affiliate of Owner. Nothing in this Agreement shall constitute or create a joint venture, partnership, or any other similar agreement or relationship between NAES and Owner or any Affiliate of Owner that creates fiduciary or quasi-fiduciary duties or obligations.

IN WITNESS WHEREOF, the Parties have executed this Operation and Maintenance Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

OWNER:

BLUEGRASS GENERATION COMPANY, LLC

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

Name: Carolynne Wass

Title: SVP

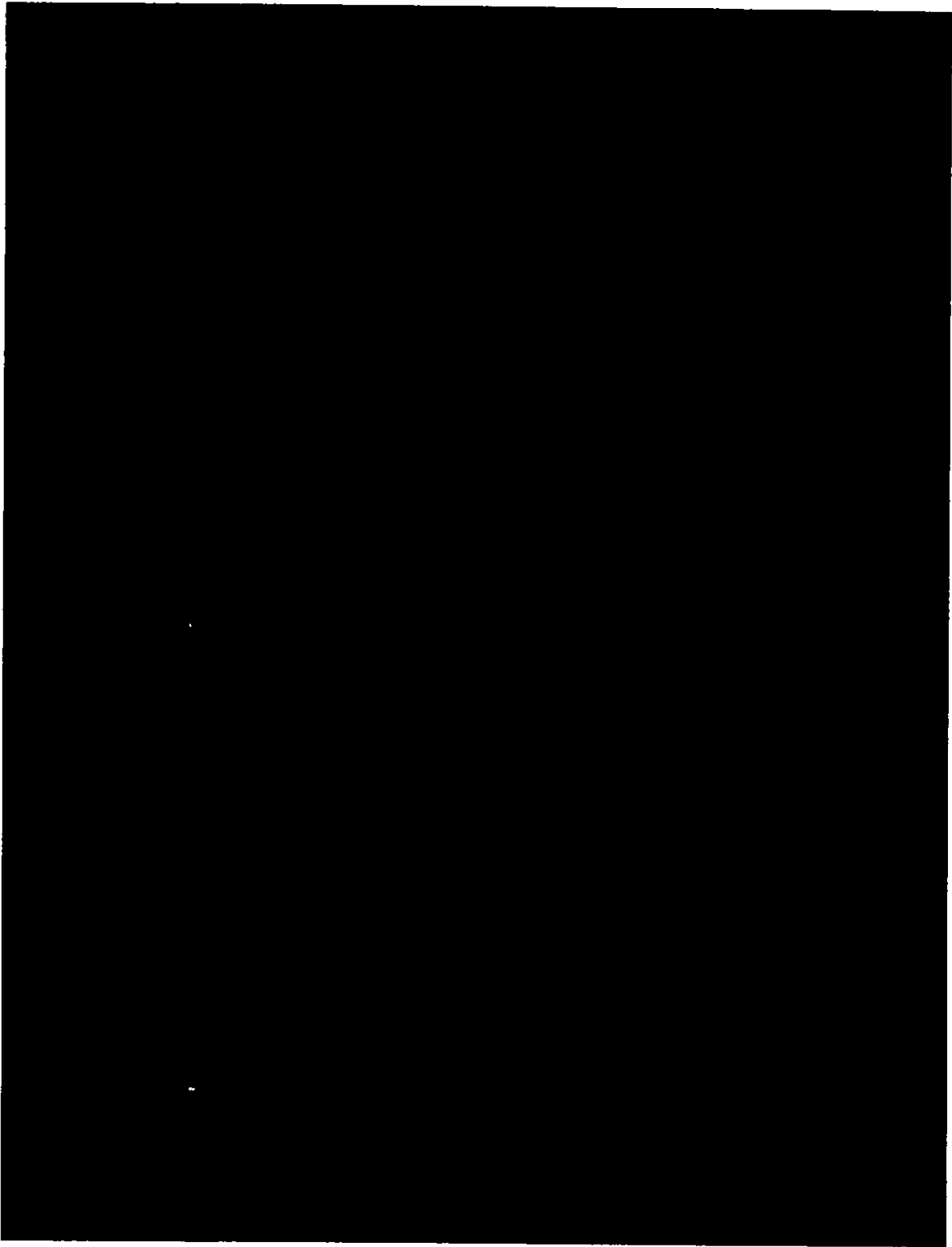
NAES:

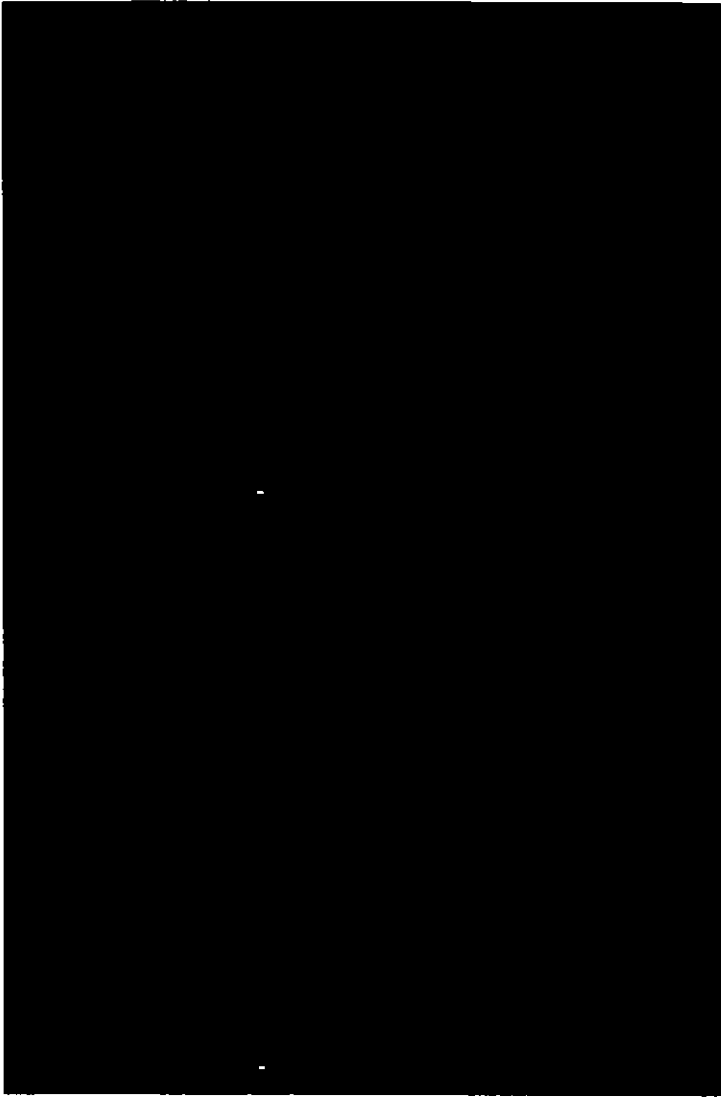
NAES CORPORATION

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

Name: Stuart B. Neale

Title: Sr. Vice President, CFO & Treasurer





## APPENDIX B

### SCOPE OF OPERATIONAL SERVICES

The Operational Services to be provided by NAES shall include but not be limited to the following:

**Facility Personnel** – NAES shall provide experienced personnel to ensure the efficient and safe operation and cost effective maintenance of the Facility. NAES shall be responsible for the recruitment and hiring process and for related services such as advertising, interviewing, testing and relocating.

**Training** - NAES shall provide all training necessary to ensure that NAES's personnel employed at the Facility are trained as required to administer, operate and maintain the Facility, in accordance with Prudent Industry Practices.

**Operations and Maintenance Procedures** – NAES shall develop a site-specific Operations and Maintenance Procedures. The Operations and Maintenance Procedures will include programs and procedures for Facility operation, systems lockout and tagout, maintenance, plant safety, water chemistry, environmental compliance, NERC compliance, NERC GADS reporting, communications protocol with pertinent outside entities, document control, purchasing, management, program to insure timely processing of periodic regulatory and environmental local, state, and federal reporting, housekeeping, loss prevention, plant assessment, and security.

**Regulatory Compliance** – Consistent with Sections 3.10 and 3.11, NAES shall be responsible for compliance with all local, state, and federal reporting requirements. Such responsibility shall include, but is not limited to, DOE, FERC, regional NERC, NERC GADS. The Owner, for its part, will provide supporting data as required.

**Environmental Compliance** – NAES shall be responsible for compliance with all Environmental Standards. Consistent with Sections 3.10 and 3.11, such responsibility shall include assisting the Owner as requested with securing all necessary permits and permit renewals, operating and maintaining the Facility in compliance with such permits and submitting all required reports to the various local, state and Federal agencies as requested and approved by the Owner.

**North American Electric Reliability Corporation (NERC) Compliance** – NAES shall be responsible for compliance with applicable NERC standards. Consistent with Sections 3.10 and 3.11, such responsibility shall include development of and compliance with all applicable NERC standards, submittal of periodic reports and compliance certifications, tracking new and developing NERC requirements, responding to inquiries from NERC entities, and representation of Owner in NERC audits.



**Preventive/Predictive Maintenance Program** – NAES shall develop a site-specific Preventive/Predictive Maintenance Program identifying preventive and predictive maintenance activities and schedules, including vibration analysis, lube oil analysis, dielectric oil analysis, and infrared thermography.

**Computerized Maintenance Management System (CMMS)** – NAES shall implement a CMMS to manage maintenance activities, such as work order creation and tracking, maintenance scheduling, equipment history, parts information, inventory tracking, manhours required for maintenance, and the Preventive Maintenance Program. Work orders shall include all necessary information to capture parts and labor, specific equipment, failure modes, repair, as found/as left calibration and other pertinent data to implement an effective work tracking system.

**Administrative Procedures Manual** – NAES shall develop and implement an Administrative Procedures Manual. The Administrative Procedures Manual will include procedures and policies related to general accounting, cost accounting, inventory control, budgeting, purchasing, training and personnel.

**Facility Operations** – NAES shall startup, operate, and shut down the Facility in accordance with dispatch directions provided by the Owner or Energy Manager. Facility operations shall be conducted in a manner consistent with the Vendor Manuals, Operations and Maintenance Procedures, Prudent Industry Practice, the Facility Agreements, and the standards set forth in the Agreement.

**Operability and Maintainability Review** – NAES shall review Facility and equipment drawings and provide comments, as appropriate, to ensure that the Facility can be safely and efficiently operated and maintained per design.

**Maintenance** – Scope of work for maintenance shall include all plant equipment, structures, grounds, and utility interfaces. Equipment subject to LTSA coverage shall include but not be limited to responsibilities to monitor, assess, make recommendations, provide interface for Owner, track all parts (consumables and capital spares), document all work and requested work (i.e. TILs and PAC cases), insure LTSA supplier compliance to on-site safety and environmental program, and outage coordination.

**Corrective Maintenance** – NAES shall perform routine repairs on failed or malfunctioning equipment in accordance with the Vendor Manuals, the Operations and Maintenance Procedures, Prudent Industry Practice, and subject to the constraints imposed by Owner or Energy Manager.

**Preventive/Predictive Maintenance** – NAES shall perform preventive and predictive maintenance services in accordance with the Preventive Maintenance Program and Prudent Industry Practice. It is expected that a Preventive/Predictive Maintenance will minimize Corrective Maintenance.

**Major Maintenance** – NAES shall provide and coordinate outage planning for all planned, maintenance and forced outages to include at minimum schedule and procure major maintenance

services for the gas turbines, steam turbines, and electric generators as well as balance of plant equipment and structures in accordance with the LTSA, Vendor Manuals, the Operations and Maintenance Procedures, Prudent Industry Practice, and subject to the constraints imposed by Owner or Energy Manager.

**Plant Betterment** – NAES shall be responsible for the cost-effective, quality and timely completion of any capital project, plant enhancement or system enhancement.

**Project Assessment Program** – NAES shall evaluate all projects, except emergency work, from a cost justification standby. NAES will work with Owner to create and implement such program.

**Agreement Administration** – NAES shall perform the daily administration of any Facility Agreement.

**Goods and Services Providers** – NAES shall (i) identify the need for goods and services providers; (ii) schedule, arrange for, and procure as agent for Owner such goods and services; and (iii) coordinate and manage the receipt of goods and performance of services provided by any goods and services provider according to procedures supplied by NAES and subject to approval by the Owner.

**Purchasing** – NAES shall provide purchasing procedures subject to approval by Owner to included purchase order release processes, inventory interface, vendor qualification, sole source justification, plant site contractor bonding, safety and environmental compliance. As agent for Owner, NAES shall purchase, receive, and expedite, as necessary, the material, chemicals, lubricants, consumables, operating and maintenance supplies, vehicles, spare parts, safety supplies, tools and equipment required to operate and maintain the Facility. Purchasing shall be implemented in such a manner to ensure minimum Operating Costs (taking into account other factors such as quality and timeliness).

**Inventory Control** – NAES shall maintain an inventory of spare parts, materials, supplies and tools necessary to operate and maintain the Facility, and purchase replacement inventory as required adhering to Owner's accounting interfacing processes as required.

**Programs and Procedures** – NAES shall implement and update, as necessary, the Vendor Manuals, Operations and Maintenance Procedures, Preventive Maintenance Program, the Project Assessment Program and Administrative Procedures Manual. NAES shall implement, where cost-effective and appropriate to the task to be performed computerized systems to provide the services contemplated by these programs and procedures.

**Reports** – NAES shall provide periodic monthly and annual technical, incident reports, outage reports, administrative and financial reports to Owner per the Owners direction. NAES shall prepare additional reports for the Owners, Lender, regulatory agencies, and other Facility participants as required. NAES shall compare monthly actual progress against the Operating Plan & Budget.

**Facility Books and Records** – NAES shall maintain Facility technical and administrative records as required by Owner. NAES shall also maintain true and complete Facility accounting books in accordance with the accrual method of accounting which shall reflect all Facility transactions in accordance with generally accepted accounting principles. All records are subject to auditing and shall be maintained 'audit ready'.

**Technical Library** – NAES shall establish and maintain a technical library to include document control procedure implementation. The technical library shall include the Vendor Manuals, the Operations and Maintenance Procedures, the Administrative Procedures Manual, drawings, test and calibration records, major maintenance outage reports, and archived operating logs. Drawings and manuals shall be updated, as necessary, to reflect design modifications. As much as practical, all documents shall be kept on a plant server, up to date and accessible to the Owner remotely with hard copy back-up as required and prudent. All regulatory, safety, and environmental reporting and records shall be kept 'audit ready'.

**Capital Improvements/Facility Changes** – NAES shall make recommendations for capital improvements and changes to the Facility as identified. NAES shall evaluate loss control recommendations provided by insurers of Facility. All such recommendations are subject to Owner approval before being implemented including those within the OP&B.

**Assistance to Owner** – NAES shall provide assistance to Owner in the performance of Owner duties, including the preparation of insurance and warranty claims, and reports required to comply with environmental laws, regulations or permits and NERC matters.

**Cooperation** – NAES shall cooperate with the parties signatory to the Facility Agreements.

**Annual Operating Plan and Budget plus 5 Year Budget** – NAES shall create annually an Operating Plan and Budget (OP&B). The OB&P shall detail the goals for operating and maintaining the facility for the upcoming year including details of major maintenance, remedies for chronic O&M problems, betterment programs, improvements to programs, training plan, capital and significant maintenance cost justifications, changes to personnel and other issues related to providing the services herein. In addition a five year budget shall be prepared and updated at a minimum yearly. Both annual and 5 year plans shall be based upon Owner provided production expectations.

**Fuel Management** – Perform daily fuel gas supply balancing and/or supply Fuels Manager with information as may be authorized by owner.

**Energy Management** – NAES will maintain plant operating statistics in a sufficient manner as to provide accurate operating characteristics to Energy Manager. NAES will interface daily with the Energy Manager. At a minimum hourly MW baseload capacity, ramp rates, equipment constraints in effect or at risk, heat rate at any load, and incremental heat rate to change to another output shall be available.

**Permits – NAES shall obtain all permits, licenses and approvals specific to NAES such as boiler operator licenses and authority to do business.**

## APPENDIX C

### OWNER RESPONSIBILITIES

**Facilities** – Owner shall provide, as needed, suitable office, sanitary and secure storage facilities with the necessary utilities to enable NAES to perform the Services.

**General Management** – Owner shall provide general management and administrative functions for the Facility, including financial audits, tax filings, permit auditing, Operating Plan & Budget guidance and legal services.

**Fuel** – Owner, or Energy Manager, shall supply fuel gas necessary to operate the Facility.

**Fuel Management** – Owner, or Energy Manager, shall manage the fuel gas supply.

**Energy Management** – Owner, or Energy Manager, shall provide dispatch directions and energy marketing services.

**Permits** – Owner shall obtain or assist NAES in obtaining all permits, licenses and other approvals necessary to operate the Facility.

**Access** – Owner shall provide access to the Facility.

**Information** – Owner shall provide information and other data, including as-built drawings, manuals, contracts and permits necessary to operate the Facility efficiently and in compliance with all contracts and permits.

APPENDIX D

FACILITY AGREEMENTS

Electrical Interconnection Agreement

Energy Management Agreement

Financing Agreements

Gas Interconnection Agreement

APPENDIX E  
INCENTIVE PAYMENT

**O&M Bonus Calculation**



The actual and budgeted Operating Costs and Reimbursable Costs used in this calculation shall exclude the cost of fuel supply and transportation.

The budgeted Operating Costs and budgeted Reimbursable Costs will be adjusted for deviations between the actual Facility operating profile and the expected (budgeted) Facility operating profile. Such adjustment shall only apply to variable costs and shall be made in a manner subject to mutual agreement of Owner and NAES.