

Engineering, Procurement and  
Construction Agreement

Between

Louisville Gas and Electric Company  
and  
Kentucky Utilities Company  
as Owners

and

PCL Industrial Construction Co.  
and  
Overland Contracting Inc.

as Contractor

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## ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This Engineering, Procurement and Construction Agreement, entered into as of the 2<sup>nd</sup> day of July 2012, (“**Agreement**”) by and between Louisville Gas and Electric Company, a Kentucky corporation (“**LG&E**”), and Kentucky Utilities Company, a Kentucky corporation (“**KU**”), each to the extent of its individual, undivided interest as a tenant-in-common, and PCL Industrial Construction Co. (“**PCL**”), a Colorado corporation and Overland Contracting Inc. (“**OCI**”), a Delaware corporation (PCL and OCI, hereinafter collectively “**Contractor**”).

### RECITALS

WHEREAS, Owners desire to enter into an agreement with a qualified contractor to design, engineer, procure, construct, start-up, commission and test the Facility (as hereinafter defined) on a lump-sum turnkey basis as set forth in this Agreement;

WHEREAS, Contractor represents that it (or its affiliates) is qualified to engineer, design, procure, construct, start-up, commission and test the Facility and desires to perform all work and services in connection therewith on a lump-sum turnkey basis in accordance with requirements and provisions of this Agreement.

WHEREAS, Contractor agrees to perform the Work as more specifically described in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

**1.1 Definitions.** The following terms have the respective meanings specified in this **Article 1** when capitalized and used in this Agreement or in any notice delivered under or in respect of this Agreement.

“**Acceptable Credit Bank**” means a bank the long term senior debt obligations of which are rated “A-” or better by S&P or “A3” or better by Moody’s or whose obligations are guaranteed, insured, or otherwise credit enhanced by a bank or financial institution, the long term senior unsecured debt obligations of which are so rated.

“**Acceptable Letter of Credit**” means an irrevocable, unconditional standby letter of credit issued by an Acceptable Credit Bank to which KU is the beneficiary as agent of Owners: (i) having a stated expiration date of not less than [REDACTED] days (or such longer term as may be commercially available) after the date of the original issuance or any renewal thereof; (ii) that automatically renews or permits KU, as agent of Owners, on the signature of an authorized representative of KU, to draw on sight all or any portion of the stated amount if not renewed on or prior to [REDACTED] Day prior to any expiration date of the letter of credit, including the

final expiration date; (iii) that is payable in U.S. Dollars in immediately available funds; (iv) that is governed by the International Standby Practices, International Chamber of Commerce Publication No. 590 (ISP 98), and any amendments or revisions thereto, and, to the extent not governed thereby, the laws of the State of New York; (v) that is drawable upon issuance of a drawing certificate signed by an authorized representative of KU stating that Owners are entitled to be paid under the Agreement; and (vi) that is otherwise in the form set forth in **Exhibit F-10**.

“**Agreed Rate**” has the meaning specified in **Section 25.9**.

“**Agreement**” has the meaning specified in the first paragraph hereof and includes the body of this Agreement (the “**Body of this Agreement**”) and all Exhibits herein referenced, as they may be amended, modified or supplemented from time to time.

“**Air Emissions Tests**” means the tests set forth in **Exhibit G** to (i) determine whether the Guaranteed Air Emissions have been achieved and (ii) certify the continuous emission and opacity monitors.

“**Air Permit Deadline**” means the date which is the earlier of [REDACTED] Days after the maximum production rate (401 KAR 59.005, Section 2) of the Facility is reached, but not later than [REDACTED] after the date of Start-Up (as defined in 401 KAR 59) of the Facility.

“**Applicable Credits**” has the meaning specified in **Section 25.11.3**.

“**Applicable Law**” means any applicable statute, law (including common law), rule, treaty, regulation, code, ordinance, permit, approval, interpretation, injunction, judgment, decree, writ, order or the like, including the NERC Requirements, Codes and Permits, when issued, enacted or promulgated by a Governmental Authority and interpretations thereof by a Governmental Authority.

“**Application For Payment**” means a written request by Contractor to Owners for payment, completed in the form required by **Exhibit F-1** together with the documentation required by **Section 8.6**.

“**As-Built Drawings**” means: (i) all drawings prepared in the performance of the Work that are “issued for construction” by Contractor and (ii) all of the drawings specified by Owners in **Exhibits X-1, X-2 and X-3**, in each case as modified and updated to accurately show the final actual design and construction of the Work upon Final Completion.

“**Business Day**” means any Day other than a Saturday, Sunday, or a holiday observed by the United States federal government, the Commonwealth of Kentucky or Owners.

“**Cane Run Site**” means the approximately 510 acre site along the Ohio River near river mile 616.6 in western Jefferson County, Kentucky as more particularly described in **Exhibit S-1**.

“**CEII**” has the meaning specified in **Section 4.38**.

“**Certificate**” means the applicable Certificate of Mechanical Completion, Substantial Completion, Commercial Operation or Final Completion, as the case may be.

“**Certificate of Commercial Operation**” will be in the form specified in **Exhibit F-2**.

“**Certificate of Final Completion**” will be in the form specified in **Exhibit F-2**.

“**Certificate of Mechanical Completion**” will be in the form specified in **Exhibit F-2**.

“**Certificate of Substantial Completion**” will be in the form specified in **Exhibit F-2**.



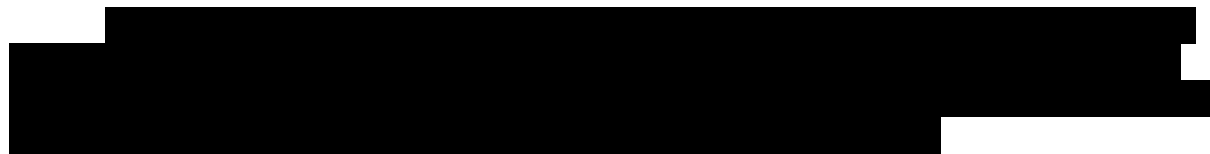
“**Change Order**” has the meaning specified in **Section 10.1.3**.

“**Change Order Request**” has the meaning specified in **Section 10.1.1**.

“**Change(s)**” has the meaning specified in **Section 10.1.1**.

“**Claims**” has the meaning specified in **Section 20.1**.

“**Claim Notice**” has the meaning specified in **Section 20.3**.



“**Codes**” means the most recent edition of the codes, standards and guidelines applicable to Work, including those described in **Exhibit N**.

“**Commercial Operation**” will be deemed to have occurred when all of the following have occurred: (i) Mechanical Completion has occurred; (ii) the Work is complete except Punch List Items; (iii) Facility Consumable levels are fully charged and filled; (iv) all Performance

Tests ( [REDACTED] ) have been successfully completed and passed in accordance with this Agreement, including **Exhibit G**, and Contractor has completed making necessary and desirable system adjustments identified during the start-up and testing process; (v) all Performance Guarantees [REDACTED] ) have been satisfied in their entirety; (vi) all obligations of Contractor expressly required to have been performed as of the Commercial Operation Date will have been properly discharged; (vii) the Facility is capable of being operated in the normal course of business in compliance with Prudent Utility Practices and each applicable OEM written procedures and requirements; (viii) Owners have received from Contractor all Permits (including Permits (other than Owners' Permits) necessary to allow occupancy and transfer of care, custody and control of the Facility to Owners), all of which shall be valid and in full force and effect; (ix) all liquidated damages incurred pursuant to **Article 7** through the date of Commercial Operation have been paid to Owners; (x) all training required by **Section 4.9** has been completed; (xi) final versions of the Operating and Maintenance Manuals, approved by Owners have been delivered; (xii) all Special Tools and spare parts have been delivered to Owners; and (xiii) Owners have executed the Certificate of Commercial Operation.

**“Commercial Operation Date”** means the date on which the Facility achieves Commercial Operation.

**“Component”** means any and all systems, subsystems, subassemblies, materials and equipment (including parts, machinery, special tools, instruments, pipes, valves, software, Computer Programs, and hardware), spare parts, and every item of whatever nature, including all documentation related thereto, connected with the Work performed or provided by Contractor or its Subcontractors under this Agreement that is permanently incorporated into the Facility, provided as part of the Work and retained by Owners following Final Completion.

**“Computer Program(s)”** means a sequence of instructions, data, or equations in any form, and explanations thereof, intended to cause a computer, a control data processor or the like to perform any kind of operation, which is provided by Contractor or its Subcontractors under this Agreement.

**“Confidential Information”** has the meaning specified in **Section 18.1**.

**“Connect”** means the provision by Contractor of all labor and material to effect the connection of the Facility at the Terminal Points.

**“Construction Aids”** means all tangible equipment (including construction equipment), apparatus, tools, supplies, construction tools, support services, field office equipment and supplies, structures, apparatus, form lumber, protective fencing, Computer Programs used in the execution, management, maintenance or completion of the Work and other goods and items that are required to construct, clean, commission or test the Facility, but which are neither incorporated into the Work nor retained by Owners.

**“Consumables”** means items such as compressed air or gases, chemicals, oils, lubricants, cleaning materials, demineralized water, valve packing, lamps, light bulbs, gaskets, fuel filters and comparable items which, by normal industry practices, are considered consumables and are

replaced on a regular basis, required for cleaning, preparing or completing the Work or are required for the proper operation of the Equipment.

“**Contract Price**” has the meaning specified in **Section 8.1**.

“**Contractor**” has the meaning specified in the first full paragraph of this Agreement.

“**Contractor Change Notice**” has the meaning specified in **Section 10.2**.

“**Contractor Default**” has the meaning specified in **Section 24.2.1**.

“**Contractor Hazardous Substances**” has the meaning specified in **Section 19.1.1(ii)**.

“**Contractor Indemnitees**” has the meaning specified in **Section 20.1**.

“**Contractor Response**” has the meaning specified in **Section 10.1.2**.

“**Contractor’s Representative**” means the individual designated by Contractor pursuant to **Section 4.6**.

“**Contractor Taxes**” has the meaning specified in **Section 8.2.1**.

“**Day**” means a calendar day including calendar days that are not Business Days, except that, in the event that a payment obligation to be performed under this Agreement falls due on a calendar day that is not a Business Day, the payment obligation will be due on the next Business Day.

“**DBE**” has the meaning specified in **Section 25.23**.

“**Defect**” (and derivative forms thereof) means a defect, deficiency or nonconformity in the Work or other deviation from the warranties set forth in **Section 13.1**.

“**Demonstration Tests**” has the meaning specified in **Exhibit G**.

“**Design**” means all design, calculation and engineering products or services, including all preliminary and detailed design of the Facility by Contractor as it evolves during the performance of the Work.

“**Design Documents**” has the meaning specified in **Section 4.7**.

“**Dispute**” has the meaning specified in **Section 23.1.1**.

“**EAF**” has the meaning specified in **Exhibit G**.

“**Early Operation**” means the operation of the Facility by or on behalf of Owners for commercial purposes, prior to the actual date on which the earlier of Substantial Completion or Commercial Operation occurs, other than (i) sales of energy, capacity or other electrical attributes in connection with or incidental to the start-up, commissioning and debugging or

testing of the Facility or (ii) during any periods when the results of any Performance Test are being considered in accordance with **Exhibit G**.

“**Effective Date**” means the date set forth in the first full paragraph of this Agreement.

“**Emergency Notification List**” means a list of Owners’ personnel, with associated contact information, that sets forth the individuals to be notified first in the event of an emergency involving health or safety, including environmental harm, or material damage to property, as such list is amended by Owners and provided to Contractor from time to time.

“**Environmental Action**” has the meaning specified in **Section 19.1.1(ii)**.

“**Equipment**” means all of the tangible materials, items, apparatus, structures, tools, supplies or other goods, including Components, provided by Contractor or any Subcontractor which are incorporated into the Facility or provided as part of the Work and retained by Owners after Final Completion in accordance with this Agreement.

“**Estimate**” has the meaning specified in **Section 4.39**.

“**Excusable Events**” means [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Exhibits**” means all of the Exhibits identified in the “Table of Contents.”

“**Existing Facilities**” means the existing generating units, structures, installations, roadways, walkways, parking facilities and other auxiliary and support facilities located on the Cane Run Site, including all existing facilities used in connection with the generation of electricity; the transportation, handling or storage of Fuel; or the transmission of electricity.

“**Facility**” means the whole or, where the context admits, part of the new gas-fired combined cycle plant to be constructed pursuant to this Agreement, including appurtenant facilities such as roads, walks, landscaping, parking, utility interconnects, offices and buildings required by the Technical Specification, to be designed, procured, constructed, commissioned, tested and completed by Contractor in accordance with this Agreement, together with Equipment to be provided hereunder.

“**Final Completion**” will be deemed to have occurred when all of the following have occurred in respect of the Work (i) either (a) Commercial Operation has been achieved or (b) Substantial Completion has been achieved and all Performance Liquidated Damages have been paid in accordance with this Agreement; (ii) [REDACTED]

[REDACTED] (v) all As-Built Drawings, Design Documents, Operating and Maintenance Manuals and other documents required to be delivered to Owners hereunder have been so delivered; (vi) all liquidated damages for which Contractor is liable pursuant to **Article 7** and other amounts owed by Contractor to Owners under this Agreement, if any, have been paid to Owners; (vii) all obligations of Contractor expressly required to have been performed as of the Final Completion Date will have been properly discharged; (viii) all Work, including Punch List Items has been completed other than Work and other obligations that requires future performance (*e.g.*, warranty Work and indemnification obligations); and (ix) Owners have issued the Certificate of Final Completion.

“**Final Completion Date**” means the date on which Contractor successfully achieves Final Completion.

“**Financing**” means any form of construction, interim, long-term debt, lease, tax-exempt, recourse, non-recourse, equity or other form of funding, or refinancing that either Owner or any affiliate of either Owner obtains or attempts to obtain any or all of the proceeds of which are to be used in connection with such Owner’s obligations hereunder.



**“Financing Parties”** means any Person that provides Financing or credit support for Financing, as selected by Owners and/or any trustee(s) acting in connection therewith and their respective successors and assigns.

**“FNTF Target Date”** has the meaning specified in **Section 2.2.1**.

**“Force Majeure”** means any condition, event or circumstance, including the examples set forth below, but only if, and to the extent (i) such condition, event or circumstance is not within the reasonable control of the Party affected; (ii) such condition, event or circumstance, despite the exercise of reasonable diligence, could not be prevented, avoided or removed by such Party; (iii) such condition, event or circumstance has a material adverse effect on the ability of the affected Party to fulfill its obligations under this Agreement; (iv) the affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such condition, event or circumstance on the affected Party’s ability to fulfill its obligations under this Agreement and to mitigate the consequences thereof; and (v) such condition, event or circumstance is not the result of any failure of such Party to perform any of its obligations under this Agreement. By way of example, such events, conditions and circumstances shall include war, rebellion, sabotage, civil strife, insurrection, public disorder, Climatic Conditions, earthquake, quarantine, acts of terrorism, natural catastrophes, national strikes, strikes of Subcontractors providing specially designed or fabricated Equipment as to which there was at the time of the order no other reasonable source, and Changes in Law. Notwithstanding the foregoing, Force Majeure shall not include the following events, conditions or circumstances:

- (a) late delivery of Equipment, Consumables or Construction Aids required for the Work however caused, including by congestion at a Subcontractor’s plant or elsewhere, oversold market conditions, inefficiencies, transportation delays or other similar circumstances (except to the extent a transportation delay is caused by the occurrence of an independent condition, event or circumstance described in and meeting the conditions of the first full paragraph of this definition);
- (b) shortages of supervisors, labor, Equipment, Consumables or Construction Aids;
- (c) late performance as a consequence of any violation of Applicable Law or decisions of a Governmental Authority related to the conduct of Contractor’s or any Subcontractor’s business, including insolvency or any delay related to the economic, commercial or labor circumstances of Contractor, any Subcontractor or other business conducted by Contractor or any Subcontractor;
- (d) breakdown, loss, damage to or theft of machinery, Equipment, Consumables or Construction Aids except where such breakdown, loss or damage is directly due to the occurrence of an independent condition, event or circumstance described in and meeting the conditions of the first full paragraph of this definition;
- (e) failure of a Party to pay amounts due and owing under this Agreement;

- (f) strikes or other labor disturbances affecting Contractor or any of its Subcontractors, except as expressly set forth in the examples described in the first full paragraph of this definition;
- (g) increased costs of the Work, general economic or industry conditions; or
- (h) weather conditions other than Climatic Conditions.

“**Fuel**” means natural gas.

“**Full Notice to Proceed**” means the written instruction given by Owners to Contractor to commence the Work under this Agreement in the form of **Exhibit F-6**.

“**Functional Tests**” has the meaning specified in **Exhibit G**.

“**Governmental Authority**” means any federal, state, county, regional, city, parish or local government body, agency, authority, branch, department, arbitrator, court or any subdivision, instrumentality or agency thereof having a regulatory interest in, or jurisdiction over, the Work (or any portion thereof), the Facility, the Cane Run Site, this Agreement or one or more of the Parties.

[REDACTED]

“**Guaranteed Air Emissions**” has the meaning specified in **Exhibit G**.

“**Guaranteed Emissions**” means the Guaranteed Air Emissions, the Guaranteed Sound Emissions and the Guaranteed Liquid Effluent Discharge.

“**Guaranteed Final Completion Date**” means [REDACTED]

“**Guaranteed Liquid Effluent Discharge**” has the meaning specified in **Exhibit G**.

“**Guaranteed Net Electrical Output**” has the meaning specified in **Exhibit G**.

“**Guaranteed Net Heat Rate**” has the meaning specified in **Exhibit G**.

[REDACTED]

[REDACTED]

“**Guaranteed Sound Emissions**” has the meaning specified in **Exhibit G**.

[REDACTED]

“**Guaranteed Substantial Completion Date**” means [REDACTED], which date may be adjusted pursuant to the terms and conditions of this Agreement.

[REDACTED]

“**Hazardous Substance**” means: (i) any chemicals, materials, substances, or wastes which are now or hereafter defined as or included in the definition of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic substance,” “extremely hazardous substance,” “pollutant,” “contaminant,” or words of similar import under any Applicable Law; (ii) any petroleum, petroleum products (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas), or oil and gas exploration or production waste, polychlorinated biphenyls, asbestos or asbestos-containing materials, mercury, urea formaldehyde insulation, radioactive material, and lead-based paints, or any other substance that has been contaminated, polluted or made toxic; and (iii) any other chemical, material, substances, waste, or mixture thereof which is prohibited, limited, or regulated pursuant to, or that could reasonably be expected to give rise to liability under, any Applicable Law.

“**Hazardous Substance Management Plan**” has the meaning specified in **Section 4.20(vi)**.

“**Hold Point**” means an inspection point with respect to which Contractor or its Subcontractors may not proceed further with respect to the Work unless and until Owners have either: (i) inspected the applicable Work and authorized Contractor (including its Subcontractors) to proceed or (ii) waived such inspection in writing. Hold Points include those points designated by Owners from time to time by notice to Contractor.

“**Indemnified Parties**” has the meaning specified in **Section 20.3**.

“**Indemnifying Party**” has the meaning specified in **Section 20.3**.

“**Information**” means all drawings; documents; manuals; training materials; Computer Programs; operating, maintenance, and other guidelines and procedures; and Design, Design Documents and other data, trade secrets, and information used or supplied by Contractor, whether directly itself or indirectly through subcontractors, whether paper or electronic media, in performance of this Agreement which would be reasonably useful or necessary in Owners’ operation, maintenance, repair, modification, or use of the Facility.

“**Initial Synchronization**” means the first time that a generator breaker is closed and the Facility is thereby connected to the electric transmission grid.

“**Insolvency Event**” means, with respect to the Person (i) the Person’s (a) failure to generally pay its debts as they become due, (b) admission in writing of its inability to pay its debts as they become due or (c) making a general assignment for the benefit of creditors; (ii) any proceeding being instituted by or against the Person seeking (a) to adjudicate it as bankrupt or insolvent, (b) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency,

reorganization or relief of debtors or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against the person, either such proceeding remains undismissed for a period of [REDACTED] Days or any of the actions sought in such proceeding occur; or (iii) the Person's taking any action to authorize any of the actions set forth above in this definition.

**"Intellectual Property"** means all patents, patent applications, copyrights, trade secrets and other intellectual property rights.

**"Job Site"** means that portion of the Cane Run Site on which the Facility will be constructed, areas for parking, storage, laydown and office facilities, as more particularly described in **Exhibit S-1** hereto.

**"KU"** has the meaning specified in the first paragraph of this Agreement.

**"LC"** has the meaning specified in **Section 25.23**.

**"LG&E"** has the meaning specified in the first paragraph of this Agreement.

**"Liabilities"** has the meaning specified in **Section 20.1**.

**"Lien Indemnitees"** has the meaning specified in **Section 20.5**.

**"Liens"** has the meaning specified in **Section 20.5**.

**"Local Hires"** means workers hired as a part of Contractor's direct craft work force whose primary residences are located within: (i) the Commonwealth of Kentucky; or (ii) the Standard Metropolitan Statistical Area (as defined by the U.S. Census Bureau) for each of Louisville, Kentucky; Evansville, Indiana; or Cincinnati, Ohio.

**"Local Spend"** means expenditures with firms whose primary operations are within: (i) the Commonwealth of Kentucky; or (ii) the Standard Metropolitan Statistical Area (as defined by the U.S. Census Bureau) for each of Louisville, Kentucky; Evansville, Indiana; or Cincinnati, Ohio.

**"Major Subcontractor"** means a Subcontractor providing labor, materials and/or Equipment in relation to the Work under this Agreement which has a value of [REDACTED].

**"MBE"** has the meaning specified in **Section 25.23**.

**"MBE Spend"** means expenditures with MBEs certified by a recognized certification entity, Louisville Metro Human Relations Commission, Kentucky Department of Transportation, Small Business Administration, and other state agencies as approved by Owners.

**"Mechanical Completion"** means when, with respect to the Work, all of the following have occurred: (i) all Equipment has been furnished and installed in accordance with **Exhibit A**

and manufacturers' requirements (and in a manner that does not void any warranty) and the terms of this Agreement and, as appropriate, checked for alignment, lubrication, rotation, and hydrostatic and pneumatic pressure integrity; (ii) all Systems have been installed, cleaned and statically tested and cold commissioning has been completed; (iii) all initial tests have been completed, all instruments have been calibrated, the appropriate Systems have been flushed and cleaned out as necessary, all motor rotation checks are complete and the steam turbine has been placed on turning gear; (iv) all the Equipment, Systems and the Facility can be operated in a safe and prudent manner; (v) the Facility is ready to commence hot commissioning, testing and integrated operations without the use of temporary equipment or installations; (vi) an initial Punch List has been established and mutually agreed upon by Owners and Contractor; (vii) the Performance Test Procedures have been submitted to and accepted by Owners; (viii) Turnover Acknowledgements for all Systems have been issued by Owners; (ix) the classroom training required by **Section 4.9** has been completed; and (x) Owners have executed the Certificate of Mechanical Completion. It is understood that the turnover process of Systems for the Work will be accomplished in incremental steps, in accordance with the turnover procedures set forth in **Article 6**, the sum total of which, when completed, will constitute Mechanical Completion.

**"Milestone Payment Schedule"** means the schedule of milestone values as set forth in **Exhibit C**, as adjusted in accordance with this Agreement.

**"Modification"** means (i) a written amendment to this Agreement signed by all Parties hereto, (ii) a Change Order or (iii) an Owners' Authorization.

**"NERC"** means the North American Electric Reliability Corporation, a reliability organization responsible for the oversight of the regional reliability organizations established to ensure the reliability and stability of the regions.

[REDACTED]

[REDACTED]

**"Net Electrical Output"** has the meaning specified in **Exhibit G**.

**"Net Heat Rate"** has the meaning specified in **Exhibit G**.

**"Operating and Maintenance Manuals"** has the meaning specified in **Exhibit V**.

**"Owners"** means LG&E and KU collectively. Individually each of LG&E and KU is an Owner. The respective individual, undivided ownership interest of each Owner under this Agreement will be equal to such Owner's then current individual, undivided ownership interest in the Facility.

**"Owners' Authorization"** has the meaning specified in **Section 10.1.4**.

**"Owners' Default"** has the meaning specified in **Section 24.3.1**.

**"Owners' Indemnitees"** has the meaning specified in **Section 20.1**.

“**Owners’ Permits**” means Permits for which Owners are responsible hereunder.

“**Owners’ Representative**” has the meaning specified in **Section 5.1**.

“**Owners’ Response Period**” has the meaning specified in **Section 10.1.3**.

“**Owners’ Review Period**” has the meaning specified in **Section 6.2.2**.

“**Parent Guarantees**” means the guarantee to be delivered by each Guarantor, in substantially the form set forth in **Exhibit F-8**.

“**Party**” or “**Parties**” means either Owners, Contractor or all of them, as the context or the usage of such term may require.

“**Performance Fuel**” means natural gas that meets the specifications specified in **Exhibit B**.

“**Performance Guarantees**” has the meaning specified in **Exhibit G**.

“**Performance Liquidated Damages**” has the meaning set forth in **Section 7.2**.

“**Performance Tests**” has the meaning specified in **Exhibit G**.

“**Performance Test Procedures**” means the final detailed procedures for conducting the Performance Tests prepared by Contractor and approved, in writing, by Owners in accordance with **Exhibit G**.

“**Permits**” means any waiver, exemption, variance, franchise, permit, authorization, approval, identification number, inspection, certification, license, clearance or similar order, filing, registration, application of, from or to any Governmental Authority, including those set forth in **Exhibit P**.

“**Person**” means any individual, company, corporation, firm, joint venture, partnership, association, limited liability entity, organization, trust, Governmental Authority or similar entity.

“**Planned Substantial Completion Date**” has the meaning set forth in **Section 6.5.2**.

“**Pre-Existing Hazardous Substance**” means a Hazardous Substance existing on the Job Site as of the Effective Date, which Hazardous Substance is of a nature or exists in an amount that requires special handling, disposal or remediation under Applicable Law.

“**Pre-Mobilization Activities**” has the meaning set forth in **Section 2.1.2**.

“**Prime Rate**” means the per annum (365 or 366 Days, as appropriate) prime rate as published from time-to-time in the “Money Rates” table of *The Wall Street Journal*; **provided, however**, if more than one such prime rate is published, the average shall be used for purposes of this Agreement, unless an equivalent bank rate is agreed to by the Parties.

**“Professional Standards”** means

**“Project Requirements”** means with respect to the Work or the Facility or any portion of either or both (i) Applicable Law; (ii) Codes; (iii) the provisions of this Agreement; (iv) the requirements and warranties of Subcontractors, including Equipment Subcontractors; (v) the requirements of insurers providing insurance pursuant to **Article 22**; (vi) the Operating and Maintenance Manuals; and (vii) Professional Standards.

**“Prudent Utility Practices”** means the practices, methods, materials, supplies, equipment and standards of safety, performance and service that are commonly applied in the electric utility industry in the United States to operate and maintain power plants similar to the Facility, including the use of, and adherence to, equipment, practices and methods, applicable industry codes, standards, and regulations that in the exercise of reasonable judgment and in light of the facts and circumstances known at the time the decision was made would be reasonably expected (i) to protect the Facility, the Existing Facilities, the interconnection facilities, any individual or the environment from damage, loss or injury and (ii) to protect against damage, loss or injury occurring to the transmission grid or the facilities of any utility to which the Facility is directly or indirectly electrically connected. Prudent Utility Practices are not intended to be limited to the optimum practice or method to the exclusion of all others, but rather to be a spectrum of possible, but reasonable practices and methods, having due regard for vendor warranty requirements and Applicable Law.

**“Punch List” or “Punch List Items”** means

**“Records”** has the meaning specified in **Section 25.11.1**.

“**Response**” has the meaning specified in **Section 23.2.2**.

“**Retainage**” has the meaning specified in **Section 8.11**.

“**Sales and Use Taxes**” has the meaning specified in **Section 8.2.1**.

“**Schedule**” means the critical path method schedule, including key dates and milestones for completion of the Work established in accordance with and as set forth in **Exhibit D**, as such Schedule may be adjusted pursuant to this Agreement.

[REDACTED]

“**Scheduled Mechanical Completion Date**” [REDACTED]

[REDACTED]

[REDACTED]

“**Senior Officer**” has the meaning specified in **Section 23.1**.

“**Special Tools**” means tools that are described in the Technical Specification or are provided by a vendor for the installation, checking, inspection, operation, repair or maintenance of Equipment.

“**Specialty Supplier**” means any Subcontractor that provides Equipment that is to be made part of the Work and for which there are no replacements and/or services for all or any part of such Equipment that is readily available from multiple sources other than that Subcontractor.

“**Start-Up**” means Start-up (as that term is defined in 401 KAR 59) of the Facility.

“**Subcontractor**” means and refers to a Person (at any tier other than Contractor) which has a contract, agreement or other arrangement to perform a portion of the Work, including the supply of materials, services or Equipment in connection with the Work.

“**Substantial Completion**” will have occurred when [REDACTED]

[REDACTED]

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**System**” means a system or subsystem of the Facility identified in the final turnover plan established pursuant to **Section 6.2**, all of which will be subject to the turnover requirements of **Article 6**.



“**Systems Turnover Package**” means the collection of documents, drawings, specifications, manuals and diagnostic equipment tests which comprises a complete description of a plant system and its operating requirements in form and substance reasonably acceptable to Owners and meeting the requirements of the final turnover plan established pursuant to **Section 6.2**.

“**Technical Specification**” means and refers to **Exhibit A** attached hereto, and documents specified therein that define generally the requirements and the conceptual Design, scope and purpose of the Facility.

“**Terminal Point(s)**” means the points of connection including the interfaces and terminal points specified in **Exhibit T**.

“**Turnover Acknowledgment**” has the meaning specified in **Section 6.2.2**.

“**Warranty Period**” means the period described in **Section 13.2**, as it may be extended in accordance with this Agreement.

“**WBE**” has the meaning specified in **Section 25.23**.

“**WBE Spend**” means expenditures with WBEs certified by a recognized certification entity, including WBENC (and their regional affiliates), Louisville Metropolitan Sewer District, Louisville Metro Human Relations Commission, Department of Transportation, NWBOC (affiliate of NAWBO), Tri-State Minority Supplier Development Council, and other states’ agencies as approved by Owners.

“**Work**” means all work, services, Equipment, Consumables and Construction Aids to be performed, provided or installed by Contractor in accordance with this Agreement, including **Exhibit A**, all Pre-Mobilization Activities, Job Site preparation, disposal, Design, reconditioning, procurement, transportation, expediting, construction, training, start-up, commissioning, testing, warranty, and other services or items that are necessary or appropriate to complete the Facility and Connect the Facility in accordance with this Agreement. The Work specifically includes options exercised by Owners in accordance with **Exhibit Q**.

**1.2 Contract Interpretation.** In this Agreement, unless the context otherwise requires:

- (i) the singular includes the plural and vice versa;
- (ii) reference to any Person includes such Person’s successors and assigns, to the extent that such successors and assigns are permitted by this Agreement;
- (iii) reference to any agreement (including this Agreement), document, insurance policy or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

- (iv) any accounting term used and not otherwise defined in the Agreement has the meaning assigned to such term in accordance with generally accepted accounting principles consistently applied;
- (v) “including” (and “include”) means (i) including without limiting the generality of any description preceding such term and (ii), with respect to any description following such term, means “including, without limitation” or “including, but not limited to”;
- (vi) reference to Applicable Law means Applicable Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time;
- (vii) when applied to Equipment or Systems, “furnish” “provide” or words of similar import means to secure, pay for, deliver to the Job Site (or other portions of the Cane Run Site, as appropriate), unload, inspect and uncrate, store per manufacturer’s recommendations and any other services or activities appropriate to that portion of the Work;
- (viii) when applied to Equipment or Systems, “install” or “installation” or words of similar import mean to assemble, place in position, incorporate, adjust, clean, make fit for use and any other services or activities appropriate to that portion of the Work;
- (ix) unless the context specifically requires otherwise, the terms “approval,” “consent,” “accept,” “acceptance,” “authorization,” and terms of similar import shall be deemed to be followed by the phrase “which shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed”;
- (x) the words “shall” and “will” have equal force and effect;
- (xi) the words “herein,” “hereof,” or “hereunder” or similar terms refer to this Agreement as a whole and not to any specific section or article;
- (xii) the table of contents and article, section and exhibit titles and similar headings are inserted for convenience only and are not to be used for the purposes of construing or interpreting this Agreement;
- (xiii) the Work is intended to be a term that encompasses all of the necessary performance obligations of Contractor. Any listing of types of work such as “construct,” “erect,” “check” or “align” is not meant to be exclusive in the context of this Agreement or exclude similar or other services or activities appropriate to that portion of the Work;
- (xiv) words and abbreviations not defined in this Agreement which have well-known technical or design, engineering or construction industry meanings

are used in this Agreement in accordance with such recognized meanings;  
and

- (xv) all documentation to be supplied under this Agreement shall be provided in the English language. All dimensions must be specified in the U.S. Customary System.

## ARTICLE 2

### EFFECTIVENESS AND FULL NOTICE TO PROCEED

#### 2.1 Effectiveness; Notice to Proceed.

2.1.1 Effectiveness. This Agreement shall be effective and the Parties shall be bound by the conditions applicable to their conduct on the Effective Date.

2.1.2 Pre-Mobilization. On the Effective Date and prior to issuance of the Full Notice to Proceed pursuant to **Section 2.1.3**, Contractor shall commence performance of the portion of the Work described in **Exhibit L** (the “**Pre-Mobilization Activities**”). The schedule for performing the Pre-Mobilization Activities and the termination payment schedule associated therewith are set forth in **Exhibit L**. Amounts paid to Contractor for Pre-Mobilization Activities will be credited against amounts owed in respect of the Contract Price. Except as expressly set forth in **Exhibit C** for the Pre-Mobilization Activities, no payment of the Contract Price or amount in connection with a termination will be due or payable until the issuance of the Full Notice to Proceed.

2.1.3 Conditions Precedent to Effective Date. The execution of this Agreement by Owners is subject to the satisfaction or written waiver by Owners of the conditions precedent set forth below:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**2.2 Full Notice to Proceed.**

2.2.1 Issuance of FNTTP. When Owners have determined that it is desirable for Contractor to commence full performance of the Work, Owners will deliver the Full Notice to Proceed to Contractor which shall establish the date upon which Contractor shall commence full performance of the Work. [REDACTED]

[REDACTED] Contractor agrees to acknowledge its receipt of the Full Notice to Proceed by countersigning such notice and by returning an executed copy thereof to Owners on the same date such notice is received by Contractor. Execution of the Full Notice to Proceed by each Party indicates that the conditions precedent to such Party's obligations have been satisfied or waived.

[REDACTED]

**2.3 Conditions Precedent to FNTTP.**

2.3.1 Owners' FNTTP Conditions. The issuance of the Full Notice to Proceed by Owners is subject to the satisfaction or written waiver by Owners of the conditions precedent set forth below:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.3.2 Contractor FNTF Conditions. Contractor's obligations to commence the Work and to acknowledge the Full Notice to Proceed are subject to the satisfaction or written waiver by Contractor of the conditions precedent set forth below:

- (i) Owners shall have furnished the Emergency Notification List to Contractor; and
- (ii) the Job Site is available for mobilization.

### ARTICLE 3

#### GENERAL PROVISIONS

**3.1 Intent of Contract Documents.** It is the intent of the Parties that this Agreement be a lump-sum, turnkey contract with a fixed Contract Price and Schedule which will not be changed, except in accordance with **Article 10**.

**3.2 Independent Contractor.** Contractor will perform and execute the provisions of this Agreement as an independent contractor to Owners. Contractor is not and may not act as an agent of Owners for any purpose or reason whatsoever.

**3.3 Subcontracting.** Subject to **Section 3.4**, Contractor may have portions of the Work performed by Subcontractors, including entities related to or affiliated with Contractor; **provided, however**, that Contractor may not subcontract all or substantially all of the Work. No contractual relationship will exist between Owners and any Subcontractor with respect to the Work to be performed hereunder, except pursuant to **Sections 3.5, 3.6 and 13.4**. Notwithstanding whether any provision of this Agreement, or whether or not any provision specifically refers to Contractor's Subcontractors, Contractor will be fully responsible for all acts, omissions, failures or faults of any Subcontractor as fully as if they were the acts, omissions, failures or faults of Contractor and will require its Subcontractors to provide or perform their portion of the Work in a manner consistent with this Agreement. If any Subcontractor fails to perform any portion of the Work as such Work is required to be performed in accordance with this Agreement, Contractor is responsible therefor and hereby binds itself to promptly and diligently correct such failure in accordance with this Agreement, at no cost or expense to Owners. The exercise of the right to subcontract will not in any way increase the cost, expense or liability of Owners hereunder. Contractor shall require any Subcontractor to perform its portion of the Work (i) under Contractor's supervision and (ii) in accordance with the requirements of this Agreement. Contractor shall bind all Major Subcontractors to terms that protect Owners' rights and benefits hereunder and are otherwise not in conflict with the provisions of this Agreement applicable to the subcontracted Work (including the provision of Equipment).

**3.4 Specified Subcontractors.** For those items of Work or Equipment specified in **Exhibit E**, Contractor will only use the services of, or procure Equipment from, those Subcontractors listed under the headings specified in **Exhibit E**. [REDACTED] Contractor will be responsible for the negotiation of the terms and conditions of any purchase orders or subcontracts

entered into with such identified Subcontractors (including cost, performance guarantees and equipment warranties), and will enter into written purchase orders and/or subcontracts in its own name directly with such Subcontractors, it being the intent of the Parties that such Subcontractors will be subcontractors of Contractor and not of Owners. Operability, maintainability, reliability, quality must be material selection factors in Contractor's procurement decisions. Contractor shall undertake to include MBEs, WBEs, DBEs and LCs to the maximum practicable extent on bid lists for portions of the Work. Contractor agrees that before submitting specifications for bids to Major Subcontractors it will give Owners a reasonable opportunity to comment on such specifications and Owners agree that if they wish to comment, Owners will submit such comments within the time period specified for that item in **Exhibit X** and if not so specified, within [REDACTED] Business Days after delivery of the specifications to Owners. Notwithstanding Owners' right to review and comment in accordance with this **Section 3.4**, no such review or comment will relieve Contractor or otherwise serve as a defense to Contractor's full performance of its obligations hereunder.

**3.5 Certain Provisions in Subcontracts**

[REDACTED]

**3.6 Assignment of Subcontracts**

[REDACTED]

**3.7 Subcontracts.** Each such subcontract shall limit recourse exclusively to Contractor, except upon the assignment of such subcontract in accordance with **Section 3.6**. Subcontracts shall allow for suspension of all or a portion of the Work to be performed thereunder and shall be terminable for convenience pursuant to a termination payment schedule.

**3.8 Inclusion; Order of Precedence.** The Body of this Agreement and the Exhibits hereto are to be considered complementary and what is required by one will be binding as if required by all. Contractor has included within the Contract Price the cost to complete the Work in its entirety and to fulfill its other obligations hereunder. In addition, the Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve the Performance Guarantees. The failure to specifically list a requirement in one document, once such requirement is specifically listed in another, does not imply the inapplicability of such requirement and Contractor shall provide or perform, as appropriate, as part of this Agreement all Work or items required to conform to the Technical Specification, the other Exhibits and the standards herein contained. In the event of a conflict between the Body of this Agreement and the Exhibits, the Body of this Agreement governs. In the event of a conflict in an Exhibit or between or among Exhibits, the requirement most favorable to Owners will take precedence, except as may be otherwise determined by Owners. Each Modification will take precedence over that part of this Agreement (including, as applicable, any prior Modification) which it supersedes.

**3.9 Owners' Agent.** The Parties acknowledge that KU is the authorized agent of Owners for the purpose of administering this Agreement and managing the performance of Owners' rights and obligations under this Agreement. Contractor acknowledges that the acts and omissions of KU are the responsibility of Owners and Contractor shall not have recourse under this Agreement against KU, in its capacity as Owners' agent hereunder. Contractor further acknowledges that (i) it will accept the acts and directions of KU as the acts and directions of Owners; (ii) it will render performance to KU, as agent for Owners; and (iii) only KU has the power and authority to direct the Contractor and/or enter into any Modification, in each case unless and until notified in a writing signed by both Owners.

## ARTICLE 4

### CONTRACTOR'S RESPONSIBILITIES

**4.1 Performance of the Work.** Contractor hereby covenants and agrees that it will continuously and diligently provide, perform, install and complete the Work and its other obligations hereunder in accordance with Project Requirements and the Schedule. Contractor further covenants and agrees that it shall procure, provide and pay for all Equipment, Consumables, Construction Aids and other items or services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including all installation, construction services, Design, drafting and procurement, all administration, reporting, expediting, inspection, testing, training, scheduling, and coordination; all start-up, commissioning and testing services; all labor (skilled and unskilled), furnishings, Equipment and supplies; insurance as required by **Exhibit I**, permits, licenses inspections required to be supplied by Contractor under this Agreement; all tools, machinery, storage and transportation and all other facilities and services. Contractor will order,

expedite, receive, furnish, handle, inspect, store, maintain and install Equipment in accordance with vendor/manufacturer requirements and, in the absence thereof, in accordance with Professional Standards. Contractor will perform all managerial, supervisory and administrative services that may be necessary to ensure the proper and timely completion of all such activities which form a part of the Work. As such, Contractor agrees that Contractor shall be ultimately responsible for the proper and timely completion of the entirety of the Work in accordance with this Agreement, whether performed by Contractor or by any Subcontractor.

**4.2 Sufficient Personnel.** Contractor shall, at all times during the term of this Agreement, employ a sufficient number of qualified and competent supervisory personnel, craft persons and other persons, so that the Work and other obligations to be performed by Contractor hereunder are completed in an efficient, prompt, economical and professional manner. Contractor shall be responsible for all overtime or other premium time Work, except as expressly approved by Owners pursuant to **Article 10**. Without in any way limiting the foregoing, such personnel must include sufficient qualified buyers, inspectors, and expeditors necessary to provide Equipment, Consumables and Construction Aids in a timely manner consistent with the Schedule. Whenever required by Applicable Law and Professional Standards, licensed (in the applicable jurisdiction) professional engineers will perform the Design services required to perform the Work. Other portions of the Work shall be performed by properly licensed personnel as required by Applicable Law and Professional Standards. Contractor shall also provide all construction and technical services, supervision and craft personnel as required for system adjustments during startup, commissioning and testing. Contractor shall provide for an Owners-approved third party certified stack test company to certify the results of the emissions tests for the Work in accordance with the time requirements established in **Section 11.1**. During start-up, testing or the operation of the Work until the earlier to occur of Substantial Completion or Commercial Operation, as the case may be, Contractor shall maintain qualified personnel on the Job Site twenty-four (24) hours a Day to supervise Owners' operators regarding operation and maintenance of the Facility. Engineering documents shall be stamped by a Kentucky Registered Professional Engineer as required by Applicable Law.

#### **4.3 Labor Matters.**

4.3.1 Labor Peace. Contractor shall be responsible for labor peace on the Job Site and shall support Owners' efforts to maintain good labor relations with local labor organizations. Contractor shall at all times exert its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances. Contractor shall advise Owners promptly, in writing, of any actual, anticipated, or threatened labor dispute that might affect the completion of the Work by Contractor or by any of its Subcontractors in accordance with the Schedule.

4.3.2 Employment Eligibility. Contractor shall comply with the Immigration Reform and Control Act of 1986.

#### **4.4 Discipline and Protection**

[REDACTED]



[REDACTED]

**4.5 Supervision**

[REDACTED]

**4.6 Contractor’s Key Personnel.** Exhibit K contains a list of Contractor’s key personnel who will be responsible for supervising the performance of Contractor’s obligations hereunder. Such list includes the designation of Contractor’s principal representative (the “**Contractor’s Representative**”), who will be Contractor’s sole authorized representative having the responsibility and authority to direct and manage the Work, administer this Agreement, serve as Contractor’s primary point of contact from and with Owners and be authorized to make decisions related to the Work and bind Contractor. Contractor recognizes that a good working relationship must exist between its key personnel and Owners. Owners have the right to request replacement of key personnel upon reasonable notice after having given Contractor a reasonable opportunity (not to exceed [REDACTED] Days) to rectify the situation leading to such request. Upon the expiration of such period, if Owners remain unsatisfied, Contractor shall promptly effect such replacement. Any replacement of key personnel is subject to the prior written approval of Owners, which approval shall not be unreasonably withheld. Contractor’s Representative shall act as Contractor’s liaison with Owners.

**4.7 Design and Engineering.** Contractor has full Design responsibility for the performance of the Work. Black & Veatch Corporation, an Affiliate of OCI, will be the engineer of record. Contractor shall engage all supervisors, engineers, designers, draftsmen, Subcontractors and others necessary for the Design of the Facility and the preparation of all drawings, specifications, calculations, plans, reports or other Design documentation (including all media) for the Work, setting forth in detail the requirements for the construction of the Facility in accordance with this Agreement (collectively the “**Design Documents**”). Contractor shall furnish the Design of the Facility in accordance with Project Requirements and to be capable of operating in conformance with the Performance Guarantees and Applicable Law. Design Documents will be available to Owners electronically in an agreed format and in hard copy. Owners will be entitled, but not obligated, to review and comment upon the Design Documents in accordance with **Exhibit X** prior to Contractor commencing with any subsequent phase of the Work related to such Design Documents. Contractor shall provide adequate furnished office facilities (with telephone and internet access) for Owners’ personnel in Contractor’s offices in Overland Park, Kansas, during the Design and procurement phase of the Work. Design Documents will be deemed final when stamped by Contractor as “issued for permit or for construction,” except to the extent such documents are subject to review, comment and approval in accordance with **Exhibit X** by Owners. Design Documents that are required to

be certified or under seal shall be certified or sealed by professional engineers, licensed and qualified to perform engineering services in the applicable jurisdictions. In no event will any review, comment or approval of Owners, or acceptance or acknowledgment of any of the Work, in any way, relieve Contractor of any of its guarantees or obligations hereunder, including its full responsibility for errors and omissions, confirming all quantities, selection of fabrication processes, construction techniques, the accuracy of the dimensions, details and the quality of its instruments of service prepared in connection with the Facility as well as its responsibility for the quality, integrity, safety and timely performance of the Work.

**4.8 Quality Control.** Contractor shall develop, implement and maintain a quality assurance plan for the Work which must include: Facility quality assurance; management and control of the Design, engineering, construction, procurement and supply services; and management and control of Subcontractors and their subcontracts. Such plan must be designed to meet Project Requirements, include procedures for effective implementation, and must be submitted to Owners within [REDACTED] Days of the Effective Date for Owners' review and approval. Contractor shall also require Major Subcontractors to establish, implement and maintain comparable quality control and safety programs with respect to their respective portions of the Work. Compliance with the quality assurance plan will not relieve Contractor of any duty, obligation or responsibility under this Agreement.

**4.9 Training.** Contractor shall develop and implement a program to adequately instruct and train personnel made available by Owners in accordance with the provisions of **Exhibit U**. Training materials are not Confidential Information. Contractor grants Owners the right to record all training sessions and replay such recordings for retraining or training of others. Contractor will provide technical assistance to the Facility's operating personnel in connection with the development of integrated Facility training procedures.

**4.10 Utility Usage.** Contractor shall provide and pay for all utilities and associated fees (not provided or paid for by Owners pursuant to **Section 5.3**) required prior to the earlier of Substantial Completion or Commercial Operation, including telephone service, Internet service, water, Consumables, sanitary facilities, construction power, and waste and sewage disposal, including sanitary sewage, and wastewater disposal. Contractor's responsibility for payment shall include all rental, consultation, removal, usage and other costs or fees. Contractor shall provide its own information technology and telecommunications, cable, or satellite communications. Contractor shall be responsible for providing a first fill of all Consumables as well as refills and replacements during the period prior to the earlier of Commercial Operation or Substantial Completion. Contractor shall "top off" Consumables, as appropriate, promptly after Performance Tests that occur prior to or as a condition of Commercial Operation or Substantial Completion.

**4.11 Equipment Subcontractor Presence.** Contractor shall be responsible for notifying and paying for any Equipment Subcontractor representative that it deems necessary to be present (i) at any of the training sessions; (ii) for erection supervision; (iii) for commissioning; or (iv) during the Performance Tests.

**4.12 Current Records; As-Built Drawings.** Contractor (and its Subcontractors) shall maintain in good order at the Job Site at least one (1) record copy of the Design Documents,

marked currently to record changes made during construction, a copy of this Agreement and Modifications thereto, one record copy of approved shop drawings, product dates, samples and other submittals required by Contractor, all of which will be available to Owners for inspection and use at all times. Prior to and as a condition of Final Completion, the As-Built Drawings shall be delivered by Contractor to Owners, as well as a set of reproducible record drawings (in formats requested by Owners and CAD disks) showing all changes made during construction to the Design Documents and to the drawings of the Existing Facilities. From and after Contractor's mobilization to the Job Site, Contractor shall prepare and display for Owners' benefit on the Job Site a visual depiction, in a storyboard format reasonably acceptable to Owners, of the Work to be performed during the current month and the following month.

**4.13 Transportation Costs.** Contractor shall arrange and pay for all transportation, storage, transit and transfer costs (including duties and similar charges) of every kind and nature in connection with the Work.

**4.14 Parent Guarantee** [REDACTED]

**4.15 Control of Work.** Contractor shall be solely responsible for all Design and construction means, methods, techniques, sequences, procedures, quality assurance and quality control programs in connection with the performance of the Work.

**4.16 Emergencies.** In the event of any emergency at the Job Site endangering life or property, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as possible, report any such incidents, including Contractor's response thereto, to an appropriate person on the Emergency Notification List.

**4.17 Local Conditions** [REDACTED]

**4.17.1 Transportation.** Contractor has assessed and taken into account the circumstances affecting the transportation and delivery of Equipment, Consumables, and Construction Aids to the Job Site.

4.17.2 Responsibility. Any failure by Contractor to take the actions described in this **Section 4.17** or **Section 4.18** will not relieve Contractor from responsibility for estimating properly the difficulty, time and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Owners. Contractor has assessed and taken into account the circumstances affecting the transportation and delivery of Equipment, Consumables, and Construction Aids to the Job Site.

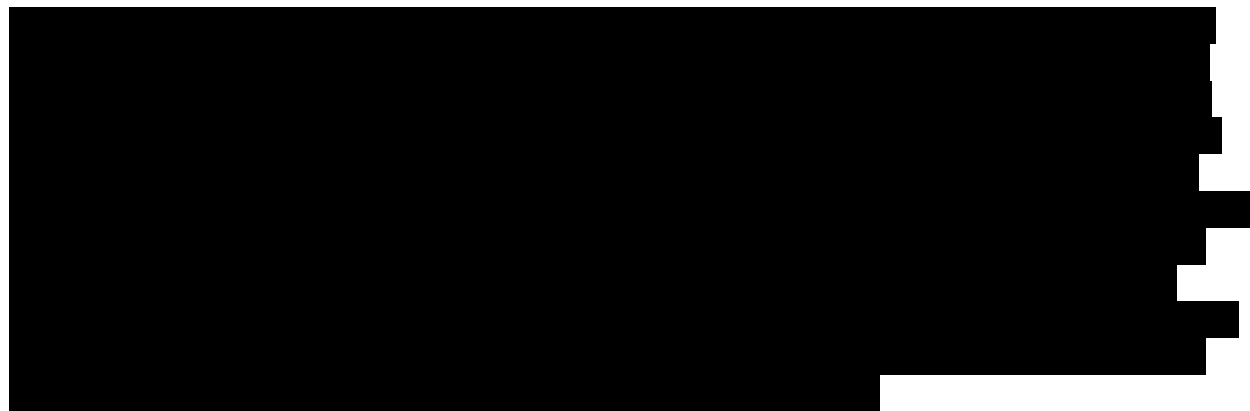
**4.18 Job Site Conditions.**

4.18.1 General. Contractor has inspected the Job Site, other portions of the Cane Run Site on which Work is to occur, and surrounding locations, has had an opportunity to conduct such tests as it may desire, and has reviewed information provided by or on behalf of Owners, copies of which are attached hereto in **Exhibits S-5, S-6 and S-7** relating to river water conditions and surface and subsurface conditions, to the extent it deems necessary for its purposes, and is familiar with the conditions thereof related to the performance of the Work. Contractor further understands the scope of construction activity that is and will be undertaken on the Cane Run Site during the term of this Agreement and has taken the inherent constraints associated therewith into account except as otherwise provided in this **Section 4.18**. Information provided to Contractor concerning the Job Site, other portions of the Cane Run Site, the Existing Facilities or surrounding areas, including the information provided in **Exhibits S-5, S-6 and S-7** specifications, Design documentation or otherwise is made without representation or warranty of any kind or nature. Such information is not warranted by Owners to be accurate, complete or otherwise suitable or sufficient for Contractor's purposes and is provided solely as a convenience to Contractor. Any reliance thereon by Contractor is at its sole risk.

[REDACTED]

**4.19 Access**

[REDACTED]



**4.20 Use of Site.** Contractor will have access to the Job Site, subject to **Exhibit S-1**, commencing on issuance and acknowledgement of the Full Notice to Proceed. Access to other portions of the Cane Run Site on which Work is to be performed, including the location of any of the Existing Facilities will be on an as-needed basis as requested by Contractor sufficiently in advance of such needs to allow Owners to schedule such activities without adversely impacting the operations of any of the Existing Facilities. Contractor shall be entitled to utilize the internal roadways of the Cane Run Site as indicated in **Exhibit S-1**. Such use is not exclusive and must not interfere with the ongoing operations of or construction activities affecting the Existing Facilities. Any use of such roadways that could result in such interference shall be subject to the prior written approval of Owners. Contractor shall confine its operations at the Job Site to areas permitted by Applicable Law and this Agreement and, with respect to the Existing Facilities or other areas of the Cane Run Site where Work is to be performed, the instructions of Owners. Notwithstanding anything in this Agreement to the contrary, Contractor may not interfere with the conduct of the Existing Facilities (including deliveries thereto) or any business operating adjacent to or in close proximity to the Job Site or the Cane Run Site. Contractor shall coordinate its performance of the Work with the requirements and business operations of the Existing Facilities. Contractor shall prepare a Job Site coordination plan to be delivered to Owners no later than [REDACTED] Days prior to mobilization to the Job Site, setting forth procedures and guidelines to be implemented by Contractor and Owners to maximize site coordination and minimize the likelihood of interference and any adverse effect therefrom on the operations of the Existing Facilities. Owners will be entitled to review and comment on such plan and any such comments must be incorporated into the final version of such plan. Contractor shall also implement and enforce rules necessary for safe, efficient and proper prosecution of the Work. At a minimum, Contractor, its Subcontractors and their respective employees and invitees will be subject to and shall strictly comply with the health, safety and environmental protection procedures and regulations established by Owners, including the procedures and regulations set forth in **Exhibit H**, as they may be changed from time to time in the sole discretion of Owners. Failure to strictly comply with the requirements of **Exhibit H** will be grounds for exclusion from the Job Site, the Cane Run Site or the Existing Facilities, at the sole discretion of Owners; any adverse consequence thereof shall be borne by Contractor. In addition, Contractor shall:

- (i) use, and shall cause all Subcontractors and their respective employees to use, only such gate(s) for access to the Job Site, as identified in **Exhibit S-1**, except as otherwise designated by Owners. All Equipment shall be received, stored and routed, and all demolition debris shall be routed and

stockpiled in strict accordance with the Job Site coordination plan prepared by Contractor and approved by Owners, as described above. Contractor shall not load, or permit to be loaded, any part of the Work in such fashion that may damage any part of the Work or endanger the safety of any part thereof. All Equipment, Consumables, and Construction Aids must be received, stored and routed, and all waste and demolition debris shall be routed and stockpiled in strict accordance with the Job Site coordination plan prepared by Contractor and approved by Owners, as described above;

- (ii) be responsible for the security of the Work and the Job Site until the earlier of Substantial Completion or Commercial Operation, it being acknowledged by Contractor that neither Contractor nor its Subcontractors are entitled to rely on any security measures or procedures in place at the Cane Run Site for the protection of Persons or property;
- (iii) within [REDACTED] Days prior to Contractor's mobilization to the Job Site, Contractor shall develop and provide to Owners a temporary facilities plan. Within [REDACTED] Days (**provided, however**, if the last day of such period is not a Business Day, the period will be extended to and until the next Business Day) of receipt of such plan, Owners will provide their comments to Contractor. Contractor shall incorporate Owners' comments into a final version of such plan and revise the plan, as necessary, and issue the final version within [REDACTED] Days (**provided, however**, if the last day of such period is not a Business Day, the period will be extended to and until the next Business Day) of receipt of Owners' comments. Thereafter, Contractor shall implement the provisions of the plan, confine temporary structures, machinery, and other property of Contractor (and its Subcontractors), and the storage of Equipment, Consumables, and Construction Aids to the laydown or other areas more specifically identified in **Exhibit S-2**, or otherwise provided in the plan, permitted by Applicable Law, by this Agreement and by Owners. Temporary structures shall be neat in appearance, must not constitute a fire or any other safety hazard and must be properly maintained.
- (iv) obtain approval from the Owners' Representative prior to performing any Work on the Cane Run Site that is not wholly within the Job Site. Requests for a work permit shall be made in writing on the appropriate form set forth in **Exhibit F-7** (as such form may be modified by Owners) within a reasonable time prior to the need therefor. Contractor understands that it must consult with the Owners' Representative to assure that operation by the Existing Facilities will not be interrupted by the Work to be performed and that decisions made by the Owners' Representative hereunder will be based upon the operating and maintenance requirements of the Existing Facilities. Contractor further understands that certain activities associated with the Work will require advance notice or approval of Owners, including submission and approval

of forms completed by Contractor. The forms to be submitted by Contractor are set forth in **Exhibit F-7** and must be completed and submitted to the Owners' Representative a reasonable time prior to the time Contractor needs to conduct the subject activity;

- (v) except as expressly permitted with the prior written consent of Owners, not deliver any Equipment or perform any Work that would be considered "heavy construction" on Days that are not Business Days or except during the hours of 6 a.m. to 7 p.m. Monday through Friday. Contractor shall not schedule deliveries during hours that school bus transportation is scheduled to utilize roads in the general vicinity of the Cane Run Site. Contractor shall strictly comply with all applicable sound regulations to which the construction activity or the Facility is subject shall be strictly followed by Contractor;
- (vi) develop and implement a construction environmental control plan in connection with the Work for the purpose of properly managing the sediment control, erosion, fugitive dust, storm water runoff, noise and other adverse environmental impacts of construction, all in conformance with the Project Requirements. Owners shall be entitled to review and comment on such plan and any such comments must be incorporated into the final version of such plan. Such plan shall be submitted no less than [REDACTED] Days prior to the date on which Contractor mobilizes to the Job Site; and
- (vii) within [REDACTED] Days of Contractor's mobilization to the Job Site, Contractor shall provide to Owners a Hazardous Substances management plan ("**Hazardous Substances Management Plan**") that it will vigilantly implement during performance of the Work on any portion of the Cane Run Site. Such plan, at a minimum, must incorporate the Cane Run Station policies and procedures and require Contractor to cooperate and coordinate with Owners. Within [REDACTED] Days (**provided, however**, if the last Day of such period is not a Business Day, the period will be extended to and until the next Business Day) of receipt of the plan, Owners shall provide comments to Contractor and Contractor shall incorporate Owners' comments into the final version of such plan. Contractor shall implement the provisions of the plan.

#### 4.21 Compliance With Law [REDACTED]

[REDACTED]

#### 4.22 Permits and Approvals

#### 4.23 Periodic Reports & Meetings.


4.23.1 Status Report. Within [REDACTED] Days after the end of each calendar month after the Effective Date, Contractor shall prepare and submit to Owners a status report, covering the previous calendar month, that will be prepared in a manner, level of detail and format acceptable to Owners and must include (i) a detailed description of the progress of the Work, including a critical path chart illustrating the progress which has been made together with a comparison against the Schedule; (ii) a statement of any significant issues including Change Orders that remain unresolved, and Contractor's recommendations for resolution of the same; (iii) an updated report as to Contractor's adherence to the Schedule; (iv) a summary of any significant events that are scheduled or expected to occur in connection with the Work during the following [REDACTED]; (v) a report on safety program performance and results for the previous month, including statistics, lost time accidents, OSHA recordables and near misses, as well as root causes and corrective actions; (vi) the information required by **Section 11.3**; and (vii) such additional information reasonably requested by Owners. Contractor shall also comply with the requirements of **Exhibit M**.

4.23.2 Attendance and Participation. Until Final Completion, Contractor shall attend and participate in meetings on a daily, weekly and monthly basis among Contractor and Owners for the purpose of discussing the status of the Work and anticipating and resolving problems. Such meetings may also include other Persons at the invitation of Owners, such as consultants of Owners; **provided**, such Persons execute reasonable and customary agreements to maintain Work-related information on a confidential basis. Other Persons shall be permitted to attend with the prior consent of Owners. Contractor shall prepare and distribute notes of monthly meetings. Publication or distribution of notes of meetings will neither constitute a notice pursuant to **Section 25.5** for any purpose under this Agreement nor a permitted basis to assert claims under this Agreement. No implication whatsoever shall be drawn as consequence of a failure by any Party to comment upon or object to meeting notes prepared or distributed by the other Party.

**4.24 Signage**. Contractor shall not display, install, erect or maintain any advertising or other signage at the Cane Run Site without Owners' prior written approval, except as may be required by Applicable Law.

#### 4.25 Spare Parts





**4.26 Interference with Traffic.** Contractor shall carry out the Work so as not to damage or interfere with access to, use or occupation of, public or private roads, docks, waterways, footpaths or other properties, whether in the possession of Owners or of any other Person. Contractor shall communicate with, and ascertain the requirements of, all Governmental Authorities in relation to vessel or vehicular access to and egress from the Cane Run Site (and the Job Site) and shall comply with those requirements. Contractor shall be deemed to have satisfied itself as to and shall be fully responsible for the routing for deliveries of Equipment including delivery of heavy, large or oversize loads to the Cane Run Site or the Job Site, as appropriate.

**4.27 Supply of Water and Facilities.** Contractor shall make available an adequate supply of potable water and sanitary facilities for the benefit of those working on the Job Site.

**4.28 Cutting and Patching.** Contractor shall be responsible for all cutting, repairing, fitting or patching which is required to complete or repair the Work or to make its parts fit together properly. It is the intent of this Agreement that all areas requiring cutting, fitting, repairing or patching will be restored to a completely finished equivalent-to-new condition.

**4.29 Cleaning Up.** Contractor shall, at all times during the term of this Agreement, keep the Job Site, other portions of the Cane Run Site and surrounding streets (whether public or private), properties, waterways, sidewalks and other areas free from accumulations of waste materials, Equipment, rubbish, dirt, debris and other garbage, liquid and non-liquid materials

whether spilled, dropped, left behind, discharged, blown out or leaked during performance of the Work. Contractor shall maintain its working, storage, laydown and parking areas in a clean and non-hazardous condition, and shall employ adequate dust control measures. Contractor must provide adequate tire washing facilities for trucks leaving the Job Site. Contractor shall properly maintain Equipment and Systems containing any Hazardous Substance. Contractor shall repair (if necessary) roads and other infrastructure (internal, public or private) on or in the vicinity of the Job Site and the Cane Run Site that are affected by construction activities or traffic, as needed. Hazardous Substances, including chemicals used in cleaning processes must be properly handled and must be properly disposed of off of the Cane Run Site. Prior to Final Completion with respect to the entire Job Site (including laydown, parking and construction areas) Contractor shall remove all tools, trailers, surplus, waste materials, and rubbish, and shall clean all glass (inside and out), remove all paint spots and other smears, stains or scuff marks, clean all plumbing and lighting fixtures, wash all concrete, tile and finished floors, and otherwise leave the Job Site and the Cane Run Site where Work was performed neat and clean. If Contractor fails to take the actions required by this **Section 4.29**, Owners may do so (or cause it to be done) and the cost thereof will be charged to Contractor.

**4.30 Waste Disposal.** Contractor is responsible for disposal of all wastes generated by it or its Subcontractors during the performance of the Work, including waste water, sanitary wastes, demolition debris, construction debris, spoil, surplus excavation material, driven water, office wastes, and wastes related to preparation, commissioning, testing, and start-up of Systems or Equipment. All such wastes must be handled, stored or disposed of in accordance with Applicable Law in a suitable off-site location. All costs related to such waste disposal are the responsibility of Contractor.

**4.31 Water Control.** Contractor shall carry out all dewatering, storm water control drainage, pumping and disposal required to keep the Work dry during performance of the Work. Contractor shall not (i) place Hazardous Substances (including site soils or water that may be contaminated), waste materials, trash or rubbish or (ii) discharge contaminated water, into any area that will pollute a natural stream or body of water. No discharge of contaminated water may be permitted to cause soil contamination (whether documented or undocumented) in violation of any Applicable Law.

**4.32 Permit Assistance.** Contractor, at its expense, will reasonably assist and support Owners' efforts to obtain Owners' Permits, or to otherwise satisfy the conditions thereof. By way of example, such assistance includes providing customary information and documentation, and Design data. Contractor shall provide all drawings, documents and other information, stamped as appropriate, that are necessary for Owners to properly and timely complete and defend all permit related hearings and actions.

**4.33 Deliveries by Truck or Rail.** Contractor shall provide Owners with reasonable advance notice of any delivery of Equipment that is to arrive by truck (to the extent oversized or is extraordinary in any other material way) or rail. Deliveries by rail are allowed only so long as they do not disrupt coal delivery or the operation of the Existing Facilities.

**4.34 Artifacts and Other Valuable Items.** If Contractor should discover any (i) artifact, fossil or other items of historical, geological, archeological, religious or other value or

(ii) protected or endangered species on the Job Site, it shall immediately cease Work in the immediate vicinity thereof, notify Owners and take reasonable actions to preserve and protect such items from damage or theft. All such items described in **clause (i)** are the property of Owners and Owners will provide Contractor with direction on how to proceed.

**4.35 Release**

[REDACTED]

**4.36 Covering.** No portion of the Work (including foundations) may be covered or otherwise made inaccessible without conducting (and passing) any test or inspection required pursuant to this Agreement. If it is, Contractor shall uncover any Work that is covered in violation of the previous sentence, pay all costs related thereto and there will be no adjustment to the Schedule in connection therewith. If a portion of the Work has been covered which Owners have not specifically requested to observe prior to its being covered, Owners may request to see such Work and Contractor shall uncover it. If such Work is in accordance with the requirements of this Agreement, the costs of uncovering and replacement will, by appropriate Change Order, be charged to Owners, and, if applicable, the Schedule will be equitably adjusted. If such Work is not in accordance with this Agreement, Contractor shall pay all such costs and will not be permitted any adjustment to the Schedule.

**4.37 No First of a Kind.** Without Owners' consent, except as specified in **Exhibit A**, Equipment will not include prototype equipment, meaning any equipment or component thereof that is at that stage in the evolutionary developmental process where the design, functionality, environmental suitability, material composition, scale, reliability, maintainability, and other operational characteristics of the equipment or any component thereof has not been substantiated by at least two (2) full operating years of commercial experience.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**4.39 Estimate.** [REDACTED]

**ARTICLE 5**

**OWNERS RIGHTS, DUTIES & OBLIGATIONS**

**5.1 Key Personnel.** Owners shall designate, from time to time, one or more individuals who will act on Owners’ behalf, in connection with the Facility, together with the scope of their authority. Among such designees, there must be appointed a principal representative of Owners (the “**Owners’ Representative**”), who will be Owners’ authorized representative, and who will receive and initiate all communications from and with Contractor and who will be authorized to render decisions related to the Facility and bind Owners.

**5.2 Owners’ Review.** Owners will be entitled to review, comment on, evaluate or approve the Design and any plans, drawings, specifications or other documents to the extent provided in **Exhibit X, X-1, X-2 or X-3**, which Contractor shall consider in good faith; **provided, however**, Owners will not have any responsibility or liability for the accuracy or completeness of such documents, for any defects, deficiencies or inadequacies therein or for any failure of such documents to comply with the requirements set forth in this Agreement, the responsibility for all of the foregoing matters being the sole obligation of Contractor. Contractor shall advise Owners in writing of the disposition of Owners’ comments.

**5.3 Supplies.** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**5.4 Right to Apply Monies.** Owners have the right to deduct from any funds or monies due or to become due to Contractor (or draw on the Retainage) any amounts actually due to Owners from Contractor as a result of any losses, expenses, damages, obligations or liabilities for which Contractor is responsible pursuant to the terms and provisions of this Agreement.

**5.5 Access and Inspection.**

5.5.1 Access to Site. Owners shall provide reasonable non-exclusive access to the Job Site, other portions of the Cane Run Site and the Existing Facilities on which Work is to be performed to Contractor and its Subcontractors commencing upon issuance and acknowledgement of the Full Notice to Proceed for the performance of the Work, subject to Applicable Law, applicable Cane Run Site regulations and the terms of this Agreement. Prior to issuance of the Full Notice to Proceed, Contractor may have access to the Job Site or other portions of the Cane Run Site (subject to Cane Run Site regulations) upon reasonable advance notice to Owners and at reasonable times for purposes expressly approved by Owners. Until issuance and acknowledgement of the Full Notice to Proceed, Contractor must not engage in any construction Work upon the Cane Run Site. Owners will be entitled to restrict Contractor's

access to or activities on the Cane Run Site prior to issuance of the Full Notice to Proceed and Contractor will not be entitled to assert any claim for relief under **Article 9** or **Article 10** on account thereof.

5.5.2 No Relief. No inspection or review of, or failure to inspect or review, the Work or any portion thereof by Owners or any other Person on behalf of Owners will relieve Contractor of its obligation to properly execute and complete the Work. Inspection by Owners will not be deemed to be supervision or direction by Owners, and is only for the purpose of attempting to confirm for Owners' purposes that the Work conforms to the requirements of this Agreement.

**5.6 Owners' Permits**

[REDACTED]

**5.7 Right to Carry Out the Work.** If Contractor defaults under this Agreement or neglects to carry out the Work in accordance with this Agreement and fails within a [REDACTED] Day period after receipt of written notice from Owners to take steps to commence and continue curing such default or neglect with diligence and promptness, Owners, without prejudice to any other rights or remedies Owners may have under this Agreement, including declaring Contractor in default, and with or without terminating this Agreement, may correct such deficiencies at Contractor's expense, (including Owners' internal, general, and administrative expenses) and Owners shall have the right to (i) deduct an amount equal to the reasonable expenditures incurred by Owners in so doing from amounts due or to become due to Contractor; (ii) draw on the Retainage; and/or (iii) obtain reimbursement from Contractor therefor.

**5.8 Rights Not Limited.** The rights and remedies provided in this **Article 5** are in addition to, and not in limitation of, any other rights or remedies otherwise available to Owners under this Agreement.

**5.9 Operating Personnel**

[REDACTED]

[REDACTED]

**5.10 Contractor's Personnel.** Owners have the right to object to any representative or Person employed or otherwise engaged by Contractor who engages in misconduct, is incompetent, disruptive or negligent while on the Job Site or the Cane Run Site. Contractor shall remove such Person from the Job Site or the Cane Run Site, as applicable upon receipt of Owners' notice. Any cost for replacement personnel will be at Contractor's expense. The rights of Owners under this **Section 5.10** are in addition to the rights of Owners with respect to the personnel pursuant to **Section 4.6**.

**5.11 Revenue.** Owners are entitled to all energy (steam and electrical), capacity and ancillary attributes that result from electrical generation of the Facility and all revenue derived therefrom.

**5.12 Dispatch of Energy** [REDACTED]

[REDACTED]

## ARTICLE 6

### PROJECT SCHEDULE

**6.1 Commencement.** Contractor acknowledges that it will commence performance of the Work and will continuously and diligently fulfill its obligations under this Agreement upon its receipt of the Full Notice to Proceed.

**6.2 Turnover of the Systems.** Not less than [REDACTED] Days prior to commencing the turnover process contemplated by this **Article 6**, Contractor shall provide a detailed written turnover and start-up plan to Owners for their review and comment. Such plan must include: a complete listing of Systems along with scheduled turnover date for each such System and a schedule of documents to be included in the Systems Turnover Package that will accompany the System being turned over. Such plan shall also provide a schedule for the provision of operating personnel by Owners. Each Systems Turnover Package must be properly completed and include all necessary checkout and operation information which clearly indicates the System has been completely checked out, including: instrumentation checkout and calibration data sheets, hydrostatic test reports, factory test reports, chemical cleaning records, non-destructive testing records, operating manuals, marked-up P&ID's reflecting the as-built



conditions, electrical test data sheets, including megger test reports and vendor field reports. The data provided in each Systems Turnover Package must be complete and compatible for insertion into Owners' hold card system or lock out/tag out procedures, as applicable. Owners will have [REDACTED] Days to review such plan and provide written comments to Contractor. Contractor will promptly address such comments and resubmit the plan until such time as Owners approve the plan. Owners and Contractor will mutually agree on the final turnover and start-up plan prior to its implementation. Thereafter, Contractor's turnover of Systems will be accomplished as follows:

6.2.1 Ready for Turnover. When Contractor deems that it has achieved completion of construction of a System (which may include one or more items of the Work, such as Equipment) in accordance with this Agreement, including static integrity tests, alignment, electrical continuity tests, lubrication and demonstration of readiness for operation as appropriate (but exclusive of Punch List Items, final vendor reports, manuals and other information not necessary for start-up), Contractor shall notify the Owners' Representative, in writing, that the System is ready for turnover to Owners, which notice must be accompanied by the applicable Systems Turnover Package meeting the requirements of this Agreement.

6.2.2 Turnover Acknowledgment. Owners will agree that the System is ready for turnover in writing ("**Turnover Acknowledgment**") within [REDACTED] Days of receipt by Owners' Representative of notification from Contractor (the "**Owners' Review Period**"), unless Owners reasonably believe the System (i) or the Systems Turnover Package does not comply with the requirements of this Agreement; (ii) contains deficiencies, defects or non-conformities that preclude safe testing, safe commissioning or safe operation; (iii) has not been prepared, flushed and/or cleaned as necessary or appropriate; (iv) requires Work which has not been completed and which does not constitute a Punch List Item; or (v) materially differs from the System required under this Agreement. Owners and Contractor must develop a Punch List and endeavor to ensure that the Punch List contains all deficiencies and incomplete items of Work with respect to the System submitted for Turnover Acknowledgment. Notwithstanding the foregoing, if the turnover of Systems by Contractor is not made in accordance with the agreed upon turnover schedule and as a result Owners are unable to accept or reject such System within the Owners' Review Period, Owners and Contractor will mutually agree upon a reasonable extension of the Owners' Review Period for the affected Systems, which extension will reflect the nature of the affected System. Turnover Acknowledgment and the provision of operating personnel neither constitutes acceptance of any System, Owners' acceptance of care, custody or control of such System, nor any transfer of care, custody or control to Owners, including, responsibility for commissioning, start-up, testing, operations or maintenance.

[REDACTED]

[REDACTED]

**6.3 Mechanical Completion.**

[REDACTED]

[REDACTED]

**6.4 Initial Synchronization.** Contractor shall not attempt to achieve Initial Synchronization until it has achieved Mechanical Completion. Contractor shall provide Owners with at least [REDACTED] Days prior written notice and [REDACTED] hours prior verbal notice of the time or times it will attempt to achieve each of both Initial Synchronization or Start-Up.

**6.5 Schedule Updates and Contingency.**

[REDACTED] Schedule Updates. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**6.6 Re-Setting of Facility.** During those periods after the earlier of Substantial Completion or Commercial Operation in which Contractor is not conducting any Performance Tests on or in the Facility, and promptly after the completion of any Performance Tests on or in the Facility, Contractor shall perform whatever Work is necessary, including re-setting of Equipment and repairs of damage or modifications caused by testing, to return the Facility or relevant portion thereof to the normal operating control settings and configurations.

**6.7 Substantial Completion and Commercial Operation.**

[REDACTED]

[REDACTED]

[REDACTED]

**6.8 Final Completion.** Contractor shall successfully perform all of the Work and obligations (except obligations requiring future performance, e.g., warranty and indemnification obligations) and shall achieve Final Completion (other than issuance of the Certificate therefor by Owners) on or before the Guaranteed Final Completion Date. At such time as Contractor, in good faith, believes that the requirements of Final Completion have been met, Contractor shall give notice to Owners, together with reasonable substantiating documentation thereof, including all gross and reduced data from Performance Tests conducted by Contractor. Final laboratory results are not required to be provided with such notice. Within [REDACTED] Days after receipt by Owners of such notice from Contractor, Owners will determine whether the requirements of Final Completion have been achieved, subject to confirmation by reference to the final laboratory results. If Owners agree with Contractor's notice, upon receipt of final laboratory results that confirm that Final Completion has been achieved, Owners, within [REDACTED] Business Days of the later of receipt of Contractor's notice or such final laboratory results, shall issue the Certificate of Final Completion. If, however, Owners believe that Final Completion has not been achieved, Owners shall give notice to Contractor to that effect, with reasons for such belief, within the [REDACTED] Business Day period, and, upon receipt of such notice from Owners, Contractor shall promptly take corrective action to fulfill the requirements of Final Completion. Contractor shall thereafter provide another notice to Owners when it believes that Final Completion has been achieved (other than issuance of the Certificate therefor by Owners) and

the above-described procedures will be repeated until Final Completion is achieved. Owners are obligated to issue the Certificate of Final Completion within [REDACTED] Business Days of receipt of Contractor's notice if Contractor has satisfied the requirements of Final Completion. Nothing in this **Section 6.8** shall relieve Contractor of its obligation to achieve Final Completion by the Guaranteed Final Completion Date [REDACTED]

[REDACTED]

**ARTICLE 7**

**LIQUIDATED DAMAGES & LIABILITY LIMITATIONS**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## ARTICLE 8

### CONTRACTOR'S COMPENSATION

**8.1 Contract Price.** Owners shall pay Contractor for the due, proper and complete performance of the Work as required hereunder and for the due performance of all other obligations and duties imposed upon Contractor pursuant to this Agreement an amount equal to

[REDACTED]  
subject to adjustments in the event of (i) exercise of any of the Options in accordance with **Exhibit Q** and (ii) other additions and deductions by Change Order as provided in this Agreement (the "**Contract Price**"). Contractor shall receive the Contract Price as full compensation for its performance of the Work hereunder whether or not Contractor has properly estimated or anticipated the costs required to fully perform its obligations under this Agreement.

### **8.2 Taxes and Expenses.**

**8.2.1 Responsibility.** Contractor shall pay all payroll and other related employment compensation taxes for Contractor's employees; federal, state and other taxes that may be assessed on Contractor's net income, net worth, license, privilege, or gross receipts (other than taxes that are designated as Sales or Use taxes) arising from the Agreement; taxes, duties, excise fees, and other costs associated with the importation or exportation of Equipment, Consumables, Construction Aids or services; other fees, royalties and assessments of any nature in connection with the Work, taxes for which Contractor is liable under **Section 8.2.6**, and engineering and business license costs (collectively, the "**Contractor Taxes and Expenses**"). Sales or use taxes required to be paid (and for which no exemption is available) in connection with the Work, (collectively "**Sales and Use Taxes**") including sales and use taxes on Equipment and Consumables provided by Contractor, shall be administered by Contractor in accordance with **Sections 8.2.4** and **8.2.6** below. The Contract Price includes Contractor Taxes and Expenses and excludes Sales and Use Taxes (other than those included in Contractor Taxes and Expenses). Contractor shall be reimbursed for the full amount of Sales and Use Taxes (other than those included in Contractor Taxes and Expenses) properly paid by Contractor in accordance with this Agreement on a monthly basis at the time Contractor receives payments pursuant to **Section 8.5**, subject to the documentation requirements of **Section 8.6**.



8.2.2 Subcontractors. Owners will not have any responsibility whatsoever with respect to taxes assessed against, paid, or deemed to be paid by Subcontractors.

8.2.3 Taxes Related to Employment of Persons. Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes that are measured by wages, salaries, or other remunerations paid to Persons employed by Contractor or its Subcontractors for the Work, or which arise by virtue of their employment, and which now or hereafter are imposed by any Governmental Authority. Such contributions or taxes shall include those for unemployment insurance, social security insurance, workers' compensation, old age retirement benefits and other payroll taxes of any kind. Contractor shall comply with Applicable Law relating to such subjects and shall fully reimburse Owners for any of such taxes or contributions that Owners may be required to pay.

8.2.4 Sales and Use Taxes. Certain items of Equipment purchased in the performance of the Work may be exempt from Sales and Use Taxes in accordance with KRS 139.470 and KRS 139.480 and any successor provisions or similar provisions. Owners are responsible for notifying Contractor in a timely manner as to the nature of items that are exempt from Sales and Use Taxes. As set forth below, Owners shall provide Contractor with valid tax exemption certificates which, when properly utilized by Contractor, will allow Contractor to purchase such items from Subcontractors without payment of Sales and Use Taxes. Contractor shall present such certificate to such Subcontractor on a timely basis as needed to qualify for the applicable exemption.

Within five (5) Days following the Effective Date, Owners shall provide Contractor with valid exemption certificates and a list describing the qualifying incorporated Equipment that may be purchased by Contractor and its Subcontractors and which are exempt from Sales and Use Taxes. Contractor shall not procure incorporated Equipment pending the Owners' issuance of such valid exemption certificates and the above-referenced list. The Contract Price does include Sales and Use Taxes for Contractor "end user" purchases of Construction Aids and Consumables. Reimbursement of Sales and Use Taxes properly paid by Contractor or its Subcontractors on taxable incorporated Equipment that is not eligible for the tax exemption pursuant to the exemption certificate provided by Owners will be reimbursed to Contractor in addition to the Contract Price as follows: Contractor shall provide a well-documented Change Order Request to Owners and Owners will execute a Change Order to increase the Contract Price by the amount of the Sales and Use Taxes Contractor properly pays in respect of Equipment not eligible for tax-exemption by use of the valid exemption certificates provided by Owners. Upon execution of such Change Order, Contractor may seek reimbursement of such amount in the next Application for Payment it provides to Owners.

8.2.5 Indemnity and Assessment. Owners shall defend and indemnify and hold Contractor harmless from and against any and all claims for, and resulting liability for Sales and Use Taxes and related penalties and interest, and any dispute resolution costs and attorneys' fees that may be asserted on all items which Contractor purchased under the exemption certificates provided by Owners and for which Sales and Use Taxes are later assessed by Governmental Authorities; **provided**, that any resulting liability is not caused by the wrongful act or omission of Contractor. With Contractor's consent, Owners, at their own expense, will have the right to assist in the determination of the basis on which any tax assessment will be paid or contested and

to control any contest leading to the settlement of assessed taxes. Contractor shall cooperate with Owners in connection with any audit or contest.

8.2.6 Other Taxes. Contractor shall be responsible for any taxes on Construction Aids used in the performance of the Work. Owners shall be responsible for property taxes, if any, on incorporated Equipment purchased by Contractor on behalf of Owners in transit or from and after delivery to the Job Site.

8.2.7 Tax and Accounting Information. Contractor shall provide assistance as reasonably requested by Owners or their tax consultant(s), in confirming eligibility and qualification for exemptions from Sales and Use Taxes (and any other exemptions) to the relevant Governmental Authorities. From time to time during the term of this Agreement and within [REDACTED] Days of a request therefor, Contractor shall provide Owners with information, including quantities, descriptions, costs, and allocations of property acquired in connection with the Work as reasonably requested by Owners in connection with the preparation of Owners' tax returns, Owners' defense of their tax treatment of such items, for the purpose of satisfying regulatory requirements or as otherwise required in connection with calculating, obtaining exemption from, or rebate of, Sales and Use Taxes. Contractor agrees to participate in any Sales and Use Taxes exemption or other exemption or rebate programs identified by Owners, to complete and deliver the applicable documentation to obtain tax-exemption for purchases made by Contractor, including for incorporated exempt Equipment, and to pass any Sales and Use Taxes savings or rebates through to Owners.

**8.3 Progress Payments** [REDACTED]

**8.4 Application For Payment.** On or before [REDACTED] Day of each calendar month, Contractor shall furnish Owners with an Application for Payment for Work completed through the last Day of the previous calendar month, accompanied by the substantiating data required by **Section 8.6**. Each Application For Payment submitted by Contractor that seeks payment for Work involving the removal, alteration, or destruction of any portion of the Existing Facilities must separately identify (i) the removal, alteration, or destruction Work performed and (ii) the percentage of the Contract Price associated with such removal, alteration, or destruction.

**8.5 Payment of Substantiated Amount** [REDACTED]

[REDACTED]

**8.6 Supporting Documentation.** Each Application for Payment submitted by Contractor must be accompanied by the following, all in form and substance satisfactory to Owners:

[REDACTED]

- (ii) a detailed description of the Work performed during the period as to which the Application for Payment relates; photographic and other documentation of the status and completion of the Work; reasonable documentation demonstrating achievement of milestones;

[REDACTED]

- (iv) a copy of the status report pursuant to **Section 4.23.1** for the previous month;
- (v) a copy of all invoices pursuant to which Contractor has paid sales or use taxes for which it seeks reimbursement; and
- (vi) such other information, documents or other materials (a) reasonably required by Owners or (b) as may be required by the laws or customs of the jurisdiction in which the Facility is located in order to protect the owners of the Cane Run Site from Liens or Liabilities.

**8.7 Payments Withheld.** Owners may, without prejudice to other rights of Owners hereunder, withhold payment on an Application For Payment or any other amount due to Contractor or a portion thereof (or draw on the Retainage if sufficient funds to withhold are not then available) to the extent such payment is disputed by Owners or because of:

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

**8.8 Final Payment.**

[REDACTED]

[REDACTED]



8.8.3 Satisfaction of Obligation. Notwithstanding any provision to the contrary set forth in this Agreement, Owners and Contractor acknowledge and agree that Contractor will not be entitled to final payment of the Contract Price unless and until Contractor has achieved Final Completion.

**8.9 Disputed Applications for Payment.** If there is any dispute about any amount which is requested by Contractor or which is claimed by Owners to be due and payable by Contractor, the amount not in dispute will be promptly paid in accordance with the provisions hereof, and any deduction of a disputed amount which is not specifically agreed to by Contractor or Owners, as applicable, and which is then determined by arbitration, litigation or by mutual agreement, to have been improperly withheld will be promptly paid by Owners or Contractor, as applicable, together with interest from the date such amount otherwise would have been payable to the date of payment at the Agreed Rate.

**8.10 Payment of Subcontractors.** Contractor shall promptly pay each Subcontractor the amount to which such Subcontractor is entitled. Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-subcontractors in a similar manner. Owners have no obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by Applicable Law, in which event Contractor shall immediately reimburse Owners therefor, with interest thereon at the Agreed Rate. Upon reasonable prior notice, Owners reserve the right to make payments due hereunder directly to Subcontractors from and after such time as Contractor (i) fails to make any payment to a Subcontractor that is properly due or (ii) upon Owners' request, fails to provide adequate assurances that Contractor's financial condition is sufficient to continue to pay such amounts as and when they become due without financial risk to Owners. The amount of any such payment made by Owners directly to Subcontractors shall be credited against any payments otherwise due from Owners to Contractor.

**8.11 Retainage.**



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**8.12 Release of Retainage**

[REDACTED]

**8.13 Overpayment.** Any overpayment by Owners to Contractor shall be deemed to be a mistake of fact and promptly repaid to Owners upon demand within [REDACTED] Days.

**8.14 Tax and Accounting Information.** Contractor shall provide tax and accounting information required by Owners with respect to the Work and Equipment, including information required for submission to Governmental Authorities. For accounting purposes, Contractor shall provide to Owners a cost breakdown of the Contract Price in accordance with the systems of accounts established by Owners and as detailed in **Exhibit W**. The sum of the items listed in Contractor's price breakdown shall equal the Contract Price. Overhead and profit shall not be listed as separate items.

**ARTICLE 9**

**EXCUSABLE EVENTS**

**9.1 Notice**

[REDACTED]

[REDACTED]

**9.2 Rights Limited**

[REDACTED]



**ARTICLE 10**

**CONTRACT CHANGES**

**10.1 Owners-Initiated Changes.**

10.1.1 Change Order Requests. Owners may, from time to time, without invalidating this Agreement, order changes (including additions or deletions) in the Work consistent with the general purposes of this Agreement, and/or changes in the time for or sequence of completion of all or any portion of the Work (“**Changes**”), by notification in writing to Contractor (such notice, which will be substantially in the form of **Exhibit F-3** hereto, a “**Change Order Request**”), and the Contract Price, Schedule or other applicable provision of this Agreement will be adjusted accordingly in a Change Order. Each Change Order Request will be accompanied by a description of the Changes requested, together with a conceptual Design thereof (where appropriate). Contractor will prepare such conceptual Design materials at the request of Owners.

[REDACTED]

[REDACTED]

10.1.3 Owners' Response. Owners shall, within [REDACTED] Days after receipt of Contractor Response (the "**Owners' Response Period**") (i) notify Contractor as to whether it agrees or disagrees with such Contractor Response, and of Owners' position regarding the effect of the Changes and the Change Order Request on the Contract Price, Schedule, or other applicable provision of this Agreement and (ii) embody the agreed upon changes in the Work, the Contract Price or the Schedule in a document to be executed by the Parties (a "**Change Order**"). During the Owners' Response Period, Owners' Representative and the Contractor's Representative shall make themselves available and shall use reasonable efforts to meet or otherwise confer to discuss the Change Order Request, Contractor Response and the estimates therein contained, and to answer any questions or clarify any information provided with respect thereto. Owners or the Owners' Representative may request the Contractor's Representative to provide additional reasonable information or further information and data to the extent Contractor has failed to provide such information and data required to be provided or if there are errors, mistakes or omissions in any information or data previously provided as part of the estimates contained in the Contractor Response. If Contractor fails to provide data or information required to be provided as part of the Contractor Response or fails to correct any errors or mistakes in such information or data, which prevents Owners from properly analyzing such data, or information, the Owners' Response Period will be extended by that period of time commencing on the date Contractor receives notice of such failure, error or mistake and ending on the date the correct data and information is received by Owners.

[REDACTED] Owners' Authorization. Contractor is not required to perform any Changes until a Change Order has been issued therefor or Owners have expressly authorized or directed Contractor in writing to perform any Changes prior to such approval, which they will be entitled to do. If Owners so authorize or direct Contractor to proceed with any of the Changes set forth in a Change Order Request prior to issuing a Change Order therefor (the "**Owners' Authorization**"), Owners shall, as part of such Owners' Authorization, (i) acknowledge in writing to Contractor that it will issue a Change Order therefor, upon agreement on the effect of the Changes on the Contract Price and Schedule and (ii) agree to pay Contractor in accordance with the invoicing procedures contained herein any undisputed portion of Contractor's proposed change in the Contract Price resulting from such Changes. Upon receiving such Change Order or such Owners' Authorization, Contractor shall perform the approved or authorized Changes in accordance with and subject to all of the terms of this Agreement. Contractor may not suspend, in whole or in part, performance of the Work during any dispute over any Changes set forth in the Change Order Request or an Owners' Authorization or during the review and negotiation of any Change Order based thereon (or any adjustment to the Contract Price or Schedule to be set forth therein) unless directed to do so by Owners. If directed pursuant to an Owners' Authorization issued in accordance with the provisions hereof to proceed with a Change, a disputed item or a dispute of whether Work is in or out of the scope of Work required of Contractor hereunder, pending review and agreement upon such Change Order adjustments or resolution of such dispute, Contractor shall (without waiving any rights or remedies with respect to such Change or dispute) proceed with such Work [REDACTED]

[REDACTED]

**10.2 Contractor Change Notice.** If Contractor wishes to make a claim for an adjustment in the Contract Price, an extension of the Schedule or other applicable provision under this Agreement on account of the occurrence of an Excusable Event, Contractor shall promptly give notice (“**Contractor Change Notice**”) in accordance with the requirements set forth in **Article 9**. This Contractor Change Notice must be given by Contractor before proceeding to execute any additional Work, except in an emergency endangering life or property in which case Contractor may act to prevent threatened damage, injury or loss. Within the time periods established in **Article 9** following the giving of any Contractor Change Notice, Contractor shall supplement such notice with all relevant information as required by **Article 9**. Owners shall respond to all such Contractor Change Notices within [REDACTED] Days after receipt of final documentation from Contractor, setting forth Owners’ position regarding Contractor’s statement, and, if appropriate, issuing a Change Order or Owners’ Authorization based thereon. All Contractor Change Notices must include sufficient documentation for Owners to be able to make a well-informed decision.

**10.3 Emergencies.** Any request for a Change claimed by Contractor on account of emergency work will be determined by the Parties by agreement and based upon the facts of each such incident.

**10.4 Resolution.** In the event of a failure to agree to any adjustment of this Agreement, including, to the Contract Price or Schedule as required by the terms of this Agreement arising out of this **Article 10**, either Party may demand resolution of such issues in accordance with **Article 23** and **Section 25.1** hereof.

**10.5 Contractor Caused Delays.** To the extent any delay or suspension is caused by Contractor or any of its Subcontractors, no adjustment will be made to the Contract Price, Schedule or other provision of this Agreement.

## ARTICLE 11

### TEST AND INSPECTIONS

**11.1 Testing.** Contractor shall conduct, arrange or obtain (at its sole expense) all inspections, tests, including the Performance Tests required to be performed to meet its obligations under this Agreement (including all certification testing and associated reports required by Applicable Law or applicable engineering codes or standards which must be conducted by a qualified independent party), tests required by the applicable transmission service provider to tie the Facility to the electrical grid or which are necessary for the proper execution and completion of the Work. Contractor shall provide for or arrange for all testing personnel (excluding operating personnel to be provided by the Companies in accordance with **Section 5.9**). The Performance Tests must be conducted pursuant to the Performance Test Procedures, and in strict accordance with Applicable Law, including, 401 KAR 59.001. A draft of the proposed Performance Test Procedures shall be prepared by Contractor and delivered to Owners not less than [REDACTED] Days prior to the Scheduled Mechanical

Completion Date. The draft Performance Test Procedures prepared by Contractor must (i) require that on or before the Air Permit Deadline, Contractor shall have conducted the Air Emissions Tests, achieved the Guaranteed Air Emissions, and, immediately thereafter, caused the Facility's continuous emissions monitors (including any monitors for opacity) to be certified in accordance with Applicable Law and (ii) require that (a) the continuous emissions monitor be fully operational at all times when the Facility is in operation, including during Performance Tests and (b) Contractor use good air pollution control practices for minimizing emissions at all times from and after the Mechanical Completion Date. Owners shall review such draft and provide written comments to Contractor with [REDACTED] Days of receipt of the draft Performance Test Procedures. Contractor and Owners shall cooperate and diligently work to complete an agreed final version of the Performance Test Procedures no later than [REDACTED] Days prior to the Scheduled Mechanical Completion Date. Contractor and Owners shall cooperate and in good faith finalize Performance Test Procedures in accordance with **Exhibit G**.

**11.2 Performance Tests.** At such time as Mechanical Completion, Start-Up and Initial Synchronization have been achieved and Contractor believes that the Work is ready for the performance of the Performance Tests, Contractor shall so notify Owners in writing. As soon as practicable after delivery of any such notification, but in no event earlier than ten (10) Days thereafter, Contractor shall conduct the Performance Tests. Performance Tests shall be scheduled with due regard for minimizing the operating expenses of and maximizing revenues to be derived from operation during such tests. The Tests must be conducted and passed in accordance with the provisions of **Exhibit G**. Such tests must be conducted (i) in the presence of Owners and (ii) utilizing the personnel provided by Owners, acting under the direct technical supervision and control of Contractor. No auxiliary, standby or temporary equipment or machinery may be used during the performance of the Performance Tests, unless otherwise approved in writing by Owners. All Equipment and systems of the Facility must be operational. The Facility will be operated in its usual mode of operation (using a normal complement of operating personnel) while the Performance Tests are being conducted, which consists of (a) the operation of the Facility as a whole in accordance with Project Requirements and in accordance with Prudent Utility Practices and (b) the operation of all Facility systems and Equipment within the manufacturers' specifications, recommendations and warranty requirements and Prudent Utility Practices, and without over-stressing or over-pressurizing any such systems. Contractor shall be entitled to provide test technicians for purposes of data collection and similar services during testing; **provided**, that such technicians do not operate the Equipment during any such test. Except as otherwise provided in **Section 5.3**, all costs and expenses incurred in relation to the Performance Tests shall be borne by Contractor. If Contractor fails to successfully perform any of the Performance Tests, the defects, deficiencies and other conditions which so prevent performing such tests successfully must be immediately thereafter corrected and/or remedied in accordance with **Section 12.1**. Upon completion of such corrective and/or remedial actions, Contractor shall re-perform the Performance Test upon not less than [REDACTED] hours prior written notice to Owners. The foregoing procedures shall be repeated until the Performance Tests have been successfully conducted but in no way excuse Contractor from timely achievement of the Guaranteed Substantial Completion Date. The results of all inspections and tests shall be provided to Owners together with gross and reduced data and other information reasonably requested by Owners. The Performance Tests shall be conducted in accordance with this **Section 11.2** and **Exhibit G** for the purpose of demonstrating the achievement of Substantial Completion, Commercial Operation and Final Completion, as the case may be.

**11.3 Witnessing Tests and Inspection.** Contractor shall perform all inspection, pre-performance testing, expediting, quality surveillances, and traffic services as necessary for the performance of the Work. Contractor's responsibilities under this **Section 11.3** include inspecting and testing such Work (including Equipment) as is customarily inspected or tested in accordance with Professional Standards, including inspecting work in progress at intervals appropriate to the stage of construction or fabrication, whether on or off of the Job Site, as necessary to ensure that such Work is proceeding in accordance with this Agreement and the Schedule. All third party inspections, tests, or approvals must be performed by qualified organizations acceptable to Contractor and Owners. If Applicable Law requires any Work to specifically be inspected, tested, or approved, Contractor shall assume full responsibility therefor and furnish to Owners the required certificates of inspection, testing, or approval. Not later than one hundred [REDACTED] Days prior to the first expected delivery of Equipment to the Cane Run Site, Contractor will supply to Owners a quality surveillance plan for all Equipment that will be inspected by Contractor. A chart, accompanying each monthly progress report delivered by Contractor shall specify the date, time, and location of factory tests, inspections, and witness points of which Contractor is then aware of and intends to witness with respect to Equipment or other work to be provided or performed by its Subcontractors in the [REDACTED] Day period following the Month in which each such progress report is delivered to Owners. If and when Contractor obtains new information about such factory tests, inspections, or witness points or other factory tests, inspections, or witness points that was not available to it when the monthly status report was delivered, it will promptly advise Owners and update such information as necessary to allow Owners a reasonable opportunity to attend such event. Contractor shall give reasonable notice of changes to such dates, times, and locations to allow Owners to make arrangements to attend, it being understood that tests, inspections, or witness points to be performed outside the United States will require additional notice. Owners and their invitees have the right, but not the obligation, to attend any inspections, tests, or approvals of the Work. In no event shall Contractor's obligation to provide notice regarding certain tests, inspections, or approvals or Owners' and their designees' right to attend tests, inspections, or approvals limit, delay, or modify Contractor's obligation to perform all tests, inspections, or obtain approvals required by this Agreement. Successful completion of factory or other off-Job Site tests is a precondition to shipment of such Equipment to the Job Site or other Contractor storage facility, unless otherwise agreed by Owners. Contractor shall thereafter implement such plan and reperform and demonstrate that such test has been passed. Should Contractor fail to give proper notice under this **Section 11.3**, at Owners' option, Contractor shall reperform or reinspect any such test or inspection as to which Contractor failed to give proper notice if Owners have reviewed the test results (which are to be provided to Owners within [REDACTED] Days of such failure or as soon thereafter as test results are available to Contractor) and gives notice to Contractor questioning the validity, accuracy, or completeness thereof. Attendance by Owners at any such test or inspection despite the lack of proper notice will waive Owners' right to cause Contractor to so retest or reinspect for failure to give proper notice.

**11.4 Defects During Performance Tests.** After completion of any Performance Test or any retest, Owners and Contractor shall consult concerning the results of such test and Owners shall advise Contractor in writing of any defects, deficiencies or needed adjustments in the Facility that they have discovered or observed during the performance thereof. If Contractor is notified of such defects, deficiencies or adjustments, Contractor shall immediately commence and promptly (i) complete corrective measures to rectify such defects or deficiencies and any

other defects and/or deficiencies of which it is aware (including, replacement of any defective parts) and (ii) make any necessary adjustments, in each case, at Contractor's sole cost and expense.

### **11.5 Retests**



## **ARTICLE 12**

### **CORRECTION OF WORK**

**12.1 Correction of Work.** Prior to the earlier to occur of the Commercial Operation Date or the Substantial Completion Date, Contractor shall, at the earliest practical opportunity, correct, repair or replace any portion of the Work that is defective or does not conform to the requirements of this Agreement, without regard to the stage of completion of the Work or the time or manner of discovery of the defect or nonconformance. If other portions of the Work are adversely affected by or are damaged by such defective Work, Contractor shall, at no additional cost or expense to Owners and at the earliest practical opportunity, correct, repair or replace such affected or damaged Work. Contractor shall bear all costs of correcting such defective or nonconforming Work, including additional testing and inspections and compensation for any Design or engineering services and expenses made necessary thereby.

**12.2 Urgent Repairs.** If by reason of any accident, failure or event occurring to, in, or in connection with the Work or any part thereof either during the execution of the Work or during any period of warranty hereunder, any remedial or other work or repair is in the opinion of Owners urgently necessary and Contractor is unable or unwilling at once to do such work or repair, Owners may, with their own forces or other contractors, do such work or repair as considered necessary. If the work or repair so done is Work which Contractor was liable to do at its own expense under this Agreement, all costs and expenses incurred by Owners in so doing less any insurance proceeds received as a result of such event shall be paid by Contractor to Owners on demand. Owners, as soon after the occurrence of any such emergency as may be reasonably practicable, shall notify Contractor thereof in writing.

**12.3 Damage to Existing Facilities.** To the extent that Contractor or its Subcontractors cause any physical damage or loss to any equipment, structure, or portion of the Work as to which care, custody, and control and risk of loss has passed to Owners or to the Existing Facilities (but not Work for which care, custody, and control and risk of loss has not yet

passed to Owners) in the course of the performance of the Work, Contractor shall be liable for making payment to Owners for the cost to repair, correct, or replace such loss or damage, not to exceed [REDACTED] per occurrence, and Owners otherwise release Contractor from liability for physical damage to or loss of the Existing Facilities or Work as to which risk of loss has passed to Owners, and further shall cause insurers of Owners to waive rights of subrogation against Contractor for any such damage beyond the above limitation. Payments to be made by Contractor under this **Section 12.3** shall be made to Owners within [REDACTED] Business Days of Owners' demand therefor.

**ARTICLE 13**

**WARRANTY**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

## ARTICLE 14

### PROTECTION OF PERSONS AND PROPERTY

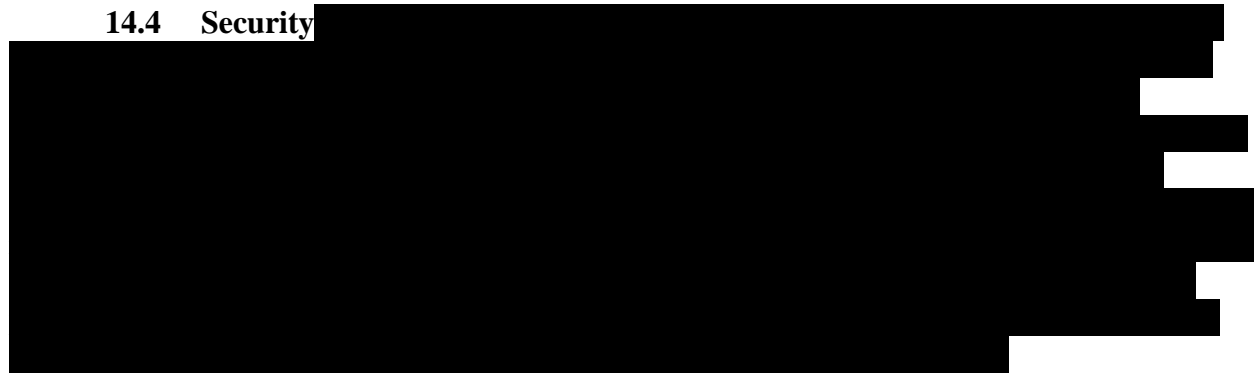
**14.1 Safety Programs.** Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement, including a fitness for duty policy and other appropriate precautions and programs for areas in and around the Cane Run Site. Prior to the earlier of [REDACTED] Days of the date of this Agreement and [REDACTED] days prior to mobilization to the Cane Run Site, Contractor shall prepare and deliver to Owners a plan to ensure proper health, safety and environmentally sound practices are employed and enforced in the performance of the Work. At a minimum, such plan shall require Contractor and Subcontractors to comply with those rules, regulations and procedures set forth in **Exhibit H**, Project Requirements and applicable rules or requirements of Owners' unions on the Cane Run Site. The efficacy or implementation of such plan shall not relieve Contractor of its obligations under this Agreement. If Owners become aware of any Work, or the performance of any Work, that they reasonably believe constitutes a threat to the health or safety of persons, property or the environment, then, without limiting any other rights of Owners hereunder, Owners may (but shall not be obligated to) immediately suspend the performance of the Work and thereafter promptly advise Contractor of the cause therefor. Such suspension may be maintained until such cause is removed. All costs related to such suspension and any other adverse impact on Contractor or the Work attributable thereto shall be the responsibility of Contractor and no relief under this Contractor shall be allowed. Owners, in their reasonable opinion, may exclude from the Cane Run Site any individual whose conduct is prejudicial to safety, health, protection of the environment, or is found or suspected to be in violation or in disregard of the requirements of this Article, this Agreement or Applicable Law.

**14.2 Applicable Law.** Contractor shall give notices and comply with Applicable Law bearing on the safety of Persons or property (on and in the vicinity of the Cane Run Site) or their protection from damage, injury or loss, including all standards of the U.S. Occupational Safety & Health Administration applicable to the Work.

**14.3 Safety Precautions.** Contractor shall take all reasonable precautions for safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- (i) employees and Subcontractors or other Persons performing the Work and all other Persons who may be affected thereby;
- (ii) the Work, Equipment, Consumables and Construction Aids, whether in storage on or off of the Site, under the care, custody or control of Contractor or Subcontractors; and
- (iii) other property at the Cane Run Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, waterways, roadways, structures and utilities, it being agreed that Contractor will be liable for the cost of damages incurred by Owners and caused by Contractor or its Subcontractors.

**14.4 Security**



**14.5 Dangerous Materials.** When use or storage of dangerous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities only under the supervision of properly qualified personnel. Explosives shall not be used on the Job Site or the Cane Run Site.

**14.6 Safety Personnel.** Contractor shall assign a full-time Job Site safety officer who shall be responsible for introducing, administering and monitoring procedures to promote safe working conditions on the Job Site (and other areas of the Cane Run Site where Work is to be performed) and compliance with Applicable Law.

**14.7 Loading.** Contractor must not load or permit any part of the construction, the Job Site or other portions of the Cane Run Site to be loaded so as to endanger the safety of Persons or property.

**14.8 Notices to Owners.** Contractor shall immediately (and in each case, but in no event later than a period of time equal to one-half the amount of time Owners has to report any incident to a Governmental Authority) notify Owners by telephone or messenger of any and all potential lost time accidents, recordable injuries (as defined under OSHA), and any property damage arising out of or in connection with the Work. Contractor shall provide Owners with a written report, giving of full details and statements of any witnesses within [REDACTED] hours of the occurrence of the event. In addition, if death, serious bodily injury or substantial

damage occurs, the accident must be reported immediately by telephone or messenger to Owners.

**14.9 Code of Business Conduct.** Contractor hereby acknowledges receipt of the PPL Corporation Standards of Integrity and agrees to comply therewith as it may be amended from time to time.

**14.10 Hazards and Training.** Contractor shall furnish adequate numbers of trained, qualified, and experienced personnel and appropriate safety and other equipment in good condition, suitable for performance of the Work. Such personnel shall be skilled and properly trained to perform the Work and recognize all hazards associated with the Work. Without limiting the foregoing, Contractor shall participate in any safety orientation or other of Owners' familiarization initiatives related to safety and shall strictly comply with any monitoring initiatives as determined by Owners. Contractor acknowledges that it has inspected all equipment, structures, and property of Owners to determine the existence of hazards incident to the performance of the Work, and has adopted suitable precautions and methods for the protection and safety of its employees and the property.

**14.11 Drug and Alcohol.** No individual will perform any of the Work while under the influence of any illegal or controlled substance or alcohol. No alcohol may be consumed [REDACTED] hours prior to any individual's performance of the Work or at any time during the workday. An individual will be deemed under the influence of alcohol if a level of .02 percent blood alcohol or greater is found. In addition to the requirements of the drug and/or alcohol testing program set forth in **Exhibit H**, Contractor shall (i) institute a random drug and/or alcohol testing program covering all individuals that will perform any of the Work; (ii) promptly, upon the written request of Owners, perform drug and/or alcohol tests on all individuals that will perform any of the Work; and (iii) perform drug and/or alcohol tests on any individual that will perform any of the Work under either of the following circumstances: (a) where the individual's performance either contributed to an accident or cannot be completely discounted as a contributing factor to an accident which involves off-site medical treatment of any individual or (b) where Owners determine in their sole discretion that there is reasonable cause to believe such individual is using drugs or alcohol or may otherwise be unfit for duty. Such individuals tested in accordance with **clause (a)** or **(b)** above will not be permitted to perform any Work until the test results are established. Contractor shall be solely responsible for administering and conducting drug and alcohol testing, as set forth herein, at Contractor's sole expense. As applicable and in addition to any other requirements under this Agreement, Contractor shall develop and strictly comply with any and all alcohol and/or drug testing requirements required by Applicable Law. Notwithstanding anything to the contrary herein, if the rules and regulations of Owners pertaining to the Cane Run Site are at any time more stringent than the requirements of this Agreement, Contractor and its Subcontractors must comply with such more stringent rules and regulations.

**14.12 Community Relations.** Contractor recognizes the introduction of Contractor's workforce (and those of its Subcontractors) has the potential to disrupt the local community. Contractor will proactively alert those individuals for whom it is responsible on the Cane Run Site to exercise due caution entering and leaving the Cane Run Site and to otherwise conduct themselves in a manner consistent with good community relations.

## ARTICLE 15

### SEPARATE CONTRACTORS AND ACTIVITIES BY OWNERS

**15.1 Separate Work.** Owners reserve the right to perform either with their own forces or through other contractors and subcontractors construction or operations related to the Facility or any other construction or other work at the Job Site or the Cane Run Site.

**15.2 Integration.** Contractor shall use reasonable best efforts to arrange the performance of the Work so that the Work and the work of Owners' forces or any of their separate contractors are properly integrated, joined in an acceptable manner and performed in the proper sequence without any disruption or damage to the Work, the work or business operations of either of the Owners or any work of Owners' forces or their separate contractors.

**15.3 Coordination.** Contractor shall provide for coordination of the activities of Contractor's, and its Subcontractors' forces with the activities of Owners' forces and each of their separate contractors, as applicable, in accordance with the coordination plan established pursuant to **Section 4.20**.

**15.4 Use of Job Site.** Contractor shall afford all separate contractors reasonable opportunity for storage of their materials and equipment and for performance of their work on the Job Site. Owners shall direct all separate contractors to cooperate with Contractor and to avoid actions that could unreasonably interfere with the activities of Contractor.

**15.5 Deficiency in Work of Owners and Separate Contractors.** Without otherwise limiting Contractor's obligations under this Agreement, if part of Contractor's Work depends for proper execution or results upon construction or operations by Owners or another separate contractor of Owners, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Owners any apparent discrepancies or defects in such other construction or operations that would render it unsuitable for proper execution and results by Contractor. The Parties shall resolve in good faith any such discrepancies or defects or any disagreements relating thereto, and Owners shall correct or cause the separate contractor to correct such defects and deficiencies. Failure of Contractor so to report discrepancies or defects of which it has or upon reasonable investigation should have had knowledge shall constitute an acknowledgment by Contractor to Owners that Owners' or separate contractor's completed or partially completed construction or operations are fit and proper to receive Contractor's Work, except as to discrepancies and defects not then reasonably discoverable.

## ARTICLE 16

### INTELLECTUAL PROPERTY

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Law.

## ARTICLE 17

### REPRESENTATIONS AND WARRANTIES

#### 17.1 Contractor.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**17.2 Owners.** Each Owner hereby represents and warrants the following to Contractor, on and as of the Effective Date, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- (i) it is duly organized, validly existing and in good standing under the laws of the state of its formation and is duly qualified to do business in the Commonwealth of Kentucky;



- (ii) no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending against or, to its knowledge, threatened against or affecting it or any of its properties, rights, revenues, assets (a) which could reasonably be expected to have a material adverse effect on the properties, business, prospects, operations or financial condition of it or (b) which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (iii) this Agreement has been duly authorized, executed and delivered by it and constitutes the legal, valid and binding agreement of it, enforceable against it in accordance with its terms to the extent of its ownership interest in the Facility.

## ARTICLE 18

### PROPRIETARY INFORMATION

**18.1 Proprietary Information.** The Parties have a proprietary interest in information that will be furnished pursuant to this Agreement. The Parties shall keep in confidence and will not disclose any such information which in good faith is proprietary and which is specifically designated in writing as being proprietary (“**Confidential Information**”) without the prior written permission of the disclosing Party or use any such information for other than the purpose for which it is supplied, except as provided herein; **provided, however**, such restriction is intended only to



- (i) to information which the receiving Party can substantiate:
  - (a) was in the possession of the receiving Party at the time it was initially furnished, without a breach of this provision;

- (b) is or becomes part of the public domain without a breach of this provision;
- (c) is received from a third party who is, as far as reasonably can be determined, under no limitation or restriction regarding disclosure;
- (d) that the receiving party either independently developed or had independently developed for it and was not obtained, in whole or in part, from the disclosing party;
- (e) that the disclosing party authorized the receiving party to disclose;
- (f) information that is inappropriately identified as “Confidential” when it is not specifically permitted to be categorized as Confidential Information under this Agreement.

The Parties acknowledges that a violation of provisions of this **Section 18.1** by a Party would cause irreparable harm to the disclosing Party for which no adequate remedy at law exists. Each Party therefore agrees that, in addition to any other remedies available, the disclosing Party shall be entitled to seek injunctive relief to enforce the terms of this **Section 18.1**, including to prevent a breach or contemplated breach hereof, without, in any case, proof of actual damages or the posting of any bond or security, which posting is hereby waived to the fullest extent permitted by Applicable Law.

Such information shall not be deemed to be within one of the foregoing exceptions if it is merely embraced by more general information available on a non-confidential basis to the receiving Party; or

- (ii) to the extent that a receiving Party is required to disclose information pursuant to Applicable Law, to the Kentucky Public Service Commission, or uses information in connection with any legal proceeding or Dispute under **Article 23** hereof; **provided**, that in such disclosure or use, the Party takes reasonable steps to make the other Party’s Confidential Information subject to any available procedures for maintaining its confidentiality.

**18.2 Import or Export of Technical Data.** Contractor agrees to comply with Applicable Law regarding the import or export of technical data or information or any product based thereon and shall not ship or communicate or allow to be shipped or communicated, either directly or indirectly, any technical data or information or any product based thereon in connection with the Work to any country or from any country to or from which such shipment or communication is prohibited by Applicable Law.

**18.3 Third Party Proprietary Information.** Contractor also agrees to enter into confidentiality agreements with third parties at Owners’ request and to keep in force confidentiality agreements concerning third parties’ proprietary information, which agreements

shall permit Contractor to use such parties' proprietary information solely in connection with the Work. Such agreements are to be consistent with current industry practices and will not contain provisions that preclude Contractor's participation in other projects or work.

**18.4 Public Relations.** Contractor agrees that all public relations matters arising out of or in connection with the Work shall be the sole responsibility of Owners. Contractor shall obtain Owners' prior written approval of the text of any announcements, publications, photographs, or other type of communication concerning the Work which Contractor or its Subcontractors wish to release for publication, which approval may be withheld in Owners' sole discretion.

## ARTICLE 19

### HAZARDOUS SUBSTANCES

#### 19.1 Hazardous Substances.

19.1.1 Hazardous Substance Responsibilities. If, in the course of performance of the Work, Contractor either encounters, spills, leaks, or releases (including threatened releases) Hazardous Substances into the environment or encounters Hazardous Substances (or a substance it reasonably believes is a Hazardous Substance) on the Job Site, except as contemplated by **Section 19.1.3**, or any portion of the Cane Run Site on which Work must occur, in such quantities or at such levels that may require investigation or remediation pursuant to Applicable Law, Contractor shall immediately suspend the Work in the area affected (except as provided below) and immediately orally report the condition to an individual on the Emergency Notification List and to the Owners' Representative followed as soon as reasonably possible by a written notice to the Owners' Representative. In any such event, the obligations and duties of the Parties are as follows:

- (i) Owners may direct Contractor to take appropriate immediate mitigating action;
- (ii) to the extent such condition involves: (a) a Hazardous Substance introduced to or created during the performance of the Work, on or under the Job Site or the Cane Run Site by Contractor or its Subcontractors; (b) a Hazardous Substance contained in or packed with Equipment provided by Contractor or its Subcontractors as part of the Work; (c) the negligent or intentional spill, leak, release, or threatened release by Contractor or its Subcontractors of a Hazardous Substance used by Owners in the operation or maintenance of the Facility or a portion thereof; **provided**, that such Hazardous Substance was properly contained and labeled (or other adequate warning had been given of its existence); or (d) the negligent or intentional exacerbation by Contractor or its Subcontractors of a Pre-Existing Hazardous Substance of which Contractor or its Subcontractors was aware or should have been aware (Hazardous Substances described in **clauses (a) through (d)** collectively, "**Contractor Hazardous Substances**"), then any investigation, response, removal, cleanup, or other

remedial action required (1) to restore the status quo ante and or (2) by Applicable Law or any Governmental Authorities (collectively, “**Environmental Action**”) shall be performed by Contractor;

- (iii) if the condition does not involve a Hazardous Substance in such quantities and/or at such levels that may require investigation or remediation pursuant to Applicable Law, Contractor shall, promptly after receiving written notice from Owners authorizing Contractor to recommence activities in the subject area, resume the portion of the Work that had been suspended;



- (v) except as otherwise required by Applicable Law, any Environmental Action, notification and other communication with third parties, including Governmental Authorities, and reports and documentation related to such Environmental Action shall be undertaken by Owners.

Contractor shall use diligent efforts to avoid any adverse effect on, or impediment to, the efforts undertaken by Owners, their agents, or independent contractors in connection with any Environmental Action or other remedial work Owners deem appropriate at the Job Site or the Cane Run Site during the term of this Agreement. The Parties acknowledge and agree that Contractor shall not commence or continue any construction activities on any portion of the Job Site or the Cane Run Site on, in, or under which Environmental Actions or other remedial actions are to be (or are being) performed until such actions are to the point where construction activities will not interfere with such actions, as evidenced by appropriate certifications from the applicable environmental engineer or remediation contractor and any required approvals of any applicable Governmental Authorities. Contractor agrees to use good faith diligent efforts to continue the unaffected portions of the Work and to adjust and schedule its activities at the Job Site or the Cane Run Site so as to minimize, to the extent reasonably practicable, any adverse effect on the cost and progress of the Work resulting from the performance of any remedial actions.

19.1.2 Contractor Obligations. Contractor shall not generate, dispose, bring, transport, or store (and shall prohibit Subcontractors from generating, disposing, bringing, transporting, or storing) Hazardous Substances to or on the Job Site or the Cane Run Site, and shall not utilize (and shall prohibit Subcontractors from utilizing) any construction materials or equipment (whether or not totally enclosed) containing asbestos, polychlorinated biphenyls, benzene, lead or urea formaldehyde; **provided, however**, that Contractor (and Subcontractors) may use and store (if properly containerized and labeled) in quantities reasonably necessary to perform the Work the following, but only in accordance with Applicable Law: gasoline, diesel fuel, fuel oil(s), gravel(s), lube oil(s), greases, sealant(s), combustibles, form oil(s), solvent(s), adhesives, and all other materials, that are normally used or consumed in or during

construction or testing of the Work and its constituent Systems and Components. Contractor shall not bring or store any other Hazardous Substances to the Cane Run Site without the specific prior written authorization from Owners. Contractor shall provide Owners with Material Safety Data Sheets in English, (“MSDSs”) properly completed covering any Hazardous Substance brought to the Cane Run Site and furnished by Contractor (or its Subcontractors). Contractor shall maintain on the Job Site, at all times, complete records and inventories, including MSDSs of materials described in this **Section 19.1.2** that are being used by it or its Subcontractors, or any Persons for whose actions it is responsible on the Cane Run Site. Contractor shall be responsible for the management, prompt removal, cleanup and off-site disposal of Hazardous Substances brought to or generated at the Cane Run Site by Contractor or any Subcontractor, including Hazardous Substances contained or packed in Equipment. In this regard, Contractor and its Subcontractors shall comply, with Applicable Law and the Hazardous Substances Management Plan. Contractor shall have ownership of and title to all contaminated media encountered or created in performing its obligations under **Section 19.1.1(ii)** and this **Section 19.1.2**, and shall have sole responsibility in responding to such conditions including complying with reporting obligations, providing for access restrictions and warnings, manifesting and any other obligations under Applicable Law.

Owners shall determine whether reporting is required under Applicable Law and shall initiate the reporting of conditions on the Job Site if required. Unless Owners provide written authorization, Contractor acknowledges and agrees that it shall not report, or cause any other person to report, any information regarding environmental conditions to any Governmental Authority, except as required by Applicable Law. Contractor shall use its best efforts to afford Owners an opportunity to present all objections and defenses Owners or Contractor may have prior to the making of such report by Contractor. Contractor retains its obligation to report to Owners any conditions requiring remediation, special handling or disposal requirements involving Contractor Hazardous Substances. Contractor shall be responsible for emergency notification to Owners, in accordance with **Section 4.16**, as well as additional immediate and follow-up reporting with respect to any discharge or release of a Hazardous Substance into the environment at the Job Site or the Cane Run Site that occurs after the Effective Date arising out of performance of the Work by Contractor or its Subcontractors.

19.1.3 Labeling. Contractor and its Subcontractors shall properly store, label and dispose of Hazardous Substances that either of them introduces to the Cane Run Site or creates during the performance of the Work. Contractor and its Subcontractors shall train their respective employees in the safe usage and handling of Hazardous Substances, including any training that is required either by the Hazardous Substances Management Plan or Applicable Law.

[REDACTED]

**ARTICLE 20**  
**INDEMNIFICATION**

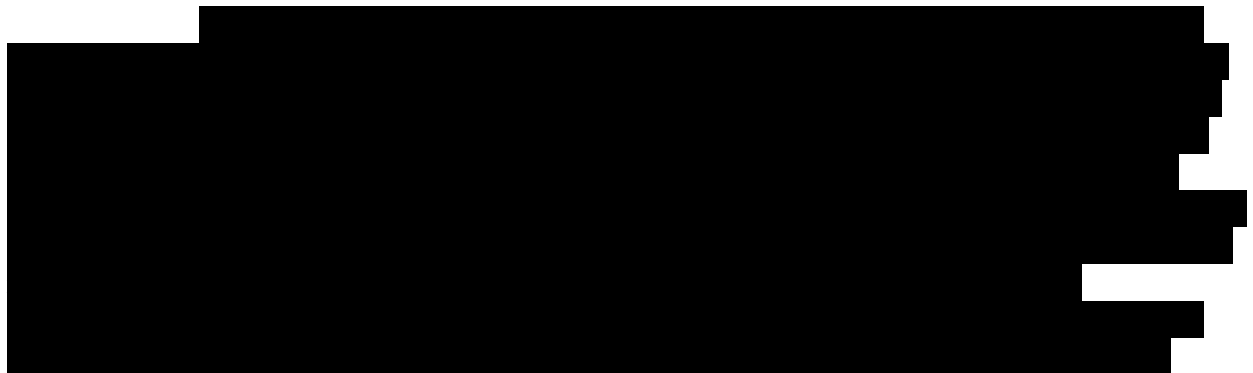
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**20.3 Notice.** An Owners' Indemnitee or a Contractor Indemnitee entitled to indemnity under any other indemnification provision of this Agreement (individually, an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") shall give prompt written notice (a "**Claim Notice**") to the party that is required to provide indemnification under **Section 20.1, 20.2, 16.3,** or any other indemnification provision of this Agreement (the "**Indemnifying Party**") of any Claim or event known to it which does or may give rise to a Claim by the Indemnified Party against the Indemnifying Party based on this Agreement. Each Claim Notice must be accompanied by (i) a detailed schedule setting forth a description (including the nature of the Claim and the amount thereof) of each Claim and (ii) a copy of the Claim, process and all legal pleadings with respect thereto (to the extent available to the Indemnified Party) and must be delivered to the Indemnifying Party within [REDACTED] Days of being served with such claim, process or legal pleading. Failure to give such notice in a timely manner will not diminish the indemnification obligations of the Indemnifying Parties under this Agreement except to the extent the failure or delay in giving such notice results in actual and material prejudice to the Indemnifying Party.

**20.4 Defense of Claims or Actions.**



[REDACTED]

20.4.2 Independent Counsel. If the Indemnifying Party does not agree in writing to assume the defense of such Claim, the Indemnified Parties may engage independent counsel of reputable standing selected by them to assume the defense and may contest, pay, settle or compromise any such Claim on such terms and conditions as the Indemnified Parties may determine; **provided, however**, that the Indemnified Parties shall not settle or compromise any Claim without the prior consent of the Indemnifying Party if such Indemnifying Parties acknowledge in writing their liability for any Liabilities incurred or required to be paid in respect of such Claim and provide adequate assurances of their ability to satisfy any such Liabilities.

20.4.3 Cooperation. The Indemnified Parties and the Indemnifying Party shall cooperate in good faith in connection with any common defense.

20.4.4 Settlement. The Indemnifying Party shall not, except with the consent of the Indemnified Parties, enter into any settlement or consent to entry of any judgment that (i) does not include as an unconditional term thereof the giving by the Person or Persons asserting such Claim to all Indemnified Parties of an unconditional release from all liability with respect to such Claim, (ii) includes a statement as to an admission of fault, culpability or failure to act by or on behalf of any Indemnified Party, and (iii) imposes any conditions, future obligations or limitations on any of the Indemnified Parties; **provided, however**, that for settlements with any Governmental Authority, the consent of the Indemnified Parties shall not be unreasonably withheld or delayed and in making such determination, the Indemnified Parties shall exercise their reasonable business judgment (without taking into account the indemnity afforded hereby) consistent with usual and customary settlement terms, conditions and practices for the applicable Governmental Authority.

**20.5 Liens**

[REDACTED]



- (i) the provisions of **Section 20.3.1** shall apply as if the Lien Indemnitee is an Indemnified Party and Contractor is the Indemnifying Party thereunder;
- (ii) Contractor is not liable for any additional expenses resulting from the appropriate Lien Indemnitee failing to reasonably cooperate in the defense of any such Liens at Contractor's expense; and
- (iii) Contractor has sole control of the defense and settlement of any such Liens; **provided**, that Contractor shall first promptly confirm in writing its obligation to indemnify, defend, and hold Lien Indemnitees harmless from and against all Liabilities with respect to such Lien. Contractor shall promptly satisfy or otherwise discharge any such Liens filed against any Lien Indemnitee, the Work, the Facility, or upon any Equipment or structures encompassed therein, or upon the premises upon which they are located. If Contractor fails to promptly (but in no event later than [REDACTED] Days after the filing or creation of same or such earlier time as may be necessary to prevent the imminent sale, foreclosure, or other title divestiture of any Lien Indemnitee's property), bond over, satisfy or otherwise discharge such Liens, Owners may promptly notify Contractor in writing that they are taking any action to satisfy, defend, settle, or otherwise remove such Lien at Contractor's expense, including attorneys' fees and charges. If Contractor fails to timely take the actions required pursuant to this **Section 20.5** to protect Owners against Liens, then Owners shall have the right but not the obligation to: (a) deduct any such expenses from any payment due, or which may become due, to Contractor or (b) draw upon the Retainage therefor and/or (c) collect from Contractor any balance remaining. Contractor shall have the right to contest any such Liens; **provided**, that it first provides to Owners (on behalf of the Lien Indemnitees) a bond to assure payment reasonably satisfactory to Owners, in the amount of such Liens.

## ARTICLE 21

### INSURANCE



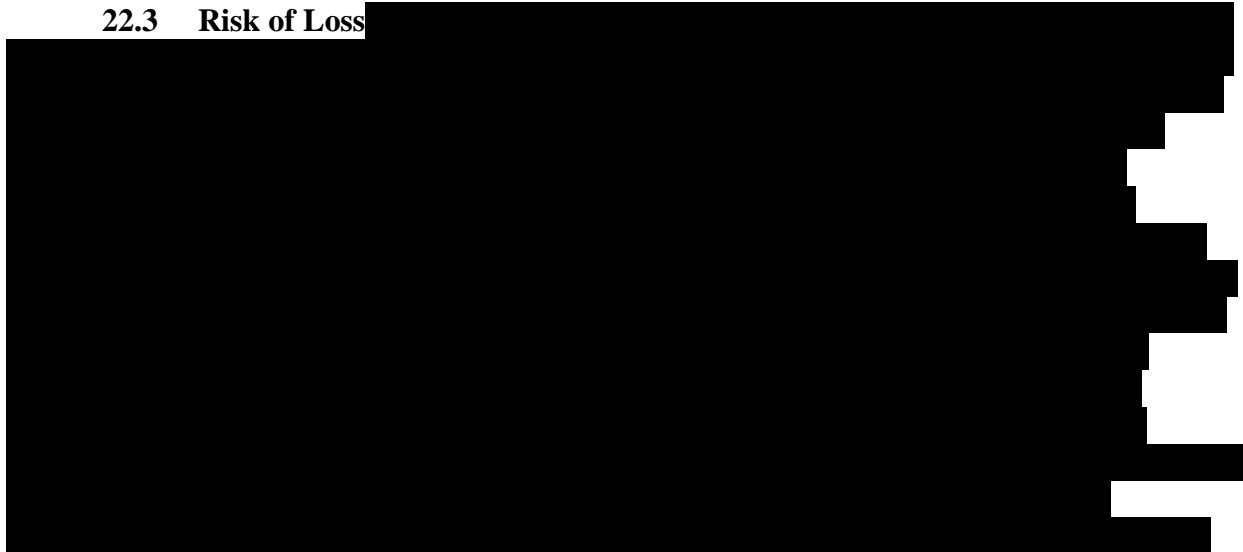
**ARTICLE 22**

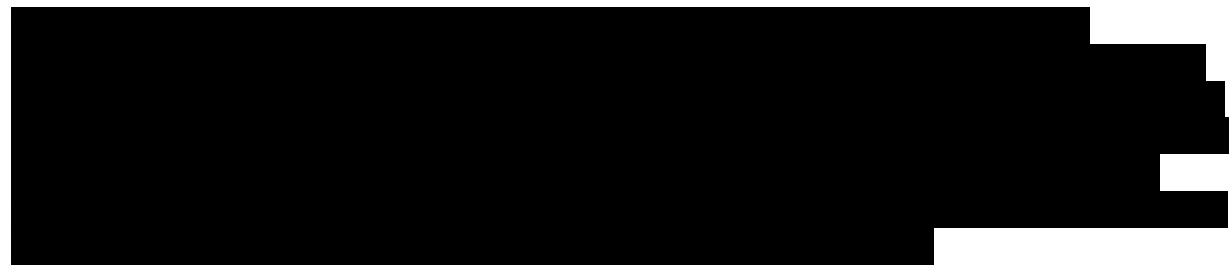
**TITLE & RISK OF LOSS**

**22.1 Transfer of Title.** Except as otherwise expressly provided below, transfer of title to the Work (or any portion thereof, including Equipment and Design), will pass to Owners upon the earlier of: shipment to the Job Site; incorporation into the Work; payment of the amount properly due under an Application For Payment covering such Work; or identification of the items of Equipment to be provided under the Agreement to Owners; notwithstanding any amount retained and other amounts withheld by Owners in accordance with the terms of this Agreement. The transfer of title does not relieve Contractor of its obligation to provide and pay for all transportation and storage in connection with the Work. Contractor shall transfer title to the Work, including Equipment, free and clear of all Liens, except for those Liens that have been created by Owners. Additionally, the Work, including the Equipment, will not have been acquired by Contractor, or by any other Person performing a portion of the Work, including any Subcontractor, subject to an agreement under which an interest therein or a Lien thereon is retained by the seller thereof, or otherwise imposed by Contractor or such other Person, which would survive payment to Contractor. Passage of title will not affect the allocation of risk of loss. Title to Information (whether hard copy, electronic or other medium) shall pass to Owners on receipt.

**22.2 Title Warranty.** Contractor warrants that upon passage of title of the Work in accordance with **Section 22.1**, Owners will have good and indefeasible title to such Work, and not be subject to any Lien or other defect in title. If any Work is replaced under **Article 13**, Owners' title shall vest in the replacement Work upon the earliest of payment therefor, its delivery to the Job Site or incorporation into the Facility. In the event of any nonconformity with this warranty, Contractor, at its own expense, upon written notice of such failure, shall indemnify Owners from the consequences of and defend the title to such Work and, if necessary, shall promptly replace such Work and any other affected portion of the Work, and such obligation shall survive the expiration, cancellation or termination of this Agreement, including the Warranty Period.

**22.3 Risk of Loss**





**22.4 Contractor Tools.** Risk of loss or damage to the equipment or tools of Contractor, its Subcontractors or their respective employees will at all times remain with Contractor, its Subcontractors or their respective employees and Owners are hereby released from liability therefor. Owners will have no liability for any damage, theft, or loss of construction equipment or other Construction Aids brought to the Cane Run Site or the Job Site or used thereon by Contractor or Subcontractors, however arising.

## ARTICLE 23

### DISPUTE RESOLUTION

**23.1 Resolution.** An authorized representative of a Party may submit a claim, dispute or other controversy arising out of, or relating to, this Agreement (hereinafter collectively referred to as a “**Dispute**”) which an authorized representative of a Party does not believe can be resolved by the Parties’ authorized representatives to a Senior Officer from each Party for resolution by mutual agreement between the Senior Officers. Any agreed determination by the Senior Officers will be final and binding upon the Parties. However, if the Senior Officers do not arrive at a mutual decision as to the Dispute within ten (10) Days (or such longer time as the Parties agree) after notice to each Party of the Dispute, either Party may pursue any other available remedy at law or in equity. For purposes of this Agreement, the term “Senior Officer” means the chief executive officer, president or any senior vice president of a Party.

**23.2 Continuation of Work.** Pending final resolution of any Dispute, Contractor shall proceed diligently with the performance of its duties and obligations under this Agreement, and Owners shall continue to make undisputed payments in accordance with such Agreement.

## ARTICLE 24

### TERMINATION

**24.1 Termination for Convenience.**





[REDACTED]

[REDACTED]

24.1.3 Mitigation. If any payment is due to Contractor from Owners in accordance with **Section 24.1.1**, Contractor shall use its reasonable best efforts to minimize the amount of such cancellation payment.

[REDACTED]

**24.2 Termination by Owners for Cause.**

24.2.1 Default by Contractor. The occurrence of any one or more of the following, and, with respect to **clauses (ii), (iv), (vi) or (vii)**, the continuation of the same for [REDACTED] Days after Contractor's receipt of written notice thereof from Owners, will constitute a default by Contractor under this Agreement (a "**Contractor Default**") (**provided**, that with respect to **clauses (ii), (iv), (vi) or (vii)**, if such Contractor Default cannot reasonably be cured within such [REDACTED] Day period, such cure period shall extend for a total of [REDACTED] Days, so long as Contractor diligently pursues a cure throughout such period):

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24.2.2 Owners' Remedies. Upon the occurrence of a Contractor Default, Owners may, without prejudice to any other right or remedy Owners may have under this Agreement (i) terminate this Agreement; (ii) take possession of the Job Site and of all materials, equipment, tools, machinery and Information owned or held by Contractor; (iii) finish the Work by whatever method Owners may deem expedient; and (iv) draw on the Retainage and/or withhold amounts due to Contractor to make payments therefor. If the unpaid balance of the Contract Price exceeds the cost of finishing the Work, then Contractor will be paid for all Work properly performed by Contractor to the date of termination (which amount will in no event exceed the difference between the unpaid portion of the Contract Price and Owners' cost of completing the Work). However, if the cost of finishing the Work (including the cost of arranging for completion of the Work and performing such Work on an accelerated basis to preserve as nearly as possible adherence to the Schedule) and performing Contractor's other obligations under this Agreement exceeds the unpaid balance of the Contract Price, Contractor shall immediately pay the difference to Owners on demand upon receipt of invoices from Owners. Owners will be entitled to withhold further payments to Contractor until the Work has been completed and a determination that Contractor is entitled to further payments. Any amounts not paid hereunder when due shall bear interest at the Agreed Rate. Owners may in their discretion employ such

other Persons to finish the Work by whatever method or means as Owners in their sole discretion may deem expeditious; **provided**, that the balance of Work and obligations will be completed utilizing reasonable methods of construction management and construction consistent with the Schedule, as adjusted. If this Agreement is terminated pursuant to this **Section 24.2.2** and is later determined or adjudged that no Contractor Default had occurred, such termination shall be deemed to be a termination pursuant to **Section 24.1.1**.

**24.3 Termination by Contractor for Cause.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**24.4 Suspension of the Work**

[REDACTED]



**ARTICLE 25**

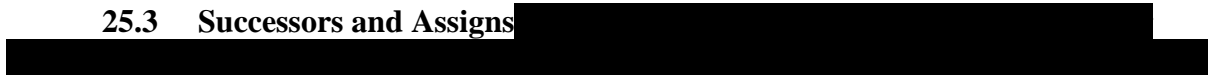
**MISCELLANEOUS PROVISIONS**

**25.1 Governing Law**




**25.2 Entire Agreement.** This Agreement represents the entire agreement between Owners and Contractor with respect to the subject matter hereof, and upon issuance of the Full Notice to Proceed by Owners shall supersede all prior negotiations, binding documents, representations or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by Owners and Contractor, as appropriate.

**25.3 Successors and Assigns**







**25.4 Contractual Relationship.** Nothing contained in this Agreement may be construed as creating a contractual relationship of any kind (i) between Owners and any Subcontractor (except as provided in **Section 3.6** and **Section 13.4** hereof), or (ii) between any Persons other than Owners and Contractor. Contractor is an independent contractor and all of its agents and employees shall be subject solely to the control, supervision, and authority of Contractor. Owners and Contractor disclaim any intention to create a partnership or joint venture. Except as provided in **Section 8.2.4**, Contractor may not act for or have any power or authority assume any obligation or responsibility on behalf of Owners.

**25.5 Notices.** All notices pertaining to this Agreement must be in writing, signed by a duly authorized representative of the Party giving such notice and will be deemed given when received by personal delivery, recognized express courier or electronic mail (followed by recognized express courier) to the other Party at the address designated below:

If to Owners:

Louisville Gas and Electric Company/Kentucky Utilities Company  
820 W. Broadway  
Louisville, KY 40202  
Attn: Scott Straight  
Telephone: 502-627-2701  
E-mail: scott.straight@lge-ku.com

With required copy to:

Louisville Gas and Electric Company/Kentucky Utilities Company  
820 W. Broadway  
Louisville, KY 40202  
Attn: Noel W. Lively  
Telephone: 502-627-4577  
E-mail: noel.lively@lge-ku.com

Louisville Gas and Electric Company/Kentucky Utilities Company  
820 W. Broadway  
Louisville, KY 40202  
Attn: James Huguenard  
Telephone: 502-627-4802  
E-mail: jim.huguenard@lge-ku.com

Louisville Gas and Electric Company/Kentucky Utilities Company  
220 W. Main Street  
Louisville, KY 40202  
Attn: Gerald A. Reynolds  
Telephone: 502-627-3297  
E-mail: gerald.reynolds@lge-ku.com

If to Contractor:

PCL Industrial Construction Co.  
6445 Shiloh Rd Suite E  
Alpharetta, Georgia, 30005  
Attn: John Hyland  
Telephone: 678-965-3142  
E-mail:jjhyland@pcl.com

With required copy to:

Overland Contracting Inc.  
c/o Black & Veatch Corporation  
11401 Lamar Avenue  
Overland Park, KS, 66211  
Attn: Gary Jamison  
Telephone: 913-458-2061  
E-mail:JamisonGG@BV.com

Addresses may be changed by a Party effective upon receipt of notice of such address change.

**25.6 Rights and Remedies.**

[REDACTED]

[REDACTED]

**25.7 Incorporation by Reference.** The recitals set forth on the first page of this Agreement are hereby incorporated into this Agreement by this reference and expressly made a part of this Agreement.

**25.8 No Waiver.** No course of dealing or failure of Owners or Contractor to enforce strictly any term, right or condition of this Agreement may be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement will operate as a waiver of any other term, right or condition.

**25.9 Agreed Rate.** Unpaid amounts will bear interest at an annual (365 or 366 Days, as appropriate) rate equal to the lesser of (i) [REDACTED] in excess of the Prime Rate and (ii) the maximum rate permitted by Applicable Law (the “**Agreed Rate**”).

**25.10 Financing Cooperation.** Contractor shall provide such reasonable assistance and cooperation to Owners as may be necessary for Owners to secure Financing for the Facility, including developing and providing information regarding the Facility reasonably available to Contractor; making presentations to potential Financing Parties, their consultants and representatives; and responding to any questions or requirements asked or imposed by any Financing Parties. Contractor hereby consents to the collateral assignment of this Agreement to the Financing Parties. All obligations of the Parties hereto are expressly subject to the execution of final agreements required to close the Financing for the Facility contemplated by this Agreement. Contractor and Owners agree to amend this Agreement in accordance with reasonable requests from each Owners’ Financing Parties. Contractor also agrees to enter into a consent to collateral assignment with the Financing Parties regarding this Agreement, which consent will contain such provisions as are typically provided to the Financing Parties, including giving the Financing Parties financial information of Contractor reasonably satisfactory to Financing Parties, copies of certain notices delivered to Owners hereunder, and affording the Financing Parties an independent right to cure any Owners’ Defaults hereunder. Contractor shall also provide customary inside counsel legal opinions as required by the Financing Parties.

**25.11 Audit.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**25.12 Survival.** Articles 7, 13, 16, 17, 18, 19, 20, 23 and 25 and Sections 4.3.5, 8.8.2 and 22.2 of this Agreement and all other Articles and Sections thereunder providing for indemnification, or limitation of or protection against liability of either Party, survives the termination, cancellation or expiration of this Agreement.

**25.13 No Third Party Beneficiaries.** The provisions of this Agreement are intended for the sole benefit of Owners and Contractor and, except to the extent specifically identified herein, there are no third party beneficiaries other than assignees contemplated by the terms herein.

**25.14 Non-Recourse** [REDACTED]

[REDACTED]

**25.15 Parent Guarantees**

[REDACTED]

**25.16 Provisions Required by Law.** Any term or condition required to be contained in this Agreement as a matter of Applicable Law which is not so contained herein is deemed to be incorporated in this Agreement as though originally set forth herein.

**25.17 Severability**

[REDACTED]

**25.18 Joint Effort.** Preparation of this Agreement has been a joint effort of the Parties and the resulting document (or any portion thereof) is not to be construed more severely against one of the Parties than against the other.

**25.19 Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which is deemed to be an original, but all of which together shall constitute one and the same instrument.

**25.20 Approvals Not To Relieve Contractor.** No approval, consent or failure to disapprove, inspect or failure to inspect, or comment on, any matter by or the submission of any drawing or document to, or acquiescence on the part of Owners or any of them, including any Turnover Acknowledgment, will relieve Contractor of any liability for any of its obligations under this Agreement or otherwise.

**25.21 Consultants.** At their option, Owners and the Financing Parties may retain the services of others, including engineers and financial consultants, to assist Owners and Financing Parties in monitoring the conduct of the Work by Contractor.

**25.22 Equal Employment Opportunity.** To the extent applicable, Contractor shall comply with all of the following provisions, which are incorporated herein by reference: (i) Equal Opportunity regulations set forth in 41 CFR § 60-1.4(a) and (c), prohibiting employment discrimination against any employee or applicant because of race, color, religion, sex, or national origin; (ii) Vietnam Era Veterans Readjustment Assistance Act regulations set forth in 41 CFR § 60-250.4 relating to the employment and advancement of disabled veterans and Vietnam era veterans; (iii) Rehabilitation Act regulations set forth in 41 CFR §60-741.4 relating to the employment and advancement of qualified disabled employees and applicants for employment; (iv) the clause known as “Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals” set forth in 15 USC § 637(d)(3); and (v) the subcontracting plan requirement set forth in 15 USC § 637(d).

**25.23 Minority, Women, Disadvantaged and Local Business Enterprises.** Owners have a “Supplier Diversity Policy” to provide the maximum opportunity for Minority Business Enterprises (“**MBEs**”), Women Business Enterprises (“**WBEs**”), Disadvantaged Business Enterprises (“**DBEs**”), and union and non-union local contractors (“**LCs**”) to participate as subcontractors for goods and services. As such, every attempt should be made by Contractor to include MBEs, WBEs, DBEs, and LCs, on subcontract bid lists for the Work. To the extent practicable, this requirement shall be passed down to Subcontractors. Contractor shall provide a supplier diversity program for the Work. Elements of such a program shall at a minimum include: (i) a goal setting process for identifying MBE/WBE/DBE/LC opportunities for involvement in the Work; (ii) an outreach process to identify and attract possible MBE/WBE/DBE/LC business interest in the Work, including working with local organizations such as Kentuckiana Minority Business Council; (iii) a pre-qualification process to assess the suitability of interested MBE/WBE/DBE/LCs; (iv) a bidding process inclusive of suitable MBE/WBE/DBE/LCs on subcontract bid lists; and (v) a monitoring process to provide statistical reporting on opportunities and utilization. Contractor shall report to Owners with respect to its compliance with this **Section 25.23** in accordance with **Exhibit F-9**.

**25.24 Local Involvement; Reporting.**

25.24.1Local Workers. Contractor shall make a diligent good faith effort to hire, to the maximum practical extent, qualified Local Hires for and in connection with the performance of the Work in the order of priority in which geographic areas are listed in the definition of Local Hires.

25.24.2Local Content. Contractor shall make a diligent good faith effort to include, to the maximum practical extent, qualified contractors on subcontract bid lists for portions of the Work that are to be subcontracted by Contractor or its Subcontractors in the order of priority in which geographic areas are listed in the definition of Local Spend.

25.24.3Reporting. On a monthly basis commencing on the Effective Date, Contractor shall provide a written report substantially in the form set forth in **Exhibit F-9**, detailing statistical data relating to its workforce and those of its Subcontractors, including information relating to MBEs, WBEs, DBEs, LCs, Local Spend, WBE Spend and MBE Spend. Contractor will not be obligated to provide confidential individual employee information under this **Section 25.24.3**.



[End of Page]

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives.

**LOUISVILLE GAS AND ELECTRIC COMPANY**

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

**KENTUCKY UTILITIES COMPANY**

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

**PCL INDUSTRIAL CONSTRUCTION CO.**

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

**OVERLAND CONTRACTING INC.**

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