
COAL FEEDSTOCK PURCHASE AGREEMENT

by and between

MILL CREEK CLEAN FUELS, LLC

and

LOUISVILLE GAS AND ELECTRIC COMPANY

January 16, 2019

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COAL FEEDSTOCK PURCHASE AGREEMENT

THIS COAL FEEDSTOCK PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of January 16, 2019 (the “Effective Date”), by and between Mill Creek Clean Fuels, LLC, a Colorado limited liability company (“Producer”), and Louisville Gas and Electric Company, a Kentucky corporation (“Generator”). Producer and Generator are also each referred to herein as a “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, Generator owns and operates a four-unit coal-fired, steam-power, electric-generating plant and associated equipment, facilities and improvements known as the Mill Creek Generating Station (the “Power Plant”) on certain property located in southwest Jefferson County, Kentucky (more particularly described on Exhibit A, the “Site”);

WHEREAS, Producer intends to use certain portions of the Site for the operation and maintenance of a refined coal production facility (the “Facility”), upon the terms and subject to the conditions set forth in the License Agreement;

WHEREAS, Producer and Generator have entered into that certain Refined Coal Supply Agreement, dated as of the Effective Date (the “Refined Coal Supply Agreement”), pursuant to which Producer will supply Generator with all requirements of Refined Coal for the Power Plant;

WHEREAS, Producer desires to purchase Coal from Generator to fulfill its obligations under the Refined Coal Supply Agreement; and

WHEREAS, Generator desires to sell and deliver to Producer Coal to enable Producer to fulfill such obligations.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION

SECTION 1.1 Definitions.

The following terms, when used in this Agreement, have the following meanings:

“Affiliate” of a specified Person means any Person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such specified Person. As used in this definition of Affiliate, the term “control” of a specified Person including, with correlative meanings, the terms, “controlled by” and “under common control with,” means (a) the ownership, directly or indirectly, of 50 percent or more of the equity interest in a Person or (b) the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning given to such term in the introductory paragraph.

“Annual Forecast” has the meaning given to such term in Section 5.1.

“Authorized Representative” means the individual or individuals designated as such by each Party pursuant to Section 4.1.

“Business Activity Tax” means any Taxes based upon a Party’s corporate franchise, capital, assets, profit, net income or general operations paid or payable by that Party.

“Business Day” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by Law or governmental action to close.

“Carrier(s)” means the party(ies) under contract to Generator for the transportation of Coal to be delivered hereunder.

“Claims” means any and all suits, actions, causes of action, legal proceedings, claims, losses, demands, liabilities, costs, damages, liquidated damages, expenses, fines and penalties, whether based on contract, warranty, guarantee, indemnity, tort (including negligence), strict liability, breach of statute or otherwise, including costs and expenses of any and all actions, suits, proceedings, investigations, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys’ and consultant fees and reasonable disbursements in connection therewith whether such costs, expenses, fees and disbursements relate to a Third Party claim or to a claim by an Indemnified Party directly against an Indemnifying Party.

“Coal” means coal, including ILB Coal, NAPP Coal or any combination thereof, in each case satisfying the Coal Specifications. For the avoidance of doubt, Coal does not include Refined Coal.

“Coal Consultant” means Generator in its role as “Coal Consultant” under the Coal Handling and Consulting Agreement.

“Coal Handling and Consulting Agreement” means the Coal Handling and Consulting Agreement, dated as of the Effective Date, by and between Producer and Generator.

“Coal Price” means the Coal Price determined pursuant to Schedule 1.1(a).

“Coal Specifications” means the specifications for the Coal as set forth on the attached Schedule 7.1(a).

“Coal Yard” has the meaning given to such term in the Coal Handling and Consulting Agreement.

“Commercial Operations Date” has the meaning given to such term in the License Agreement.

“Contract” means any agreement, lease, license, evidence of indebtedness, indenture, or other contract (including any design, construction, equipment or other warranty or guarantee under any of the foregoing).

“Contract Year” means each calendar year during the Term; provided, however, that: (a) the initial Contract Year shall commence on the Commercial Operations Date and shall end on December 31 of that year and (b) the final Contract Year shall end on the date of termination or expiration of this Agreement and shall commence on the immediately preceding January 1.

“Defaulting Party” has the meaning given to such term in Section 10.2(a).

“Delivery Point” means (a) for all Coal sold pursuant to Section 5.2(a) that is to be transported to the Power Plant by barge, at the fleeting area at the Power Plant when such Coal is unloaded and disengaged from the barge, (b) for all Coal sold pursuant to Section 5.2(a) that is to be transported to the Power Plant by rail, at the Coal Yard when such Coal is unloaded and disengaged from the rail car, and (c) for all other Coal, at the Coal stockpile in the Coal Yard.

“Effective Date” has the meaning given to such term in the introductory paragraph.

“Environmental Indemnity Agreement” means that certain Environmental Indemnity Agreement, dated as of the Effective Date, by and between Producer and Generator.

“Event of Default” has the meaning given to such term in Section 10.1.

“Event of Force Majeure” means any event beyond the reasonable control of the Party affected and is not due to the fault or negligence of the Party affected, including any act of God, strike, work stoppage or other labor disturbance, interruption in the supply of coal, shortage of labor, supplies, parts, materials, trucks, barges or other freight transport vehicles customarily used, breakdowns or damage to or destruction of the Facility, the Power Plant or any part thereof or to plants or other facilities (including a forced outage or an extension of a scheduled outage of the Facility, the Power Plant or such plants, equipment or facilities to make repairs to avoid breakdowns thereof or damage thereto), sabotage, act of public enemy, act of terrorism, war, blockade, riot, public unrest, lightning, fire, violent storm, flood, frozen river, canal, channel or lake, unforeseeable geological condition, environmental catastrophe, drought, unusually severe weather conditions, explosion, Governmental Body order or restraint, inability to obtain Governmental Approvals or utility services or similar events or occurrences (provided that such Party has properly and timely submitted any requests for and reasonably pursued same), or other cause or event, whether of a similar or dissimilar nature, which, in the case of any of the foregoing, cannot be reasonably avoided or circumvented by the affected Party with the exercise of commercially reasonable diligence.

“Facility” has the meaning given to such term in the Recitals.

“Generator” has the meaning given to such term in the introductory paragraph.

“Generator Indemnified Parties” has the meaning given to such term in Section 12.2.

“Governmental Approvals” means any authorization, consent, concession, license, certificate, permit, waiver, privilege or approval from, or filing with, or notice to, any Governmental Body.

“Governmental Body” means the federal government of the United States, any state of the United States or political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity, instrumentality, agency, authority or commission.

“Guarantor” means (a) Tinnium Group, LLC, and (b) any subsequent guarantor of any of Producer’s obligations under or pursuant to any of the Project Documents.

“ILB Coal” means eastern bituminous coal from the region known as the Illinois Basin.

“Indemnified Party” means any of the Producer Indemnified Parties or Generator Indemnified Parties, as applicable under Article XII.

“Indemnifying Party” means Generator or Producer, as applicable under Article XII.

“Indemnity Acceptance Date” has the meaning given to such term in Section 12.3(a).

“Knowledge” means, as to Generator, the actual knowledge, after due inquiry, of those persons identified on Schedule 1.1(b) and, as to Producer, the actual knowledge, after due inquiry, of those persons identified on Schedule 1.1(c); provided, however, that with respect to Tim Lenneman, no due inquiry is required.

“KPSC” has the meaning given to such term in Section 14.2(b).

“Late Payment Rate” means a rate of interest per annum equal to the lesser of: (a) as to each applicable day, two (2) percentage points over the most recent published prime rate, as reported in *The Wall Street Journal* (Eastern Edition) under “Money Rates” or, if such rate does not so appear, in such other nationally recognized publication as Generator may, from time to time, specify to Producer or (b) the maximum rate of interest permitted by applicable Law.

“Law” means any law (including common law), statute, act, decree, ordinance, rule, directive (to the extent having the force of law), order, treaty, code or regulation (including any of the foregoing relating to health and safety matters) or any interpretation of any of the foregoing, as enacted, issued or promulgated by any Governmental Body, including all amendments, modifications, extensions, replacements or re-enactments thereof.

“Liabilities” means, as to any Person, all indebtedness, obligations and other liabilities of such Person (whether absolute, accrued, contingent, fixed or otherwise, and whether due or to become due).

“License Agreement” means that certain License and Services Agreement, dated as of the Effective Date, by and between Producer and Generator.

“Lien” means any mortgage, pledge, security interest, lien, levy, charge or other encumbrance of any kind whatsoever, or any conditional sale Contract, title retention Contract or other Contract giving effect to any of the foregoing.

“NAPP Coal” means eastern bituminous coal from the northern Appalachian coal region.

“Non-Defaulting Party” has the meaning given to such term in Section 10.2(a).

“Notices” has the meaning given to such term in Section 14.5.

“Operator” means the Person designated as the Operator from time to time in writing by Producer to Generator in accordance with Section 4.2(a) of the License Agreement, which shall be Tinum Services, LLC, a Colorado limited liability company, as of the Effective Date.

“Party” and “Parties” have the meanings given to such terms in the introductory paragraph.

“Person” means any corporation, limited liability company, any form of partnership, any joint venture, trust, estate, Governmental Body, or other legal or commercial entity or any natural person.

“Power Plant” has the meaning given to such term in the Recitals.

“Pre-Closing Coal Inventory Purchase Agreement” means the Pre-Closing Coal Inventory Purchase Agreement, dated as of the Effective Date, by and between Producer and Generator.

“Producer” has the meaning given to such term in the introductory paragraph.

“Producer Indemnified Parties” has the meaning given to such term in Section 12.1.

“Producer’s Inventory” means [REDACTED] Tons (the “Producer Inventory Level”) of Coal purchased by Producer from Generator under the Pre-Closing Coal Inventory Purchase Agreement as of the Commercial Operations Date and located in the Coal stockpile in the Coal Yard.

“Project Documents” means: (a) this Agreement, (b) the Coal Handling and Consulting Agreement, (c) the Refined Coal Supply Agreement, (d) the Pre-Closing Coal Inventory Purchase Agreement, (e) the License Agreement, (f) the Environmental Indemnity Agreement, (g) the Security Agreement of even date herewith between Producer and Generator, and (h) the other documents, agreements, certificates and instruments executed or entered into by and between Producer and Generator in connection with the transactions contemplated thereby.

“Refined Coal” has the meaning given to such term in the Refined Coal Supply Agreement.

“Refined Coal Supply Agreement” has the meaning given to such term in the Recitals.

“Section 45 Tax Credits” means the credits against federal income tax available under Section 45 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder and guidance issued in conjunction therewith.

“Site” has the meaning given to such term in the Recitals. The description of the Site may not be modified without the prior written consent of each Party.

“Tax” means any present or future tax, levy, impost, duty, charge, surcharge, assessment or fee of any nature (including any interest, penalties and additions thereto) that is imposed by any Governmental Body, including any present or future tax, levy, impost, duty, charge, assessment or fee of any nature triggered by the severance, transportation, importation, receipt, refining, processing, or other exercise of dominion, control, or ownership rights over Coal that is imposed without regard to the existence of a purchase, sale, or other transaction effecting the ownership or ultimate control of Coal. For purposes of clarification and not limitation, Taxes include Transaction Taxes.

“Term” has the meaning given to such term in Section 3.1.

“Third Party” means any Person other than (a) a Party, (b) a party to any Project Document other than this Agreement, and (c) each Affiliate of each Person referenced in the immediately preceding clause (a) or (b).

“Third Party Impositions” has the meaning given to such term in Section 5.3.

“Third Party Supplier(s)” means the party(ies) under contract to Generator for the supply, handling and/or transportation of the Coal to be sold to Producer hereunder.

“Ton” means 2,000 pounds avoirdupois weight.

“Transaction Tax” means any sales, use, excise, value-added, gross receipts (in the nature of a sales tax), services, consumption and other similar transaction-based Taxes, however designated, that are properly levied by any Governmental Body upon or in respect of the benefits or transactions contemplated under this Agreement and required by any Law or by custom to be collected from the purchaser of goods or services (but excluding any Business Activity Tax).

SECTION 1.2 Construction of Certain Terms and Phrases.

Unless the context of this Agreement otherwise requires: (a) words of either gender include the other gender; (b) words using the singular or plural also include the plural or singular, respectively; (c) the terms “hereof,” “herein,” “hereby,” “hereto” and similar words refer to this entire Agreement and not any particular Article, Section, Clause, Exhibit, Appendix or Schedule or any other subdivision of this Agreement; (d) references to “Article,” “Section,” “Clause,” “Exhibit,” “Appendix” or “Schedule” are to the Articles, Sections, Clauses, Exhibits, Appendices and Schedules, respectively, of this Agreement; (e) the words “include” or “including” shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases or words of like import; (f) the word “or” is not exclusive; and (g) references to “this Agreement” or any other agreement or document shall be construed as a reference to such agreement or document, including any Exhibits, Appendices,

Attachments and Schedules thereto, as amended, modified or supplemented and in effect from time to time. Whenever this Agreement refers to a day or a number of days, such day or number shall refer to calendar days unless Business Days are specified. If a date specified herein for giving any notice or taking any action is not a Business Day, then the date for giving such notice or taking such action shall be the next day that is a Business Day. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under generally accepted accounting principles as promulgated by the Financial Accounting Standards Board and as in effect on the Effective Date.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1 Generator's Representations.

Generator represents and warrants to Producer as of the Effective Date as follows:

(a) the execution and delivery of, and performance under, this Agreement by Generator have been duly authorized and do not, and will not, violate or conflict with any charter, bylaw, Law, Contract, Governmental Approval or obligation applying to Generator, the Power Plant or the Site, other than such violations or conflicts that would not reasonably be expected to have a material adverse effect on Generator's ability to perform its obligations under this Agreement;

(b) this Agreement constitutes a legal, valid and binding obligation of Generator, enforceable against Generator in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar Laws affecting the enforcement of creditors' rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending;

(c) no Governmental Approval from, notice to, consent, approval, authorization or order of any court or other Governmental Body or Third Party not already given or obtained and in full force and effect is required with respect to Generator in connection with its execution and delivery of, and performance under, this Agreement, other than such notices as may be required to be given to the KPSC under applicable Law, and other such Governmental Approvals, notices, consents, approvals, authorizations or orders the failure of which to file, obtain or give would not reasonably be expected to have a material adverse effect on its ability to perform under this Agreement;

(d) Generator is duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and is authorized to do business in each jurisdiction necessary for it to perform its obligations under this Agreement, and Generator has the right, power and authority to enter into this Agreement and to perform its obligations hereunder;

(e) there is no pending or, to Generator's Knowledge, threatened action, suit, investigation, arbitration or other proceeding that would reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement;

(f) neither the execution, delivery or performance of this Agreement by Generator, nor the consummation by Generator of the transactions contemplated hereby, will result in the creation or imposition of any Lien, Claim, charge, restriction, equity or encumbrance of any kind whatsoever upon, or give to any Person other than Producer or its Affiliates any interest or right in or with respect to, the Coal purchased by Producer or the assets of Producer or its Affiliates, or otherwise subject Producer or its Affiliates to any of the Liabilities of Generator, except for the Lien contemplated by this Agreement to be granted by Producer to Generator; and

(g) Generator owns good, valid and marketable title to the Coal purchased by Producer hereunder, free and clear of all Liens, except for any Liens in favor of Third Party Suppliers of such Coal, and, on each purchase date of any such Coal, good, valid and marketable title to such Coal, free and clear of all Liens, except for any Liens in favor of Third Party Suppliers of such Coal and the Lien contemplated by this Agreement to be granted by Producer to Generator, shall pass to Producer.

SECTION 2.2 Producer's Representations.

Producer represents and warrants to Generator as of the Effective Date as follows:

(a) the execution and delivery of, and performance under, this Agreement by Producer have been duly authorized and do not, and will not, violate or conflict with any charter, bylaw, Law, Contract, Governmental Approval or obligation applying to Producer, other than such violations and conflicts that would not reasonably be expected to have a material adverse effect on Producer's ability to perform its obligations under this Agreement;

(b) this Agreement constitutes a legal, valid and binding obligation of Producer, enforceable against Producer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar Laws affecting the enforcement of creditors' rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending;

(c) no Governmental Approval from, notice to, consent, approval, authorization or order of any court or other Governmental Body or Third Party not already given or obtained and in full force and effect is required with respect to Producer in connection with its execution and delivery of, and performance under, this Agreement, other than such Governmental Approvals, notices, consents, approvals, authorizations or orders the failure of which to file, obtain or give would not reasonably be expected to have a material adverse effect on its ability to perform under this Agreement;

(d) Producer is duly organized, validly existing and in good standing under the laws of the State of Colorado and is authorized to do business in each jurisdiction necessary for it to perform its obligations under this Agreement, and Producer has the right, power and authority to enter into this Agreement and to perform its obligations hereunder;

(e) there is no pending or, to Producer's Knowledge, threatened action, suit, investigation, arbitration or other proceeding that would reasonably be expected to have a material adverse effect on the ability of Producer to perform its obligations under this Agreement; and

(f) neither the execution, delivery or performance of this Agreement by Producer, nor the consummation by Producer of the transactions contemplated hereby, will result in the creation or imposition of any Lien, Claim, charge, restriction, equity or encumbrance of any kind whatsoever upon, or give to any Person other than Producer or its Affiliates or Generator or its Affiliates any interest or right in or with respect to, the Coal purchased by Producer or the assets of Generator or its Affiliates, except for the Lien contemplated by this Agreement to be granted by Producer to Generator.

ARTICLE III

TERM

SECTION 3.1 Term.

The term of this Agreement will commence on the Effective Date and, unless terminated earlier pursuant to the provisions of Sections 10.2 or 11.1, or any other provision of this Agreement, will end upon the expiration of the term or other termination of the Refined Coal Supply Agreement or the License Agreement, whichever is earlier (the “Term”).

ARTICLE IV

AUTHORIZED REPRESENTATIVES

SECTION 4.1 Authorized Representatives.

The initial Authorized Representatives of Generator are Joe Didelot, Brian Limberg and Timothy Smith. The initial Authorized Representative of Producer is Jim Walter, Senior Vice President of Operations and Engineering. Each Party shall be entitled to rely upon any instructions or information given or provided by any Authorized Representative of the other Party (or any one designated individual if more than one individual is designated as such other Party’s Authorized Representative), but no Authorized Representative shall have authority under this Section 4.1 to modify or amend this Agreement. Each Party shall have the right to revoke any appointment of any individual or individuals who had been appointed to act as its Authorized Representative with such revocation being effective upon receipt by the other Party of the notice provided for in the following sentence. Each Party shall give to the other Party written notice of any such revocation of appointment and of the appointment of a new individual or individuals to act as its Authorized Representative.

SECTION 4.2 Operator.

Generator acknowledges that Producer has retained Operator to operate and maintain the Facility on behalf of Producer on a day-to-day basis, subject to Producer’s oversight. Generator acknowledges that Operator shall be permitted to act on behalf of Producer under this Agreement in connection with the performance of certain of Producer’s obligations hereunder, subject to the terms and conditions of this Agreement, the License Agreement and Producer’s separate contractual arrangements with Operator. Producer shall, and shall cause its Operator, other contractors, employees and agents to, comply in all material respects with the Generator Procedures (as defined in the License Agreement) and the relevant provisions of the Project

Documents. Producer shall be responsible for the acts or omissions of Operator (and its subcontractors) and Producer's other contractors, employees and agents. In the absence of any written Notice to the contrary given by Producer to Generator, (a) Generator shall be entitled to rely on any deliverable or communication given to it by Operator as if it were a deliverable or communication given by Producer, and (b) Producer shall be deemed to have received any deliverable or communication given by Generator to Operator; provided, however, that the foregoing shall not apply to Notices, which must be delivered as set forth in Section 14.5.

ARTICLE V

PURCHASE AND SALE OF COAL

SECTION 5.1 Annual Forecasts.

For each Contract Year during the Term, Producer shall provide Generator with a good faith projection (each, an "Annual Forecast") of the aggregate quantity of Coal it expects to require during each month of such Contract Year pursuant to the terms of this Agreement, which shall be reasonably based upon the needs of the Power Plant as communicated by Generator. The Annual Forecast for the initial Contract Year shall be provided no later than the 30th day following the Commercial Operations Date. Each succeeding Annual Forecast shall be delivered no later than November 15 preceding the start of such Contract Year. Producer shall update such Annual Forecast on a monthly basis to reflect any change in Producer's projections. Producer shall provide any such update to Generator no less than ten (10) Business Days before the first Business Day of each such month. In addition, Producer shall provide Generator with prompt written notice of any suspension or reduction of its requirements. The Annual Forecast is to be used solely for informational purposes.

SECTION 5.2 Coal Purchase Obligations.

(a) During each Contract Year, subject to the terms and conditions set forth herein, Generator shall sell, assign, transfer and deliver to Producer, and Producer shall purchase and accept from Generator, all of Generator's right, title and interest in and to that quantity of Coal as reasonably requested by Producer from time to time to facilitate the operation of the Facility and the production of Refined Coal by Producer, free and clear of all Liens, except for any Liens in favor of Third Party Suppliers of the Coal and the Lien contemplated by this Agreement to be granted by Producer to Generator. Notwithstanding the foregoing, the Parties hereby acknowledge and agree that (i) Producer does not have any minimum purchase requirement hereunder and (ii) the quantity of Coal to be sold to Producer hereunder will not exceed Generator's demand for use of Refined Coal at the Power Plant.

(b) (i) Subject to Section 5.2(c), from time to time (including upon or immediately prior to the termination or expiration of this Agreement), if Generator is unable to sell to Producer an amount of Coal sufficient to maintain at all times Producer's Inventory at the Producer Inventory Level, Generator shall sell to Producer Coal owned by Generator from the Coal stockpile in the Coal Yard, at the Coal Price, in an amount sufficient to restore Producer's Inventory to the Producer Inventory Level. At the end of each month or upon the termination or expiration of this Agreement, if Producer's Inventory is greater than the Producer Inventory

Level, Generator shall purchase from Producer, and Producer shall sell to Generator, Coal owned by Producer in the Coal stockpile in the Coal Yard, at the Coal Price, in an amount sufficient to reduce Producer's Inventory to the Producer Inventory Level.

(ii) For the avoidance of doubt, for purposes of this Section 5.2(b), Producer's Inventory shall not include Coal that has not been offloaded from the barges or rail cars, as applicable. For purposes of this Section 5.2(b), any Coal purchased from a Person other than Generator shall be excluded from the calculation of Producer's Inventory.

(c) Generator shall have the right, if the amount of Generator's Coal in the Coal stockpile in the Coal Yard reduces below [REDACTED] Tons, to require Producer to sell to Generator certain amounts of Coal owned by Producer from Producer's Inventory at the Coal Price; provided, however, that Producer's Inventory shall be replenished to the Producer Inventory Level as soon as sufficient Coal to do so is made available to Generator to do so.

SECTION 5.3 Third Party Impositions.

Generator shall be solely responsible for all assessments, fees, costs and expenses (other than Taxes) imposed by any Governmental Body or other Third Parties ("Third Party Impositions") relating to Coal that arise prior to any transfer of title to such Coal to Producer hereunder, and Generator shall, to the extent permitted by Law, indemnify Producer for, and hold harmless Producer in respect of, all such Third Party Impositions. Producer shall be solely responsible for all Third Party Impositions relating to Coal that arise at or after any transfer of title to such Coal to Producer hereunder, and Producer shall, to the extent permitted by Law, indemnify Generator for, and hold harmless Generator in respect of, all such Third Party Impositions.

SECTION 5.4 Withholding.

Neither Party shall have the right to withhold or set off any payments owing, paid (that are later determined to have not been owed or payable) or payable to the other Party under this Agreement against any payment owed to it under any Project Document, unless (a) an Event of Default has occurred with respect to the other Party under this Agreement, or (b) the other Party has failed to pay any undisputed amount owed to such Party within four (4) days after its due date under a Project Document.

SECTION 5.5 Coal Price.

Producer shall pay (or cause to be paid) to Generator for each Ton of Coal purchased and sold hereunder the applicable Coal Price.

SECTION 5.6 Invoicing and Payment.

(a) Within three (3) Business Days following the end of each calendar month, Generator shall submit to Producer an invoice for the Coal sold and delivered to Producer hereunder during such month. Such invoice will include the weight of such Coal sold and delivered, the Coal Price, and the amount of any applicable adjustments. Producer shall make payment of any undisputed amount due, after the exercise of any applicable rights pursuant to

Section 5.4, by electronic transfer in United States funds in accordance with Section 14.19 by the later of (i) ten (10) Business Days following the end of each calendar month and (ii) seven (7) Business Days after receipt of that invoice.

(b) Invoices shall be mailed, emailed or sent by facsimile to the Person listed below, or such other Person or address as may be specified by Producer:

Attention: Gail Feeder
Mill Creek Clean Fuels, LLC
c/o Tinium Group, LLC
5251 DTC Parkway, Suite 825
Greenwood Village, CO 80111
Email: gfeeder@tiniumgroup.com
Facsimile: (303) 751-9210

(c) With respect to any payment not paid on the applicable due date, interest shall accrue on that amount (including, in the case of a disputed amount, to the extent it is ultimately determined to be owing under this Agreement) at the Late Payment Rate (compounded annually) from and including the original due date to but excluding the date on which such payment is made. In the event either Party disputes the amount of, or the obligation to pay, any sum due from it hereunder, that Party shall nonetheless pay to the other Party the full amount of any undisputed portion of such sum.

(d) All payments to be made under this Agreement shall be made on a Business Day. If the day specified for payment is not a Business Day, such payment shall be made on the next succeeding day which is a Business Day.

(e) If Producer, in good faith, disputes any portion of an invoice on or before the payment date therefor, Producer shall, on or before the applicable payment date with respect to such invoice, provide Generator with a statement setting forth in reasonable detail all amounts disputed by Producer and the reason for the dispute and pay only the portion of such invoice not being disputed; provided, however, that, for purposes of clarification and not limitation, each of the Parties acknowledges and agrees that neither the making of any payment under this Agreement nor the failure to dispute any payment made under this Agreement shall preclude either Party from disputing the amount, accuracy, validity or other aspect of such payment in the future. In the event of a dispute regarding any invoice or payment, each Party (and its representatives) shall have the right to request, at its sole expense and during normal business hours (but not more than once every six (6) months) and subject to Section 14.1, documentation supporting the invoice or payment, and the other Party shall provide such documentation but only to the extent reasonably necessary to verify such invoice or payment. Generator shall not be required to provide any coal supply, transportation, fuel oil hedging or related agreements as part of its verification responsibility under this Section 5.6. If any such examination reveals any inaccuracy in any invoice or payment, or if the relevant dispute is finally resolved by agreement of the Parties or by litigation or other proceedings, the necessary adjustments in such invoice or payment will be promptly made. The due date for any amount in dispute or otherwise adjusted after its original due date shall be the fifth day after the owing Party receives an invoice reflecting the amount or adjustment agreed upon by the Parties or otherwise resolved as

contemplated above. Neither Party may initiate a dispute after the two (2) year anniversary of the expiration or termination of this Agreement.

SECTION 5.7 Books and Records; Audit Rights.

Generator and Producer shall each retain and maintain (and Producer agrees to cause its Operator to retain and maintain) books and records (updated promptly and consistently) in accordance with good accounting practices in connection with the transactions contemplated in the Project Documents, throughout the Term and until the later of (a) two (2) years after the termination of this Agreement and (b) the date on which the audit of Producer's federal income tax return for the applicable calendar year has been closed by the Internal Revenue Service and is no longer subject to appeal or the applicable statute of limitations for the Internal Revenue Service to audit such tax return has expired, including any extension of the statute of limitations agreed to by Producer or any of its members. Each of Generator and Producer shall have the right (and Producer shall cause its Operator to afford Generator the right), at no additional expense but bearing its own costs, to inspect, copy and audit such books and records of the other Party at any reasonable time(s) upon reasonable prior written notice to the other Party during that retention period, and each Party shall (and Producer agrees to cause its Operator to) reasonably cooperate with such audit-related inquiries of the other Party. Each Party shall remain entitled to conduct an audit notwithstanding the payment of any amount pursuant to this Agreement.

SECTION 5.8 Taxes.

(a) Except to the extent that Producer has provided a resale certificate, exemption certificate, direct pay permit or other such appropriate documentation of exemption or explanation of non-taxability sufficient to confirm the exempt status of Producer or the relevant transaction involving Producer under this Agreement for each jurisdiction in which the purchase, sale and/or delivery of any benefit takes place pursuant to this Agreement, so as to eliminate Generator's obligation to charge, collect and remit any relevant Transaction Tax, Generator shall add to each invoice issued hereunder, and collect from Producer, any applicable Transaction Tax.

(b) Generator shall be responsible for, and pay, all Taxes (other than the Business Activity Tax, including Producer's Business Activity Tax) levied or imposed by any Governmental Body on or in respect of the purchase, possession, use, ownership, storage or transportation of Coal delivered hereunder prior to the sale and delivery of Coal to Producer at the Delivery Point.

(c) Producer shall be responsible for, and pay, all Taxes (other than the Business Activity Tax, including Generator's Business Activity Tax) levied or imposed by any Governmental Body on or in respect of the purchase, possession, use, ownership, storage or transportation of Coal delivered hereunder coincident with, or subsequent to, the sale and delivery of Coal to Producer at the Delivery Point.

(d) If Generator or Producer is contacted with respect to an audit, investigation, claim, action, or proceeding relating to the requirement to collect, remit, or pay over any Taxes that are the responsibility of another Party hereunder, the Party so contacted shall provide written notice of such contact to the other Party and the Party responsible for such Taxes hereunder shall

(i) indemnify and hold the contacted Party harmless against such Taxes and assume responsibility for the defense of such audit, investigation, claim, action, or proceeding (in which case the contacted Party and the responsible Party shall reasonably cooperate and consult with one another (including providing reasonably requested information) and keep each other reasonably informed with respect to such defense); or (ii) promptly advance to or reimburse the contacted Party for such Taxes collected, remitted or paid.

(e) Generator and Producer shall each expend commercially reasonable efforts to cooperate with the other to determine Producer's liability for Transaction Taxes accurately, and minimize such liability to the extent legally permissible including Producer registering for Transaction Tax purposes where appropriate; provided, however, that the failure of either Party to register for Transaction Tax purposes, or hold a Transaction Tax license or Transaction Tax permit shall not alter the responsibility for Transaction Taxes set forth herein; provided, further, that each Party shall on request confirm in writing to the other which Transaction Tax registrations it holds and be liable for any cost or penalties arising directly from the failure to hold any such registration so confirmed.

(f) Producer and Generator shall each provide and make available to the other any resale certificates, information regarding out-of-state sales or use of Coal, materials or services, and any other exemption certificates, direct pay permits, or information reasonably related to Taxes and requested by the other Party.

SECTION 5.9 Terms and Conditions of Sale; Security Interest.

(a) The terms and conditions of sale applicable to each sale of Coal under this Agreement will be those stated in this Agreement, unless the Parties otherwise agree in writing. No other terms and conditions will apply, including those set forth in the delivery instruction forms or acknowledgment forms of the Parties.

(b) Producer grants Generator a first priority security interest in all Coal delivered to Producer pursuant to this Agreement effective upon Producer's receipt of such Coal, as well as other assets of Producer, as set forth in a security agreement substantially in the form of the security agreement attached hereto as Exhibit B. Other than the foregoing, Producer agrees not to grant any security interest or other Lien in any Coal purchased by Producer hereunder (other than any security interest or Lien arising under applicable Law).

ARTICLE VI

DELIVERIES; WEIGHTS; TITLE AND RISK OF LOSS

SECTION 6.1 Deliveries.

Deliveries of Coal hereunder will be made at the applicable Delivery Point, as specified herein, and Producer and Generator shall use commercially reasonable efforts to schedule the deliveries of such Coal so as to accommodate the reasonable operational requirements of Producer and Generator.

SECTION 6.2 Weights.

The quantity of Coal purchased by Producer from Generator or by Generator from Producer under this Agreement shall be determined by reference to the weights that govern the purchase of Coal by Generator from its suppliers.

SECTION 6.3 Title and Risk of Loss.

Title and risk of loss, damage or destruction with respect to the Coal sold hereunder will pass to the purchaser at the applicable Delivery Point for such Coal. Producer acknowledges that ILB Coal, NAPP Coal and other Coal may not be segregated in barges, in rail cars, in the Coal stockpile in the Coal Yard, on conveyors or in bunkers at the Power Plant, or otherwise.

ARTICLE VII

COAL SPECIFICATIONS

SECTION 7.1 Coal Specifications.

(a) Producer acknowledges that it is responsible for determining whether the Coal satisfies the Coal Specifications. Producer acknowledges that the Coal Specifications for Coal sold by Generator under this Agreement are determined by testing at the place where Coal is loaded for delivery to the Power Plant, and agrees that the specifications determined by such testing shall be conclusive with respect to whether such Coal satisfies the Coal Specifications. Generator shall provide Producer with the results of such testing upon Producer's request. If Coal does not satisfy the Coal Specifications, Producer may accept or reject the same.

(b) Any coal accepted by Producer shall be deemed to satisfy the Coal Specifications. Producer has satisfied itself that Coal will be adequate for Producer's production of Refined Coal.

(c) Except as permitted by the Refined Coal Supply Agreement in connection with the production of Refined Coal, Producer shall not, and shall not authorize any other Person, to modify, or take any action that could reasonably be expected to modify, any Coal purchased from Generator hereunder in a manner that causes such Coal to fail to meet the Coal Specifications.

SECTION 7.2 Warranty Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL COAL SOLD PURSUANT TO THIS AGREEMENT IS SOLD "AS IS" AND WITH ALL FAULTS AT THE APPLICABLE DELIVERY POINT PROVIDED HEREIN. GENERATOR MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE COAL, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE VIII

FORCE MAJEURE

SECTION 8.1 Force Majeure.

(a) Except as otherwise provided in this Section 8.1, and notwithstanding any other provisions of this Agreement to the contrary, each Party shall be excused from performance under this Agreement, and shall not be considered to be in default hereunder (i) for failure to perform obligations under this Agreement to the extent that such Party is unable to perform due to an Event of Force Majeure, or (ii) if the failure of the other Party or any of its Affiliates to perform its obligations under any of the Project Documents materially hinders or prevents the performance by the first Party. Neither Party shall be relieved of any obligation for the payment of money as a result of an Event of Force Majeure or relieved of any other obligations under this Agreement as a result of an Event of Force Majeure solely because of increased costs or other adverse economic consequences that may result from or be required for performance by such Party.

(b) If either Party's ability to perform its obligations under this Agreement is affected by an Event of Force Majeure as contemplated in subsection (a) above, such Party shall (i) promptly notify the other Party in writing of such Event of Force Majeure and its cause and (ii) promptly supply such other Party available information about the Event of Force Majeure and its cause as may be reasonably requested by the other Party.

(c) The suspension of performance by either Party due to an Event of Force Majeure hereunder shall be of no greater scope and no longer duration than that which is necessary by reason of the Event of Force Majeure. The affected Party shall use commercially reasonable efforts to promptly mitigate or remedy its inability to perform. However, neither Party shall be required hereunder to accede to the demands of labor or settle any strike or labor dispute. An Event of Force Majeure shall not excuse compliance with any Law or Governmental Approval unless so provided under the applicable Law or Governmental Approval.

ARTICLE IX

INSURANCE

SECTION 9.1 Insurance

Each Party shall obtain, maintain and keep in force, or cause to be obtained, maintained and kept in force, insurance of the types, in amounts and for the time periods as indicated on Schedule 9.1.

ARTICLE X

EVENTS OF DEFAULT

SECTION 10.1 Event of Default.

An “Event of Default” on the part of a particular Party shall mean the occurrence of any one or more of the following events:

(a) A breach of a material provision of this Agreement (whether a representation, warranty or covenant) or of any of the other Project Documents by such Party, which breach (if curable) is not cured within thirty (30) days from the date written notice thereof is given to the breaching Party by the other Party (except for breaches pertaining to any payments hereunder or under any other Project Document, for which the cure period shall be five (5) rather than thirty (30) days);

(b) If such Party shall: (i) become insolvent or generally unable to pay its debts as they become due; (ii) apply for, consent to, or acquiesce in, the appointment of a trustee, receiver, sequestrator or other custodian for it or any of its property, or make a general assignment for the benefit of its creditors; (iii) in the absence of any such application, consent or acquiescence, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for it or a substantial portion of its property, and such trustee, receiver, sequestrator or other custodian shall not be discharged within sixty (60) days; (iv) apply or file for, or permit or suffer to exist, the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of it, and, if any such case or proceeding shall be consented to or acquiesced in by it or shall result in the entry of an order for relief or shall remain for sixty (60) days undismissed; or (v) take any formal action authorizing, or in furtherance of, any of the foregoing; or

(c) If any judgment, order or decree by any Governmental Body, which could reasonably be expected to materially impair or prohibit the performance or observance of any of such Party’s material obligations or the exercise of any of the other Party’s material rights under this Agreement is entered against such Party or with respect to such obligations or rights, and if that judgment, order or decree is not vacated, stayed or discharged within thirty (30) days following its entry and, in the case of a stay, remains stayed until vacated or discharged.

SECTION 10.2 Remedies.

(a) With respect to any Event of Default, (i) the term “Defaulting Party” means the Party with respect to which such Event of Default has occurred; and (ii) the term “Non-Defaulting Party” means the Party that is not the Defaulting Party with respect to such Event of Default.

(b) Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have, in addition to any other legal or equitable remedies expressly permitted in this Agreement, the right to immediately terminate this Agreement (so long as such Event of Default remains uncured) by giving written notice to the Defaulting Party to such effect.

(c) The remedies provided in this Agreement shall be in addition to any other remedies that may be available to a Party under any other Project Document, including the Environmental Indemnity Agreement.

ARTICLE XI

SUSPENSION; EARLY TERMINATION

SECTION 11.1 Suspension; Early Termination.

In addition to any other suspension or termination rights provided for elsewhere in this Agreement, certain obligations under this Agreement may be suspended and/or this Agreement (except for such provisions as are expressly contemplated in this Agreement to survive its expiration or termination) shall terminate on a date prior to the date referred to in Section 3.1 under the following circumstances:

(a) This Agreement may be terminated upon mutual agreement of the Parties, which termination shall be effective on the date mutually agreed to by the Parties.

(b) If the Refined Coal Supply Agreement, the License Agreement or the Coal Handling and Consulting Agreement is suspended for any reason, either Party may, by written notice to the other Party, suspend this Agreement as of the date of such suspension, only during the pendency of such suspension.

(c) The Non-Defaulting Party may terminate this Agreement upon the date specified in the termination notice sent by the Non-Defaulting Party, so long as such date follows the expiration of any applicable notice and/or cure period, in accordance with Section 10.2(b).

(d) Either Party may terminate this Agreement upon the date specified in a written notice of termination by such Party to the other Party, so long as such date follows the expiration of thirty (30) days' notice, if the other Party's obligation to perform hereunder is excused due to an Event of Force Majeure and, notwithstanding the provisions of Section 8.1, the suspension of such other Party's performance due to the Event of Force Majeure has continued for at least ninety (90) consecutive days.

(e) If, because all or any portion of such payment would exceed, or would cause the aggregate payments from Producer to exceed, the aggregate cap on Producer's liability provided in Section 14.8(a), any payment contemplated by any Project Document to be received by any Generator Indemnified Party is reduced below the amount to which such Generator Indemnified Party would be entitled under the applicable Project Document if Section 14.8(a) did not apply to such payment, Generator may terminate this Agreement at any time by written notice to Producer.

(f) If, because all or any portion of such payment would exceed, or would cause the aggregate payments from Generator to exceed, the aggregate cap on Generator's liability provided in Section 14.8(a), any payment contemplated by any Project Document to be received by any Producer Indemnified Party is reduced below the amount to which such Producer Indemnified Party would be entitled under the applicable Project Document if Section 14.8(a)

did not apply to such payment, Producer may terminate this Agreement at any time by written notice to Generator.

(g) Producer, on the one hand, or Generator, on the other hand, may terminate this Agreement at any time for any reason, or for no reason, by giving the other Party written notice of such termination; provided, however, that the effective date of such termination shall not be less than ninety (90) days after such notice is received by the other Party and not less than one (1) year after the Commercial Operations Date.

SECTION 11.2 Post-Expiration and Post-Termination Obligations; Survival.

(a) Any expiration or termination of this Agreement, irrespective of the reason therefor, shall not release either Party of or from any obligations accrued or incurred prior to the effective date of such expiration or termination or, subject to Section 10.2 and Section 14.8, waive any rights or remedies with respect to a breach of this Agreement giving rise to such expiration or termination, all of which shall survive the expiration or termination of this Agreement.

(b) Any expiration or termination of this Agreement, irrespective of the reason therefor, shall not release either Party of or from any applicable rights and/or obligations pursuant to Article I (to the extent relevant to the meaning or interpretation of any provision of this Agreement that is to survive its expiration or termination) or Section 4.2 (fourth sentence only), Sections 5.3 or 5.4, Section 5.6 (to the extent related to payments due from Producer accruing prior to the termination date), Sections 5.7, 5.8 or 6.3, Article IX (to the extent set forth in Schedule 9.1), Section 11.2, Article XII, or Sections 14.1, 14.2, 14.5, 14.8, 14.11, 14.13, 14.15, 14.18 or 14.20, all of which shall survive the expiration or termination of this Agreement.

SECTION 11.3 Rights and Obligations in the Event of Bankruptcy.

Upon the occurrence of an Event of Default of Producer as contemplated in Section 10.1(b), and if in the proceeding that gave rise to such Event of Default the Refined Coal Supply Agreement is terminated or rejected but this Agreement is not terminated or rejected, then Producer agrees to supply, and Generator agrees to purchase and accept, all needs of the Power Plant for Resold Coal (as defined in the Refined Coal Supply Agreement) during the Term at the Coal Price, to the extent Coal is purchased by Producer under this Agreement.

ARTICLE XII

INDEMNIFICATION

SECTION 12.1 Generator's Indemnification.

Without prejudice to Section 12.2, and subject to Section 12.4, Section 12.5, Section 12.6, Section 12.7 and Section 14.8 and Section 5.8 of the Refined Coal Supply Agreement, Generator shall:

(a) indemnify, defend and hold harmless Producer and its Affiliates, and their respective partners, members (and direct and indirect parents of such members), shareholders,

managers, officers, directors, employees, contractors, subcontractors, agents and representatives (the “Producer Indemnified Parties”), from and against any and all Claims to the extent caused by or resulting or arising from or in connection with any negligent or fraudulent act or omission or willful misconduct of Generator or any of its Affiliates or any of their respective partners, members, shareholders, managers, officers, directors, employees, contractors, subcontractors, agents, representatives or invitees, except that Generator’s indemnity obligations hereunder shall exclude any Claims to the extent resulting from an act or omission of Producer or its Affiliate, Operator, other contractor, employee or agent (other than Generator in its role as Coal Consultant under the Coal Handling and Consulting Agreement);

(b) indemnify, defend and hold harmless the Producer Indemnified Parties from and against any and all Claims relating to regulatory penalties or fines and reasonable expenses caused by or resulting or arising from or in connection with the violation of any applicable Law or Governmental Approval by Generator or any of its Affiliates or any of their respective partners, members, shareholders, managers, officers, directors, employees, contractors, subcontractors, agents, representatives or invitees, in connection with this Agreement, except for any Claims to the extent resulting from an act or omission of Producer or its Affiliate, Operator, other contractor, employee or agent (other than Generator in its role as Coal Consultant under the Coal Handling and Consulting Agreement);

(c) indemnify, defend and hold harmless the Producer Indemnified Parties from and against any and all Claims for any injury or death to any of Generator’s employees, unless caused by the negligent or fraudulent act or omission or willful misconduct of Producer or its Affiliate, Operator, other contractor, employee or agent (other than Generator in its role as Coal Consultant under the Coal Handling and Consulting Agreement); and

(d) indemnify, defend and hold harmless the Producer Indemnified Parties from and against any and all Claims resulting from or arising out of an Event of Default on the part of Generator or any other breach by Generator of any of its representations, warranties, covenants or agreements in this Agreement or any other Project Document which (if curable) is not cured in accordance with this Agreement or that other Project Document, in each case whether caused by Generator or its Affiliate, employee, contractor or agent.

SECTION 12.2 Producer’s Indemnification.

Without prejudice to Section 12.1, and subject to Section 12.4, Section 12.5, Section 12.6, Section 12.7 and Section 14.8, Producer shall:

(a) indemnify, defend and hold harmless Generator and its Affiliates, and their respective partners, members, shareholders, managers, officers, directors, employees, contractors, subcontractors, agents and representatives (the “Generator Indemnified Parties”), from and against any and all Claims to the extent caused by or resulting or arising from or in connection with any negligent or fraudulent act or omission or willful misconduct of Producer, its Operator, or any of their respective partners, members, shareholders, managers, officers, directors, employees, contractors, subcontractors, agents, representatives or invitees (other than Generator in its role as Coal Consultant under the Coal Handling and Consulting Agreement),

except that Producer's indemnity obligations hereunder shall exclude any Claims to the extent resulting from an act or omission of Generator or its Affiliate, contractor, employee, or agent;

(b) indemnify, defend and hold harmless the Generator Indemnified Parties from and against any and all Claims relating to regulatory penalties or fines and reasonable expenses caused by or resulting or arising from or in connection with the violation of any applicable Law or Governmental Approval by Producer or its Operator, or any of their respective partners, members, shareholders, managers, officers, directors, employees, contractors, subcontractors, agents, representatives or invitees (other than Generator in its role as Coal Consultant under the Coal Handling and Consulting Agreement), in connection with this Agreement, except for any Claims to the extent resulting from an act or omission of Generator or its Affiliate, contractor, employee or agent;

(c) indemnify, defend and hold harmless the Generator Indemnified Parties from and against any and all Claims arising out of the use, operation, maintenance, repair or removal of the Facility, except to the extent arising from the negligent or fraudulent act or omission or willful misconduct of Generator or its Affiliate, contractor, employee or agent;

(d) indemnify, defend and hold harmless the Generator Indemnified Parties from and against any and all Claims for any injury or death to any of Producer's employees, unless caused by the negligent or fraudulent act or omission or willful misconduct of Generator or its Affiliate, contractor, employee or agent; and

(e) indemnify, defend and hold harmless the Generator Indemnified Parties from and against any and all Claims resulting from or arising out of an Event of Default on the part of Producer or any other breach of any of Producer's representations, warranties, covenants or agreements in this Agreement or any other Project Document which (if curable) is not cured in accordance with this Agreement or that other Project Document, in either case whether caused by Producer or Operator or an employee, agent or contractor of either of them (other than Generator in its role as Coal Consultant under the Coal Handling and Consulting Agreement).

SECTION 12.3 Indemnification Procedures.

(a) In the event an Indemnified Party becomes aware of a Claim against or incurred by it that the Indemnified Party reasonably believes is covered by the provisions of this Article XII, written notice shall be given promptly by the Indemnified Party to the Indemnifying Party containing detail reasonably sufficient for the Indemnifying Party to identify the nature and basis of the Claim. Provided that the Indemnifying Party admits in writing to the Indemnified Party within thirty (30) days after receipt of such notice (the "Indemnity Acceptance Date") that the Indemnifying Party is responsible for indemnifying the Indemnified Party for such Claim in accordance with the provisions of this Article XII, the Indemnifying Party shall have the right to contest and defend by all appropriate legal proceedings such Claim and to control the contest and defense and all settlements of such Claim (provided, however, that the Indemnifying Party will not, without the prior written consent of the Indemnified Party, enter into any settlement that would restrict or impose future conditions on the Indemnified Party or its operations or would create an obligation or liability (other than for the payment of money) on the Indemnified Party's part) and to select lead counsel reasonably satisfactory to the Indemnified Party to defend any

and all such Claims at the sole cost and expense of the Indemnifying Party; provided, however, that the Indemnifying Party must conduct the defense of the claim actively and diligently thereafter in order to preserve its rights in this regard. The Indemnified Party may select counsel to participate with the Indemnifying Party's counsel in any such defense, in which event the Indemnified Party's counsel shall be its own cost and expense; provided, however, that if the Indemnified Party shall have been advised in good faith in writing by its counsel that there may be one or more legal defenses available to it that are different from or in addition to those available to the Indemnifying Party, or that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such Claim, the reasonable fees and expenses of such separate counsel shall be borne by the Indemnifying Party and the Indemnified Party and the Indemnifying Party shall share control of the defense, compromise and/or settlement of such Claim. Further, if the Indemnifying Party does not admit in writing to the Indemnified Party on or prior to the Indemnity Acceptance Date that the Indemnifying Party is responsible for indemnifying the Indemnified Party for such Claim in accordance with the provisions of this Article XII, the Indemnified Party may assume the investigation and defense of such Claim, including employing legal counsel of its choice, at the Indemnifying Party's expense; provided, however, that the Indemnified Party will not, without the prior written consent of the Indemnifying Party, enter into any settlement that would restrict or impose future conditions on the Indemnifying Party or its operations or would create any obligation or liability (other than for the payment of money) on the Indemnifying Party's part. In connection with any such Claim, or the defense or contesting thereof, the Parties shall reasonably cooperate with each other and their respective legal counsel and provide access to relevant books and records in their possession.

(b) The Indemnified Party shall notify the Indemnifying Party in writing of any matter potentially indemnifiable under this Agreement as soon as reasonably practicable after the Indemnified Party becomes aware of a potentially indemnifiable event; provided, however, that the failure to provide the notice in a timely manner shall not reduce the Indemnifying Party's obligations except to the extent of any increase in the amount of the applicable Claim or any material prejudice suffered by the Indemnifying Party or the Indemnified Party as a result of such Indemnified Party's failure to provide timely written notice.

(c) The Indemnifying Party shall pay to the Indemnified Party all reasonable costs and expenses incurred by such Indemnified Party in the enforcement of this Article XII.

SECTION 12.4 No Imputed Liability.

(a) For purposes of Section 12.1 and Section 12.2, all acts and omissions of Generator or any of the Generator Indemnified Parties, on the one hand, or of Producer or any of the Producer Indemnified Parties, on the other hand, shall be deemed solely acts and omissions of such Persons, whether committed in the course of providing services for or on behalf of another Party under one or more Project Documents, or otherwise, and in no event will any such acts or omissions be imputed to, or deemed to be acts or omissions of, the other Party, any of its Indemnified Parties or any contractors, subcontractors, agents or invitees thereof.

(b) Notwithstanding any other provision of this Agreement or the other Project Documents, no member, shareholder, officer, director, agent or employee of a Party shall have

any personal liability hereunder solely by reason of that relationship with such Party, and no Affiliate of a Party, or any member, shareholder, officer, director, agent or employee of such Affiliate shall have any liability hereunder solely by reason of that relationship with such Party or Affiliate; provided, however, that, for purposes of clarification and not limitation, this Section 12.4(b) shall not release, excuse or otherwise exempt any such Person from any liability arising from any contract to which such Person is a party or arising under applicable Law as a result of such Person's acts or omissions.

SECTION 12.5 Environmental Matters.

Notwithstanding any other provision of this Agreement to the contrary, the remedies contained in this Article XII shall not be applicable to any Claim arising out of, or any matter governed by, Environmental Law or pertaining to Hazardous Material, as those terms are defined in the Environmental Indemnity Agreement, and the Parties acknowledge and agree that any indemnification or other remedies as to such environmental matters are governed solely and exclusively by the Environmental Indemnity Agreement; provided, however, that solely in the event of the termination or rejection of the Environmental Indemnity Agreement in a bankruptcy or similar proceeding, Article III of the Environmental Indemnity Agreement and the definitions in the Environmental Indemnity Agreement used in such Article III are hereby incorporated in this Agreement by this reference and made a part hereof as to each of the Parties hereto, and shall continue as a part of this Agreement notwithstanding any termination or rejection of that separate Environmental Indemnity Agreement.

SECTION 12.6 Offset.

In the event that either Generator, on the one hand, or Producer, on the other hand, is obligated to indemnify and hold harmless the Producer Indemnified Parties under Section 12.1 or the Generator Indemnified Parties under Section 12.2, respectively, the amount owing to the Indemnified Party shall be the actual amount of the Claim, net of any amounts actually recovered by the Indemnified Parties (and legally and contractually permitted to be retained by them) under indemnification, contribution or similar agreements or arrangements with Third Parties or under insurance policies of such Indemnified Parties with respect to such Claim (net of any deductibles, out-of-pocket costs and expenses and self-insured retentions incurred in connection with the realization or receipt of such amounts), subject to any further limitations set forth in this Agreement. Each Indemnified Party agrees to use commercially reasonable efforts to obtain recovery from any of the sources of proceeds referenced in the immediately preceding sentence, although the applicable Indemnified Party does not have to seek such recovery prior to making and pursuing a claim for indemnification under this Agreement or any other Project Document. If the amount to be netted hereunder from any payment required under Section 12.1 or 12.2 (as applicable) is recovered or otherwise received after payment of any amount otherwise required to be paid under Section 12.1 or 12.2, the applicable Indemnified Party shall repay to the applicable Indemnifying Party, promptly after such recovery or other receipt, any amount that the applicable Indemnifying Party would not have had to pay pursuant to Section 12.1 or 12.2 had such recovery or other receipt occurred at the time of such payment.

SECTION 12.7 Mitigation.

Each Indemnified Party shall use, and cause its Affiliates to use, commercially reasonable efforts to mitigate any Claim it reasonably expects to be an indemnifiable Claim under this Agreement upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Claim (or such additional costs as required by applicable Law); provided, that such costs incurred shall be recoverable from the relevant Indemnifying Party as a part of the Claim.

ARTICLE XIII

DISPUTE RESOLUTION

SECTION 13.1 Dispute Resolution.

(a) The Parties hereto agree: (i) to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner; and (ii) to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such dispute.

(b) During resolution of any dispute under this Article XIII, the Parties shall continue to perform all of their respective obligations under this Agreement without interruption or slow down until such dispute is resolved, except to the extent a Party is prevented from performing due to the nature of the dispute or permitted to suspend or otherwise modify performance under a Project Document.

ARTICLE XIV

MISCELLANEOUS

SECTION 14.1 Confidentiality.

Except as otherwise provided below, during the Term of this Agreement and for a period of two (2) years thereafter, each Party shall hold, and shall cause its Affiliates, agents, contractors, advisors (including counsel and consultants), any lender, potential lender, investor or potential investor to hold, in strict confidence from any other Person (other than any such Affiliate, agent or advisor or any lender, potential lender, investor or potential investor as permitted hereby) all documents and information of or concerning the other Party or any of its Affiliates furnished to it, or its Affiliates, agents or advisors (including counsel and consultants), by or on behalf of the other Party in connection with this Agreement, any other Project Document or the transactions contemplated hereby or thereby, and neither Party nor their Affiliates or any agent, advisor, lender, potential lender, investor or potential investor shall disclose any such information unless, subject to Section 14.2, the disclosing Party is required to disclose any such information by judicial or administrative process (including in connection with obtaining from Governmental Bodies the necessary approvals of this Agreement and the transactions contemplated hereby) or by other requirements of Law. For purposes of this Section 14.1, the identity of the members of Producer and their direct and indirect parents shall be

confidential information. Each Party may disclose such documents or information to its Affiliates, agents and advisors and any lender or potential lender or any investor or potential investor; provided, however, that prior to providing the information, such Party shall inform such agent, advisor, lender, potential lender, investor or potential investor that the information is confidential and that by receiving such information, such Person is agreeing to be bound by the confidentiality provisions of this Agreement. Each Party agrees to be responsible for any breach of the confidentiality obligations in this Agreement by any Person to whom it provides such information. Each Party may disclose such documents or information in an action or proceeding brought by either Party in pursuit of its rights or in the exercise of its remedies hereunder. Notwithstanding the foregoing, this Section 14.1 shall not apply to such documents or information that were (a) previously known by the Party receiving such documents or information without breach of any confidentiality requirement or obligation, (b) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through operation of Law, or by no fault of such receiving Party, or (c) later acquired by such receiving Party from another source if such receiving Party is not aware that such source is under an obligation to the disclosing Party to keep such documents and information confidential. Notwithstanding the foregoing, the Parties (and each employee, representative or other agent of the Parties) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to either Party relating to such tax treatment and tax structure.

SECTION 14.2 Required Disclosure.

(a) Any Party reasonably determining in good faith that it is required by Law or in the course of administrative or judicial proceedings to disclose information that is otherwise required to be maintained in confidence pursuant to Section 14.1 may make disclosure notwithstanding the provisions of Section 14.1; provided, however, that the Party making the disclosure shall, if and to the extent allowed by such Law or proceeding, (i) give reasonable prior written notice to the other Party of the requirement and the terms thereof to allow such Party at its cost and expense to obtain proprietary or confidential treatment of such information by the Person to whom the information is disclosed and, to the extent such remedies are available, to seek protective orders limiting the dissemination and use of the information and (ii) cooperate to the maximum extent reasonably practicable to minimize the disclosure of the information. This Agreement does not alter the rights of either Party to object to the Law or proceedings requiring the disclosure.

(b) Notwithstanding any of the provisions of Section 14.1 or 14.2(a) to the contrary, Generator may file a copy of this Agreement with the Kentucky Public Service Commission (“KPSC”) to the extent required by Law. Prior to filing this Agreement with the KPSC, Generator shall seek confidential treatment of and KPSC approval to redact the financial terms of this Agreement, and such other terms as Generator reasonably believes may be redacted under applicable Law. Generator may also file with the KPSC any other information regarding this Agreement as is required by applicable Law, provided that Generator shall give reasonable prior written notice to Producer of such information it intends to provide and the reason therefore, and shall seek confidential treatment of such information if allowed under applicable Law.

(c) Other than as required to make the representations and warranties set forth in Article II true and correct, nothing contained herein shall require either Party to disclose to the other Party any information that is privileged or bound by a duty of confidentiality to a Person, or determined by such Party, in its reasonable discretion, to contain trade secrets.

SECTION 14.3 Compliance with Laws and Governmental Approvals.

In connection with the performance of this Agreement, each Party agrees to comply in all material respects with all Laws, and each Party agrees that it or its agent will use commercially reasonable efforts to acquire and maintain, in a timely manner, all material Governmental Approvals required by Law or Governmental Bodies to exercise its rights or perform its obligations under this Agreement and, in the case of Producer, to use and operate the Facility on the Site.

SECTION 14.4 Entire Agreement; Integration; Successors and Assigns.

This Agreement, together with the other Project Documents, together and cumulatively represent and constitute the entire, final, complete and integrated agreement and understanding between the Parties with respect to the subject matter herein and therein and the transactions contemplated hereby and thereby, and any and all other or previous understandings, proposals, negotiations, agreements, commitments and representations, whether oral or written, are merged herein and are superseded hereby. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

SECTION 14.5 Notices.

All notices, requests, demands, consents and waivers (collectively, "Notices") hereunder shall be in writing and (a) delivered in person or by courier or (b) mailed certified first class mail, postage prepaid, return receipt requested, to the appropriate Party at the following addresses:

If to Generator, to: Louisville Gas and Electric Company
220 West Main Street
Louisville, Kentucky 40202
Attn: Corporate Fuels and Byproducts Dept.

With a copy (which shall not constitute notice) to:

Louisville Gas and Electric Company
220 West Main Street
Louisville, Kentucky 40202
Attn: General Counsel

If to Producer, to: Mill Creek Clean Fuels, LLC
c/o Tinnium Group, LLC
5251 DTC Parkway, Suite 825
Greenwood Village, CO 80111
Attention: General Counsel

With a copy (which shall not constitute notice) to:

Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202
Attention: Brian Boonstra/Randy Hubbard

And with a copy (which shall not constitute notice) to:

Sherman & Howard L.L.C.
633 Seventeenth Street, Suite 3000
Denver, CO 80202
Attention: Joanne Norris

or such other address as either Party may designate to the other Party by notice given as provided herein. Such Notices shall be effective and deemed received (i) if delivered in person or by courier, upon receipt by the intended recipient or an employee that routinely accepts packages or letters from couriers or other persons for delivery to personnel at the address identified above (as confirmed by, if delivered by courier, the records of such courier), or (ii) if mailed, upon the date of delivery as shown by the return receipt therefor.

Notwithstanding the foregoing, standard, ongoing operational deliverables and communications may be delivered by either Party to the other Party's Authorized Representatives or to Operator (in the case of deliverables and communications from Generator) verbally or using e-mail if agreed by such Authorized Representatives or Operator, as applicable, and invoices may be sent using the methods described in this Agreement.

SECTION 14.6 Assignment.

Neither this Agreement, nor any of the rights and obligations hereunder, may be assigned, transferred or delegated by either Party, in whole or in part, whether by operation of Law or otherwise, without the express prior written consent of the other Party, which consent may be withheld in the sole discretion of such other Party, except that either Party may assign this Agreement to an Affiliate without the prior written consent of the other Party, provided, however, that (a) any assignment by Generator to an Affiliate is to an Affiliate that owns the Site and owns and operates the Power Plant and has agreed with Producer and Generator to assume all of Generator's rights, interests and obligations under all Project Documents, whether arising before or after the date of such assignment, (b) any assignment by Producer to an Affiliate is to an Affiliate that owns or leases all of the Facility, and has agreed with Producer and Generator to assume all of Producer's rights, interests and obligations under all Project Documents, whether arising before or after the date of such assignment, and (c) any assignment to an Affiliate shall not release the assignor from any obligations under this Agreement unless otherwise expressly consented to by the non-assigning Party.

SECTION 14.7 Waiver; Invalidity.

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written

instrument duly executed by such waiving Party. The failure or delay of either Party to require performance by the other Party of any provision of this Agreement shall not affect its right to require performance of such provision unless and until such performance has been waived by such Party in writing in accordance with the terms hereof. No waiver by either Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. The invalidity or unenforceability of any provision of this Agreement shall be determined only by a court of competent jurisdiction. The Parties hereby agree to use good faith efforts to negotiate an equitable adjustment to any provisions of this Agreement determined to be invalid or unenforceable with a view toward effecting the purposes of this Agreement, and the validity or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

SECTION 14.8 Limitations of Liability; Remedies.

(a) PRODUCER'S AGGREGATE INDEMNIFICATION OBLIGATIONS ARISING OUT OF ALL OF THE PROJECT DOCUMENTS, EXCEPT THE ENVIRONMENTAL INDEMNITY AGREEMENT, COLLECTIVELY SHALL NOT EXCEED [REDACTED] GENERATOR'S AGGREGATE INDEMNIFICATION OBLIGATIONS ARISING OUT OF ALL OF THE PROJECT DOCUMENTS, EXCEPT THE ENVIRONMENTAL INDEMNITY AGREEMENT, COLLECTIVELY SHALL NOT EXCEED [REDACTED]

(b) NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ITS AFFILIATES FOR CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE, LOSS OF PROFIT, LOSS OF GOODWILL OR ANY SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES RESULTING FROM ANY VIOLATION OF OR DEFAULT UNDER THIS AGREEMENT, INCLUDING BUSINESS INTERRUPTION DAMAGES, DAMAGES SUFFERED AS THE RESULT OF THE LOSS OF USE OF THE POWER PLANT OR THE FACILITY, COST OF PURCHASED OR REPLACEMENT POWER, DAMAGES SUFFERED BY CUSTOMERS OF SUCH PARTY FOR SERVICE INTERRUPTIONS, OR LOSS OF GOODWILL, LOSS OF USE OF EQUIPMENT AND COSTS OF REPLACEMENT OF PRODUCTS, IN EACH CASE, BY STATUTE, IN TORT OR CONTRACT, IN EQUITY, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, EXCEPT THAT THE FOREGOING SHALL NOT LIMIT AN INDEMNIFIED PARTY'S RIGHT TO INDEMNIFICATION, IF ANY, FOR ANY SUCH DAMAGES THAT RESULT FROM THE INDEMNIFYING PARTY'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR, PROVIDED SUCH DAMAGES ARE NOT PRECLUDED BY THE LIMITATIONS IN SECTION 14.8(C), THAT THE INDEMNIFIED PARTY IS LEGALLY REQUIRED TO PAY TO A THIRD PARTY AS A RESULT OF A CLAIM.

(c) NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO ANY PERSON UNDER THIS AGREEMENT OR UNDER ANY CIRCUMSTANCES IN ANY FASHION FOR ANY CLAIM CAUSED BY OR RESULTING OR ARISING FROM OR IN CONNECTION WITH ANY LOSS OR REDUCTION OF TAX CREDITS OR BENEFITS (INCLUDING

ANY OBLIGATION TO REFUND ANY TAX CREDITS OR BENEFITS), REGARDLESS OF SUCH PARTY'S RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT.

(d) THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE SOLE AND EXCLUSIVE REMEDIES OF THE PARTIES WITH RESPECT TO THIS AGREEMENT OR ANY CLAIMS RELATING TO THIS AGREEMENT AND THE TRANSACTIONS PROVIDED FOR HEREIN OR CONTEMPLATED HEREBY SHALL BE LIMITED TO THE PARTIES' RESPECTIVE RIGHT, TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, TO SEEK SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF WITH RESPECT TO THIS AGREEMENT OR ANY PROVISION HEREOF, THE TERMINATION RIGHTS SET FORTH IN SECTION 10.2 AND SECTION 11.1, AND THE INDEMNIFICATION RIGHTS SET FORTH IN ARTICLE XII OR ELSEWHERE IN THIS AGREEMENT, IN ALL CASES SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 14.8; PROVIDED THAT THE FOREGOING SHALL NOT LIMIT ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO A PARTY UNDER ANY OTHER PROJECT DOCUMENT. THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHT TO CLAIM OR SEEK ANY OTHER RIGHTS OR REMEDIES THAT OTHERWISE WOULD HAVE BEEN AVAILABLE AT LAW OR IN EQUITY WITH RESPECT THERETO, INCLUDING ANY CLAIMS FOR BREACH OF CONTRACT.

(e) NOTWITHSTANDING THE FOREGOING, PROVIDED SUCH DAMAGES ARE NOT PRECLUDED BY THE LIMITATIONS IN SECTION 14.8(C), THIS SECTION 14.8 SHALL NOT LIMIT THE RIGHTS OF EITHER PARTY TO SEEK INDEMNIFICATION, CONTRIBUTION OR REIMBURSEMENT FOR CLAIMS MADE AGAINST SUCH PARTY BY PERSONS NOT A PARTY OR AN AFFILIATE OF A PARTY HEREUNDER.

(f) IN ADDITION, TO THE EXTENT ANY PROCEEDS RECEIVED BY AN INDEMNIFYING PARTY FROM INSURANCE POLICIES EFFECTED AND MAINTAINED IN ACCORDANCE WITH THIS AGREEMENT ARE RECEIVED IN CONNECTION WITH OR ARE PAYABLE TOWARD ANY LOSS THAT WOULD OTHERWISE BE EXCLUDED PURSUANT TO THIS SECTION 14.8, SUCH LOSS SHALL BE RECOVERABLE BY THE INDEMNIFIED PARTY, BUT ONLY TO THE EXTENT (AND IN THE AMOUNT) SUCH PROCEEDS ARE PAID TO SUCH INDEMNIFYING PARTY.

(g) EXCEPT AS MAY BE EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT WITH RESPECT TO ANY INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT OR ANY OTHER PROJECT DOCUMENT, THE PROVISIONS OF THIS SECTION 14.8 SHALL APPLY TO ALL CLAIMS BASED ON OR ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT, EQUITY, TORT OR OTHERWISE, REGARDLESS OF FAULT, GROSS OR OTHER NEGLIGENCE (IN WHOLE OR IN PART), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY AND SHALL EXTEND TO ALL

INDEMNIFIED PARTIES HAVING RIGHTS UNDER THIS AGREEMENT AND THE SUCCESSORS AND ASSIGNS OF THE PARTIES HERETO AND SUCH INDEMNIFIED PARTIES.

(h) **FOR PURPOSES OF CLARIFICATION AND NOT OF LIMITATION, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH ELSEWHERE IN THIS SECTION 14.8 (IT BEING UNDERSTOOD THAT THIS SUBSECTION (H) SHALL CONTROL AND HAVE PRIORITY OVER ANY OTHER PROVISION OF THIS SECTION 14.8), THE LIMITATIONS ON LIABILITY AND EXCLUSIVE REMEDY PROVISIONS SET FORTH IN THIS SECTION 14.8 SHALL NOT APPLY TO ANY CLAIMS PAID OR PAYABLE WITH RESPECT TO (I) ANY FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFYING PARTY, (II) ANY INDEMNIFICATION OBLIGATIONS WITH RESPECT TO CLAIMS ARISING FROM ANY ENVIRONMENTAL MATTERS, OR (III) ANY FAILURE OF AN INDEMNIFYING PARTY TO SATISFY ITS REGULAR PAYMENT OBLIGATIONS UNDER ANY PROJECT DOCUMENT.**

(i) A Party shall not be liable for damages in respect of the same underlying damages under more than one provision of this Agreement or any of the other Project Documents.

(j) Each of Generator and Producer shall be excused from the non-performance of any of its obligations under this Agreement (other than payment obligations for amounts incurred prior to the other Party's or its Affiliates' failure to perform) to the extent that such non-performance is directly caused by the other Party's or such other Party's representatives' or Affiliates' breach of, or failure to perform in accordance with, its obligations under this Agreement or any other Project Document.

SECTION 14.9 Headings.

The headings contained in this Agreement are solely for the convenience of the Parties and shall not be used or relied upon in any manner in the construction or interpretation of this Agreement.

SECTION 14.10 Counterparts.

The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument, and, thereafter, each counterpart shall be deemed an original instrument as against the Party who has signed it.

SECTION 14.11 Applicable Law.

This Agreement, including the interpretation, construction, validity and enforceability hereof, and the transactions contemplated herein, and all disputes between the Parties under or related to this Agreement or the facts and circumstances leading to its execution or performance, whether in contract, tort or otherwise will be governed by the laws of the State of New York without regard to the conflict of laws rules thereof. IN ADDITION, EACH PARTY, KNOWINGLY AND INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY, WAIVES TRIAL BY JURY IN AND AS TO ANY LEGAL ACTION OR PROCEEDING

RELATING TO THIS AGREEMENT AND FOR ANY CLAIM, COUNTERCLAIM, CROSS CLAIM OR THIRD PARTY CLAIM THEREIN.

SECTION 14.12 Amendment.

No modification or amendment of any provisions of this Agreement shall be valid unless it is in writing and signed by the Parties.

SECTION 14.13 No Third Party Beneficiary.

The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third party beneficiary rights upon any other Person; provided, however, that the members of Producer and their direct and indirect parents shall be third party beneficiaries under this Agreement as their respective interests may appear, including Sections 5.7, 14.1 and 14.2, and each Generator Indemnified Party and each Producer Indemnified Party is intended to be a third party beneficiary of this Agreement as expressly provided in Article XII hereof.

SECTION 14.14 Further Assurances.

On the terms and subject to the conditions of this Agreement, at any time or from time to time, each of Producer and Generator, without further compensation, shall execute and deliver such other instruments of sale, assignment, assumption, transfer, delivery and confirmation, provide such materials and information and take such other actions as either Party may reasonably deem necessary in order to give effect to the rights of Producer and Generator hereunder.

SECTION 14.15 Forward Contract.

The Parties agree that, in the event either Party becomes a debtor in a case under any bankruptcy or insolvency law, the other Party shall be entitled to all of the relief described in United States Bankruptcy Code § 561(a) or any similar provision of any other bankruptcy or insolvency law.

SECTION 14.16 No Partnership.

Neither Party, as a result of entering into this Agreement, has in any way or for any purpose become a partner, agent, representative or fiduciary of the other Party, whether in the conduct of such Party's business or otherwise, or joint venturer or a member of a joint enterprise with the other Party.

SECTION 14.17 Guaranty.

In conjunction with the execution of this Agreement and the other Project Documents, Producer shall furnish to Generator a guaranty of Producer's performance obligations hereunder from Guarantor, in the form attached as Schedule 14.17 hereto.

SECTION 14.18 No Publicity.

Neither Generator nor Producer may use the other Party's name or logo in any of its or its Affiliates' marketing materials, or issue any press release or other public announcement of this Agreement (or any terms hereof) or the relationships created hereby, in either case without first obtaining the written permission of the other Party.

SECTION 14.19 Payment Method.

Any payments or other amounts due from one Party to the other Party under this Agreement shall be paid in immediately available funds, by electronically transferred funds, to the account of that other Party, based upon the account information (account name, ABA # and account #) provided in writing by that other Party from time to time using a form reasonably acceptable to the Parties.

SECTION 14.20 Equitable Remedies.

Each Party recognizes that the other Party may not have an adequate remedy at law and may be irreparably harmed in the event that this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, each Party shall be entitled to injunctive relief to prevent breaches of this Agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy expressly permitted in this Agreement.

[The remainder of this page is intentionally left blank; signature page follows.]

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

Generator:

Louisville Gas and Electric Company

By: _____

Name: _____

Title: _____

Paul J. Sinclair
Paul J. Sinclair
VP Energy Supply & Analysis

*for
ELL*

Producer:

Mill Creek Clean Fuels, LLC

By: _____ a Colorado limited liability company, its manager

By: _____ a Colorado limited liability company, its manager

By: Tinnuum Group, LLC, a Colorado limited liability company, its manager

By: _____

Name: Ron Eller

Title: President and Chief Executive Officer

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

Generator:

Louisville Gas and Electric Company

By: _____
Name: _____
Title: _____

Producer:

Mill Creek Clean Fuels, LLC

By: [REDACTED], a Colorado limited liability company, its manager

By: [REDACTED], a Colorado limited liability company, its manager

By: Tinnuum Group, LLC, a Colorado limited liability company, its manager

By:  _____
Name: Ron Eller
Title: President and Chief Executive Officer

EXHIBIT A

SITE

See attached.

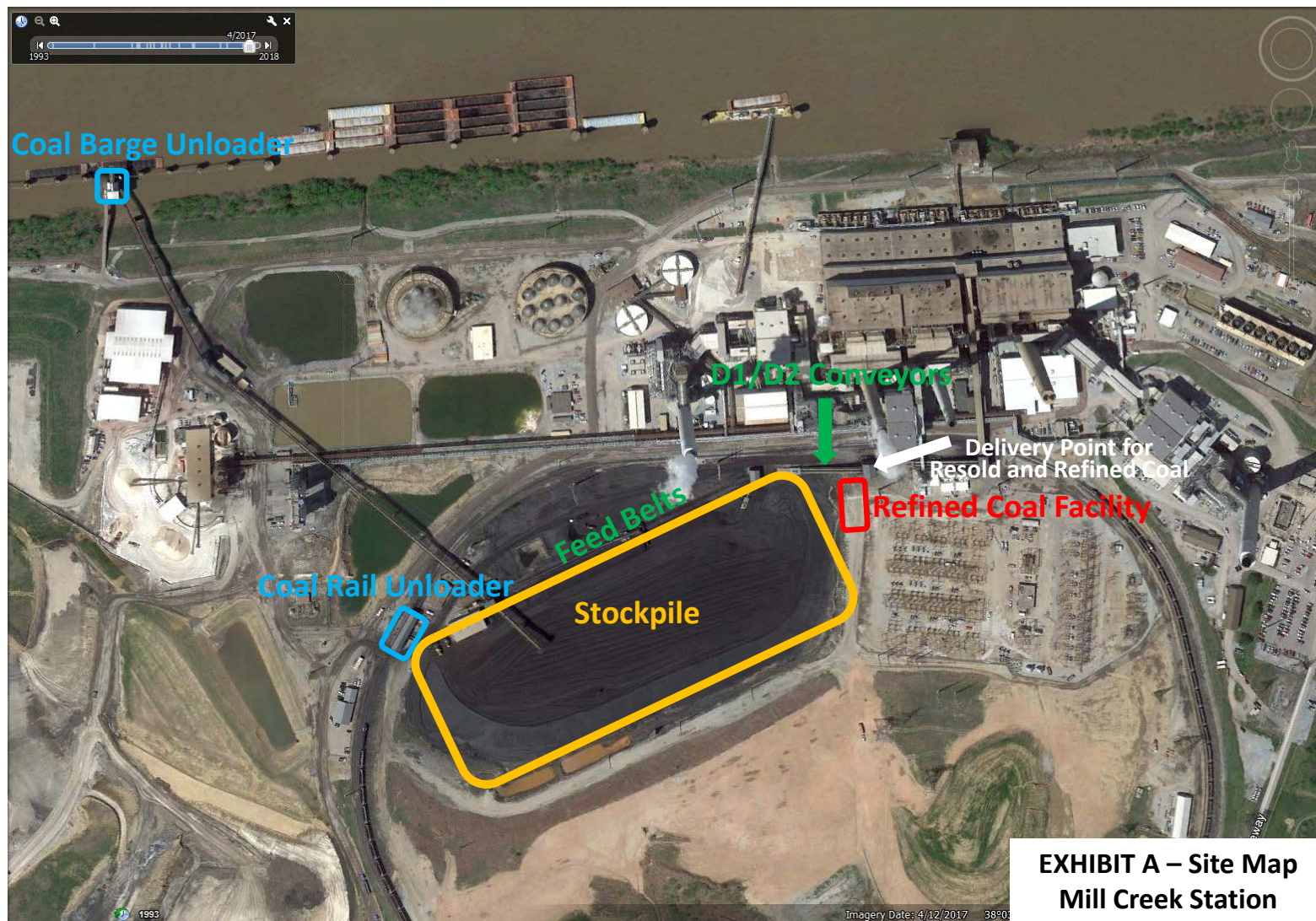


EXHIBIT B
FORM OF SECURITY AGREEMENT

See attached.

SECURITY AGREEMENT

This Security Agreement (this “Agreement”), dated as of January 16, 2019 (the “Effective Date”), is by Mill Creek Clean Fuels, LLC, a Colorado limited liability company (“Grantor”), in favor of Louisville Gas and Electric Company, a Kentucky corporation (“Secured Party”). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings given to them in the Project Documents (as defined herein). Grantor and Secured Party are sometimes individually referred to herein as “Party” and collectively as the “Parties.”

WHEREAS, pursuant to the Pre-Closing Coal Inventory Purchase Agreement between Secured Party and Grantor dated as of the Effective Date (including all amendments, modifications or superseding documents, the “Pre-Closing Coal Inventory Purchase Agreement”), Secured Party has agreed to sell, and Grantor has agreed to purchase, the Coal Inventory (as defined in the Pre-Closing Coal Inventory Purchase Agreement);

WHEREAS, pursuant to the Coal Feedstock Purchase Agreement between Secured Party and Grantor, dated as of the Effective Date (including all amendments, modifications or superseding documents, the “Coal Feedstock Purchase Agreement”), Secured Party has agreed to sell, and Grantor has agreed to purchase, the Coal (as defined in the Coal Feedstock Purchase Agreement), which Grantor intends to process to produce Refined Coal (as defined in the Refined Coal Supply Agreement, as defined below), which Grantor is then obligated to sell to Secured Party pursuant to the Refined Coal Supply Agreement between Secured Party and Grantor, dated as of the Effective Date (including all amendments, modifications or superseding documents, the “Refined Coal Supply Agreement”);

WHEREAS, pursuant to (a) the License and Services Agreement between Secured Party and Grantor, dated as of the Effective Date (including all amendments, modifications or superseding documents, the “License Agreement”), and (b) the Coal Handling and Consulting Agreement between Secured Party and Grantor, dated as of the Effective Date (including all amendments, modifications or superseding documents, the “Coal Handling and Consulting Agreement”), Secured Party has agreed to provide access to its property and perform certain services for Grantor pertaining to the Coal Inventory, the Coal and the Refined Coal in exchange for certain payments and covenants of Grantor;

WHEREAS, pursuant to the Environmental Indemnity between Secured Party and Grantor, dated as of the Effective Date (including all amendments, modifications or superseding documents, the “Environmental Indemnity”), the Parties agreed to indemnify each other for certain Claims (as defined in the Environmental Indemnity) relating to the license granted to Grantor to use the Facility (as defined in the Environmental Indemnity);

WHEREAS, the Pre-Closing Coal Inventory Purchase Agreement, the Coal Feedstock Purchase Agreement, the Refined Coal Supply Agreement, the License Agreement, the Coal Handling and Consulting Agreement, the Environmental Indemnity, and all amendments, modifications or superseding documents thereto, may collectively be referred to herein as the “Project Documents,” and

WHEREAS, Secured Party is not willing to enter into the Project Documents unless Grantor grants Secured Party a security interest in substantially all of its assets pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the above premises and the covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees as follows:

1. Grant of Security Interest. Grantor hereby grants to Secured Party, its successors and assigns, a security interest in all right, title and interest in and to all assets of Grantor, whether currently existing or hereafter acquired, including, without limitation, the following collateral (all of which is sometimes collectively, and each item of which is sometimes individually, hereinafter referred to as the “Collateral,” as that term is further defined in Section 9-102 of the Uniform Commercial Code as enacted in the State of New York, as amended (the “UCC”)):

- (a) All of Grantor’s existing and future Accounts (as that term is defined in the UCC), including, but not limited to, all accounts receivable of Grantor and all rights of Grantor to receive payment for the sale of Inventory, as hereinafter defined, including goods sold or leased or services rendered, in each case regardless of whether now existing, hereafter accruing or arising and whenever and wherever acquired, created or arising, and whether or not evidenced by a note or other instruments, and including all Inventory or other goods in transit and/or returned to, or repossessed by, Grantor and all claims against common carriers for goods lost in transit, as well as all other monies, sums and amounts whatsoever owed to Grantor by anyone and arising from whatever source; and
- (b) All of Grantor’s General Intangibles, Documents, Instruments and Chattel Paper (as those terms are defined in the UCC), including, but not limited to, all rights of Grantor under any equipment lease to use the equipment covered thereby for the term of such lease and any right Grantor may have at any time to purchase any of the equipment covered by such lease, all negotiable and nonnegotiable bills of lading and warehouse receipts, Chattel Paper, and all rights to refunds of federal, state and/or local income taxes, in each case regardless of whether now existing or hereafter acquired or arising; and
- (c) All of Grantor’s Goods (as that term is defined in the UCC) constituting Equipment (as that term is defined in the UCC), and including, without limitation, all coal mining, processing and loading equipment of every kind and nature whatsoever, or any part thereof, in each case regardless of whether now owned or hereafter acquired and including all accessions and additions thereto; and
- (d) All of Grantor’s Goods constituting Inventory (as that term is defined in the UCC) in each case regardless of whether now owned or hereafter acquired or produced, including, but not limited to, its inventory of coal and coal by-products, including, but not limited to, the Coal, Producer Coal, Conforming Coal, Feedstock, Refined Coal, Resold Coal and Third Party Coal, and other minerals severed and extracted

from the earth and stock piles thereof, and any other kinds and types of tangible personal property whatsoever held for sale or lease; and

- (e) All of Grantor's estate and interest in and to all buildings, coal, coal loading and handling facilities, refined coal production facilities, preparation plants, structures, wash plants and other improvements of every nature whatsoever now or hereafter constructed or located on or about the Facility Land or the Licensed Land (as those terms are defined in the License Agreement), including, without limitation the Facility (as defined in the License Agreement), and all furnishings, fixtures, machinery, equipment, appliances, building supplies and materials, warranties and guaranties, books and records, government or regulatory permits, licenses and approvals now or hereafter owned by Grantor and located in, on or about, or used or intended to be used with or in connection with the construction, operation or enjoyment of the Facility Land or the Licensed Land or any buildings, coal loading and handling facilities, refined coal production facilities, preparation plants, structures, wash plants and other improvements located thereon, including all extensions, additions, accessions, improvements, betterments, after-acquired property, renewals, replacements and substitutions, or proceeds from a sale of any of the foregoing; and
- (f) All of Grantor's Investment Property (as that term is defined in the UCC), including all securities, security entitlements, securities accounts, commodity contracts, and commodity accounts, of or maintained for the benefit of Grantor; and
- (g) All of Grantor's Letter of Credit Rights and Supporting Obligations (as those terms are defined in the UCC), including without limitation, rights to payment or performance under letters of credit including rights to proceeds of letters of credit, and all guaranties, endorsements, Liens, other contingent obligations or supporting obligations of any person securing or supporting the payment, performance, value or liquidation of any of the foregoing; and
- (h) Grantor's Commercial Tort Claims (as that term is defined in the UCC), as the same may be supplemented from time to time; and
- (i) All insurance policies of Grantor relating to any of the Collateral and the proceeds thereunder or therefrom, in each case regardless of whether now owned or hereafter acquired or coming into existence, and the refund of all premiums therefor; and
- (j) All proceeds of the foregoing, as that term is defined in the UCC (for purposes of this Security Agreement, the term "proceeds" is deemed to include the following types of property acquired with cash proceeds: accounts, chattel paper, general intangibles, documents, inventory, equipment, fixtures, farm products and consumer goods), whether or not such proceeds result from the sale of Inventory or result from Accounts and including, but not limited to, the proceeds payable under insurance policies covering any or all of the Collateral, and products of all

the foregoing, and all substitutions or replacements therefor, and accessions or additions thereto.

The definition of Collateral contained herein is to be given the broadest meaning under applicable law, and the use of lists to identify any of the Collateral is not intended to limit the scope of the security interest hereby granted, it being the intention of the Parties hereto that Secured Party be granted a security interest in all personal property assets of Grantor whether now owned or hereafter acquired. Notwithstanding the foregoing, the term “Collateral” does not include, and Grantor grants no security interest to Secured Party (or its successor and assigns) in (i) the Facility (or any right, title or interest of Grantor in the Facility), where “Facility” has the meaning set forth in the Project Documents and is further identified by Serial Number CY-216 together with all components of any ancillary equipment associated with such refined coal production facility, or (ii) the constituent documents of Grantor, including its certificate of formation and its limited liability company agreement.

2. Secured Obligations. The security interest granted under this Agreement secures the timely payment and performance in full of the Secured Obligations (as defined herein). “Secured Obligations” means any and all present or future obligations, liabilities, covenants and duties of Grantor to Secured Party under or relating to this Agreement, the Project Documents, and any other agreement, instrument or document, and any extensions, renewals or amendments of any of the foregoing, whether due or to become due, matured or unmatured, liquidated or unliquidated, or contingent or noncontingent, including interest that accrues after the commencement of any bankruptcy or insolvency proceeding by or against Grantor; and all charges, expenses, fees, including but not limited to reasonable attorneys’ fees, and any other sums chargeable to Grantor under any of the Secured Obligations. Secured Party’s accounting of the amount of the Secured Obligations from time to time shall be conclusive in the absence of manifest error.

3. Preservation of Collateral. Grantor will keep the Collateral in good order and repair at all times, ordinary wear and tear excepted, will use same with reasonable care and caution, will not part with possession or ownership thereof nor lease or hire out the Collateral without the written consent of Secured Party, and will exhibit the Collateral to Secured Party upon demand; provided, however, that Grantor may produce Refined Coal using the consumable assets required to do so and sell Refined Coal and Resold Coal to Secured Party pursuant to the Refined Coal Supply Agreement. Grantor will promptly notify Secured Party of any loss or damage to the Collateral. Grantor will not use, or permit the Collateral to be used, in violation of any federal, state, county or municipal law or regulation or for any unlawful purpose whatsoever.

4. Insurance. Grantor will keep its insurable real and personal property insured. All such insurance policies will name Secured Party as an additional insured and, where applicable, as lender’s loss payee under a loss payable endorsement satisfactory to Secured Party. All such policies will be in form and substance satisfactory to Secured Party and will provide that thirty (30) days’ prior written notice must be given to Secured Party before such policy is altered or cancelled. Schedules of all insurance of Grantor will be submitted to Secured Party upon request. Such schedules will contain a description of the risks covered, the amounts of insurance carried on each risk, and the name of the insurer. Grantor will provide new schedules to Secured Party promptly to reflect any change in insurance coverage. Grantor will deliver to Secured

Party certificates representing such insurance policies upon the execution hereof. All amounts payable in settlement of insurance losses may be applied, at Secured Party's option, to the Secured Obligations, or used to repair, replace or restore the Collateral.

5. Representations, Warranties and Covenants. Grantor represents, warrants and covenants to Secured Party as follows:

- (a) Title to Collateral and Facility. Grantor has clear title to all Collateral owned by it free and clear of all Liens except those arising under this Agreement, those arising by operation of law, and Liens in favor of Third Party Suppliers of Coal (collectively, the "Permitted Liens"). Grantor shall not grant any Lien on any of the Collateral, except those arising under this Agreement, and shall defend diligently Grantor's and Secured Party's interest in the Collateral. Grantor has clear title to the Facility free and clear of all Liens, other than (i) Grantor's continuing purchase price payment obligations to [REDACTED], a Colorado limited liability company ("Seller") with respect to the Facility and the related reacquisition rights in favor of Seller under the asset purchase agreement between it and Grantor and (ii) the rights of the manager of Grantor and its affiliates under the limited liability company agreement of Grantor (collectively, the "Tinum Rights"). Grantor shall not sell, assign, lease, encumber or otherwise transfer all or any part of the Facility, except with respect to the Tinum Rights. Grantor shall not grant to any third party, other than Seller and the manager of Grantor, a negative pledge agreement or an agreement not to sell or pledge the Facility.
- (b) Validity of Security Agreement; Authority. Each of this Agreement and the Project Documents, is the valid and binding obligation of Grantor, enforceable in accordance with its terms. Grantor has the power to execute, deliver and carry out the terms and provisions of this Agreement and the Project Documents, and has taken all necessary company action to authorize the execution, delivery and performance of this Agreement and the Project Documents. The security interest granted under this Agreement by Grantor constitutes a valid security interest in all of the Collateral owned by Grantor for payment of the Secured Obligations. Grantor shall not take any action that would (or fail to take any action, the result of which failure would) in any manner impair the perfection, priority or enforceability of the security interest granted to Secured Party under this Agreement.
- (c) No Conflicts. The execution, delivery and performance of this Agreement and the exercise by Secured Party of its rights and remedies under this Agreement and the Project Documents, will not (i) contravene any law or governmental regulation or breach or result in a default under any contract or agreement binding on or affecting Grantor or any of its properties, (ii) require the notification of or consent of any governmental agency or any person or entity under any applicable law or regulation or under any material contract or agreement binding on or affecting Grantor or any of its properties, or (iii) result in or require the creation of any Lien upon or with respect to any of its properties, except Liens in favor of Secured Party.

- (d) State of Formation; Name. Grantor's jurisdiction of formation is as set forth in the introduction to this Agreement. Grantor's exact legal name is as set forth in the introduction to this Agreement. Grantor shall not change its name or jurisdiction without providing Secured Party with at least thirty (30) days' prior written notice of such change.
- (e) Location of Collateral. Grantor now keeps and will continue to keep its books and records concerning the Collateral at its principal place of business located at 5251 DTC Parkway, Suite 825, Greenwood Village, CO 80111.
- (f) Taxes, Levies, Etc. Grantor has paid and shall continue to pay when due all taxes, levies, assessments and other charges that may become an enforceable Lien against the Collateral.
- (g) Further Assurances. Upon the request of Secured Party, Grantor shall do all acts and things as Secured Party may from time to time reasonably deem necessary or advisable to enable it to perfect, maintain and continue the perfection and priority of its security interest in the Collateral, or to facilitate the exercise by Secured Party of any rights or remedies granted under this Agreement or provided by law. Without limiting the foregoing, Grantor agrees to execute, in form and substance satisfactory to Secured Party, such financing statements, amendments thereto, continuations thereof, supplemental agreements, assignments, notices of assignments and other instruments and documents as Secured Party may from time to time reasonably request, and Grantor authorizes Secured Party to file such financing statements, amendments thereto, continuations thereof, supplemental agreements, assignments, notices of assignments and other instruments and documents as Secured Party may reasonably request. Grantor hereby ratifies any filing by Secured Party that predates the Effective Date but that was intended to perfect the security interest granted hereby.
- (h) In addition to the foregoing and not in limitation thereof, to the extent that Grantor has granted Secured Party a lien on any of the following types of Collateral, then Grantor agrees to furnish Secured Party with properly executed control agreements, registrar's certificates, issuer acknowledgements of Secured Party's interest in the Letter of Credit Rights, and evidence of the placement of a restrictive legend on tangible chattel paper (and the tangible components of electronic Chattel Paper), and will take all appropriate action acceptable to Secured Party sufficient to establish Secured Party's control of electronic Chattel Paper (and the electronic components of hybrid Chattel Paper), as appropriate, with respect to Collateral in which either (i) a security interest can be perfected only by control or such restrictive legending, or (ii) a security interest perfected by control or accompanied by such restrictive legending will have priority as against a lien creditor, a purchaser of such Collateral from Grantor, or a security interest perfected by any person not having control or not accompanied by such restrictive legending, in each case in form and substance acceptable to Secured Party and sufficient under applicable law so that Secured Party will have a security interest in all such Collateral perfected by control.

- (i) In addition to the foregoing and not in limitation thereof, Grantor agrees to deliver to Secured Party, or, if Secured Party has specifically consented in each instance, to an agent or bailee of Secured Party who has acknowledged such status in a properly executed control agreement, possession of all Collateral with respect to which either a security interest can be perfected only by possession or a security interest perfected by possession will have priority as against persons not having possession, and including in the case of Instruments, Documents, and Investment Property in the form of certificated securities, duly executed endorsements or stock powers in blank, as the case may be, all in form and substance acceptable to Secured Party, and subject only to Permitted Liens.

6. Standard of Care. Grantor shall be deemed to have exercised reasonable care in custody and preservation of the Collateral in Grantor's possession if the Collateral is accorded treatment similar to that which Secured Party accords its own similar property.

7. Expenses. At its option, Secured Party may discharge taxes, Liens, security interests or such other encumbrances as may attach to the Collateral, may pay for required insurance on the Collateral, and may pay for the maintenance and preservation of the Collateral, as determined by Secured Party to be necessary, and such expenditure will be part of the Secured Obligations and be reimbursed by Grantor to Secured Party on demand. All reasonable costs and expenses incurred by Secured Party, including the disbursements and reasonable fees of Secured Party's counsel and of any experts, consultants and agents, in connection with the exercise or enforcement of any of the rights of Secured Party under this Agreement (including in connection with any bankruptcy or insolvency proceedings of Grantor) during an Event of Default (as defined herein), or otherwise incurred in connection with the protection of its security interest in the Collateral, shall each be part of the Secured Obligations secured hereby and be paid by Grantor to Secured Party on demand. The Collateral will secure any advances or payments so made or expenses so incurred by Secured Party.

8. Information. Grantor will furnish to Secured Party from time to time if and as requested current lists of the Collateral, and, to the extent that it constitutes Collateral hereunder, including names and addresses of account debtors and agings of Accounts; will continue to make on the books of Grantor appropriate entries evidencing the assignment of book accounts to Secured Party and will mark Chattel Paper and Instruments to evidence the assignment thereof to Secured Party; and, if and when requested by Secured Party from time to time, will furnish to it copies of all purchase orders, inventory lists, billings, shipping orders, correspondence and other instruments or writings in any way evidencing or relating to the Collateral or the proceeds thereof. Secured Party and its designated representatives and agents will have the right at all reasonable times to examine, inspect, and audit the Collateral wherever located.

9. Receipt of Payment. Upon the occurrence and during the continuation of an Event of Default and in the event that Grantor receives payment of or proceeds from any of the Collateral, including without limitation and to the extent that it is included as Collateral hereunder, Grantor agrees that Grantor will deliver to Secured Party the same in the form received by Grantor without commingling with any funds belonging to Grantor, and promptly will deposit the same in a special collateral account designated by Secured Party.

10. Notification of Third Party Debtors. Secured Party at any time after the occurrence and during the continuation of an Event of Default, and without notice to Grantor, may notify any persons who are indebted to Grantor with respect to any of the Collateral of the assignment thereof to Secured Party and may direct such account debtors to make payment directly to Secured Party of the amounts due. At the request of Secured Party after the occurrence and during the continuation of an Event of Default, Grantor will direct any persons who are indebted to Grantor with respect to any of the Collateral to make payment directly to Secured Party. Secured Party is authorized to give receipts to such account debtors for any such payments and the account debtors will be protected in making such payments to Secured Party.

11. Event of Default. The occurrence of any of the following will be deemed an event of default (herein an “Event of Default”) under this Agreement: (i) any Event of Default (as defined in any of the Project Documents), or (ii) any default under any of the Project Documents that do not have a defined set of “Events of Default,” and for defaults which do not already have a cure period, such default continues for thirty (30) days following notice from Secured Party of such default (except for breaches pertaining to any payments under any other Project Document, for which the cure period shall be five (5) rather than thirty (30) days), (iii) any representation or warranty made by Grantor to Secured Party in this Agreement is false or erroneous in any material respect, or (iv) the failure of Grantor to observe or perform any covenant or other agreement with Secured Party under this Agreement, and such failure continues for thirty (30) days following notice from Secured Party of such default (except for breaches pertaining to any payments hereunder, for which the cure period shall be five (5) rather than thirty (30) days).

12. Remedies. Upon the occurrence and during the continuation of an Event of Default, Secured Party may declare all Secured Obligations to be immediately due and payable and may exercise any and all rights and remedies of Secured Party under this Agreement, the Project Documents, the UCC and any other applicable Law. Without limiting the foregoing, upon the occurrence and during the continuation of an Event of Default, Secured Party may sell, lease or otherwise dispose of all or any part of the Collateral, in its then present condition or following any commercially reasonable preparation or processing thereof, whether by public or private sale or at any brokers’ board, in lots or in bulk, for cash, on credit or otherwise, with or without representations or warranties, and upon such other terms as may be acceptable to Secured Party, and Secured Party may purchase at any public sale. Additionally, Secured Party may use, consume, burn or take possession of the Collateral for Secured Party’s own use at the Site following such Event of Default and declaration of the Secured Obligations to be immediately due and payable to the fullest extent authorized under applicable Law. At any time when advance notice of sale, lease, disposition or use is required, Grantor agrees that five days’ (or such shorter period as may be permissible under applicable law) prior written notice shall be reasonable. In addition to all of its other remedies, Secured Party may:

- (a) require Grantor to assemble the Collateral owned by it and all records pertaining thereto and make such Collateral and records available to Secured Party;
- (b) enter the premises of Grantor or premises under Grantor’s control and take possession of the Collateral;

- (c) commingle any Collateral that comes into possession with Secured Party's other coal inventories;
- (d) repledge such Collateral upon terms that impair Grantor's right to redeem such; and
- (e) rely conclusively upon the advice or instructions of any one or more brokers or other experts selected by Secured Party to determine the method or manner of disposition of any of the Collateral and, in such event, any disposition of the Collateral by Secured Party in accordance with such advice or instructions shall be deemed to be commercially reasonable.

The net proceeds of any disposition of the Collateral may be applied by Secured Party, after deducting its reasonable expenses incurred in such disposition, to the payment in whole or in part of the Secured Obligations in such order as Secured Party may elect. The enumeration of the foregoing rights and remedies is not intended to be exhaustive, and the exercise of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which are cumulative and non-exclusive.

13. Security Interest Absolute. All rights of Secured Party under this Agreement, the security interest granted under this Agreement, and all obligations of Grantor under this Agreement shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Project Documents or any other agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or consent to any departure from the Project Documents or any other agreement or instrument, (c) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to or departure from any guarantee, for all or any of the Secured Obligations, or (d) any other circumstance that might otherwise constitute a defense available to, or discharge of, Grantor, or any other obligor in respect of the Secured Obligations or in respect of this Agreement.

14. Other Provisions.

- (a) Amendment, Modification and Waiver. Without the prior written consent of Secured Party, no amendment, modification or waiver of, or consent to any departure by Grantor from, any provision under this Agreement shall be effective. Any such amendment, modification, waiver, or consent shall be effective only in the specific instance and for the specific purpose for which given. No delay or failure by Secured Party to exercise any remedy under this Agreement shall be deemed a waiver thereof or of any other remedy under this Agreement. A waiver on any one occasion shall not be construed as a bar to or waiver of any remedy on any subsequent occasion.
- (b) Cumulative Rights. The rights, powers and remedies of Secured Party under this Agreement shall be in addition to all rights, powers and remedies given to Secured Party by virtue of any statute or rule of law, all of which rights, powers

and remedies shall be cumulative and may be exercised successively or concurrently. Grantor expressly acknowledges and agrees that Secured Party is accepting the Project Documents in reliance on the execution and delivery of this Agreement by Grantor.

- (c) Revival of Secured Obligations. To the extent Grantor or any other person or entity makes a payment or payments to Secured Party, or Secured Party enforces its security interest, and such payment or payments or the proceeds thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver, or any other person or entity under any bankruptcy, insolvency or other law or in equity, then, to the extent of such recovery, the Secured Obligations or any part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment or payments had not been made, or such enforcement or setoff had not occurred.
- (d) Indemnification, Etc. Grantor agrees to indemnify and hold Secured Party harmless from any and all claims, causes of action or other proceedings arising by reason of Secured Party's enforcement of its rights and remedies under this Agreement during an Event of Default, other than claims, causes of action or other proceedings arising from the gross negligence or willful misconduct of Secured Party. As to any action taken by Secured Party under this Agreement during an Event of Default, Secured Party shall not be liable for any error of judgment or mistake of fact or law absent gross negligence or willful misconduct on its part.
- (e) Power of Attorney. Grantor hereby appoints Secured Party or Secured Party's designee as its attorney-in-fact, which appointment is irrevocable, durable and coupled with an interest, with full power of substitution, in the name of Grantor or in the name of Secured Party, to take any action which Grantor is obligated to perform under this Agreement or which Secured Party may reasonably deem necessary or advisable to accomplish the purposes of this Agreement. In taking any action in accordance with this Section 14(e), Secured Party shall not be deemed to be the agent of Grantor. The powers conferred upon Secured Party in this Section 14(e) are solely to protect its interest in the Collateral and shall not impose any duty upon Secured Party to exercise any such powers.
- (f) Continuing Effect; Termination. This Agreement, Secured Party's security interest in the Collateral, and all documents or instruments contemplated by this Agreement shall continue in full force and effect until all of the Secured Obligations have been satisfied in full and the Project Documents have expired or been terminated; provided, however, that all indemnities of Grantor contained in this Agreement shall survive and remain operative and in full force and effect regardless of the termination of this Agreement. All representations and warranties of Grantor contained in this Agreement shall survive the execution, delivery and performance of this Agreement until the termination of this Agreement. Upon payment and performance of the Secured Obligations in full and the expiration or termination of the Project Documents, the Collateral shall be

released from the security interest granted under this Agreement, and this Agreement and all obligations (other than those expressly stated to survive such termination) of Grantor under this Agreement shall terminate, all without delivery of any instrument or performance of any act by any Party. At the request of Grantor following any such termination, Secured Party shall execute and deliver to Grantor such documents Grantor shall reasonably request to evidence such termination.

- (g) Binding Effect. This Agreement shall be binding upon and inure to the benefit of Grantor and Secured Party and their respective successors and permitted assigns.
- (h) Governing Law. THIS AGREEMENT, INCLUDING THE INTERPRETATION, CONSTRUCTION, VALIDITY AND ENFORCEABILITY HEREOF, WILL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF, EXCEPT TO THE EXTENT THAT THE UCC PROVIDES FOR THE APPLICATION OF THE LAW OF ANOTHER STATE.
- (i) Notices. All notices, requests or other communications provided for in this Agreement or otherwise required by law shall be in writing and may be given to or made upon the respective Parties at the addresses for notices under the Project Documents. Notices shall be effective upon the date of receipt; provided, however, that a notice sent by certified or registered U.S. mail, with postage prepaid, shall be presumed received no later than three business days following the date of sending.
- (j) Severability. The determination that any term or provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other term or provision of this Agreement.
- (K) JURY TRIAL WAIVER. EACH PARTY KNOWINGLY AND INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN AND AS TO ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND FOR ANY CLAIM, COUNTERCLAIM, CROSS-CLAIM OR THIRD-PARTY CLAIM THEREIN.
- (l) Integration. This Agreement and the other Project Documents together and cumulatively represent and constitute the entire, final, complete and integrated agreement of the Parties relating to the subject matter hereof and thereof and there are no promises, terms, conditions, obligations, or warranties other than those contained herein and therein. This Agreement and the other Project Documents supersede all prior communications, representations, or agreements, oral or written, between the Parties relating to the subject matter hereof and thereof. This Agreement may not be amended except in writing signed and delivered by the Parties.

- (m) Headings. Section and subsection headings in this Agreement are included for the convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- (n) Assignment. Neither this Agreement, nor any of the rights and obligations hereunder, may be assigned, transferred or delegated by either Party, in whole or in part, whether by operation of Law or otherwise, without the express prior written consent of the other Party, which consent may be withheld in the sole discretion of such other Party, except that either Party may assign this Agreement to an Affiliate without the prior written consent of the other Party, provided, however, that (a) any assignment by Secured Party to an Affiliate is to an Affiliate that owns the Site and owns and operates the Power Plant and has agreed with Grantor and Secured Party to assume all of Secured Party's rights, interests and obligations under all Project Documents, whether arising before or after the date of such assignment, (b) any assignment by Grantor to an Affiliate is to an Affiliate that owns or leases all of the Facility, and has agreed with Grantor and Secured Party to assume all of Grantor's rights, interests and obligations under all Project Documents, whether arising before or after the date of such assignment, and (c) any assignment to an Affiliate shall not release the assignor from any obligations under this Agreement unless otherwise expressly consented to by the non-assigning Party.
- (o) Counterparts. The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument, and, thereafter, each counterpart shall be deemed an original instrument as against the Party who has signed it.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Security Agreement to be executed as of the date first above written.

SECURED PARTY:

Louisville Gas and Electric Company

By: _____

Name: _____

Title: _____

GRANTOR:

Mill Creek Clean Fuels, LLC

By: [REDACTED] a Colorado limited liability company, its manager

By: [REDACTED] a Colorado limited liability company, its manager

By: Tinuum Group, LLC, a Colorado limited liability company, its manager

By: _____

Name: Ron Eller

Title: President and Chief Executive Officer

SCHEDULE 1.1(a)

COAL PRICE

Section 1. **Definitions.** Unless otherwise stated in this Schedule 1.1(a), capitalized terms used herein shall have the same meaning as is given to such terms in this Agreement. As used in this Schedule 1.1(a), the following terms shall have the respective meanings set forth below.

“Costing Method” means the weighted average cost method of accounting for Coal regularly used by Generator in keeping its financial books.

“Fully Loaded Cost” means, with respect to Coal owned by a Party, the amount paid by such Party in respect of such Coal, including purchase price, quality adjustments, transportation costs and all other costs associated with the Coal, all as determined in accordance with the Costing Method.

“Inventory” means the amount of Coal, in Tons, in the Coal stockpile in the Coal Yard, determined in accordance with the Costing Method.

“Weighted Average Coal Cost” means the weighted average Fully Loaded Cost, on a per Ton basis, of Generator’s Coal at the Power Plant (which includes Generator’s Inventory and the Coal purchased and offloaded from each barge and rail car during the applicable calendar month), all as determined in accordance with the Costing Method.

“Weighted Average Inventory Cost” means the weighted average Fully Loaded Cost, on a per Ton basis, of the applicable Party’s Inventory, as determined in accordance with the Costing Method.

Section 2. **Coal Price.**

SCHEDULE 1.1(b)

GENERATOR KNOWLEDGE

Ralph Bowling
Joe Didelot
David Sinclair
Caryl Pfeiffer
Timothy Smith
Gary Revlett
Robert Conroy

SCHEDULE 1.1(c)

PRODUCER KNOWLEDGE

Ron Eller
Rick Dowd
Jim Zerefos
Jim Walter
Bryan Johnson
Tim Lenneman

SCHEDULE 7.1(a)

COAL SPECIFICATIONS

Specification for Bituminous Coal

Specification	Minimum	Maximum
Moisture Content (%)	N/A	15
Ash Content (%)	N/A	20
Calorific Value (BTU/lb)	10,000	N/A
Sulfur Content (lbs/mmBTU)	1.25	3.5

SCHEDULE 9.1

INSURANCE

Producer's Insurance Obligations

Producer shall maintain or shall cause to be maintained the insurance policies set forth below in accordance with the following general provisions:

- (1) To the extent permitted by Law, Producer and each of its contractors and subcontractors operating the Facility waive on behalf of itself and their insurers all rights to assert claims for any losses, damages, liabilities, and expenses, including attorneys' fees, against Generator, its Affiliates, and their respective directors, officers, managers, agents and employees, for damages to the extent proceeds realized from policies of insurance maintained or required to be maintained in connection with services or products provided under the Agreement are applied to such losses, damages, liabilities, and expenses. Each policy required herein shall include an endorsement acknowledging such waiver of subrogation.
- (2) Any and all of the deductibles, retentions, and premiums associated with the policies providing the insurance coverage required herein shall be assumed by, for the account of, and at the sole risk of Producer and each of its contractors and subcontractors operating the Facility.
- (3) Each insurance company listed in a Certificate of Insurance (as defined below) shall be rated by AM Best Company as having a financial strength rating of "A-" or better and a financial size category of "VIII" or greater or otherwise be satisfactory to Generator.
- (4) Policies shall be written on an occurrence basis with the exception that Producer may maintain pollution liability insurance and professional liability insurance on claims made forms provided that each policy (i) shall have a retroactive date prior to the Effective Date and (ii) shall be maintained by Producer throughout the Term of the Agreement and for at least three (3) years thereafter either through policies in force or through an extended reporting period.
- (5) For the commercial general liability, auto liability and umbrella/excess liability policies, such policies of insurance shall be primary and non-contributory to any insurance or self-insurance maintained by Generator with respect to Generator's operations and other obligations under the Agreement.
- (6) For the commercial general liability, auto liability, umbrella/excess liability and contractor's pollution liability insurance, Producer and each of its contractors and subcontractors operating the Facility shall provide additional insured status to Generator, its Affiliates, and their respective directors, officers, managers, representatives, agents and employees; and any additional interests as Generator may be contractually obligated to include as an additional insured but limited only to the

extent required by applicable Law. Such policies providing an additional insured status as set forth above shall include a severability of interests provision allowing any additional insured to bring a claim against any named insured.

- (7) Producer shall furnish to Generator prior to the Commercial Operations Date under the Agreement and thereafter within ten days of the renewal of any policy required herein a Certificate of Liability Insurance on form Acord 25 ("Certificate of Insurance") or a substitute equivalent form approved by Generator for itself and each of its contractors and subcontractors operating the Facility. The Certificate of Insurance shall include as evidence of insurance the following for each and every policy required herein: (i) insurance company name, (ii) policy number, (iii) policy period, (iv) per occurrence and aggregate limits, (v) deductibles or self-insured retentions, and (vi) attached copies of all applicable additional insured or waiver of subrogation endorsements.
- (8) Producer agrees to send to Generator, and to cause each of its contractors and subcontractors operating the Facility to send to Generator, by certified mail at least 30 days' advance written notice of cancellation, non-renewal, or material change with respect to any of the policies required herein. Producer shall also endorse its commercial general liability and contractor's pollution liability policies to require the insurer to provide advance written notice of cancellation to Generator as an additional insured. If any of the above insurance policies are canceled prior to expiration, Producer and each of its contractors and subcontractors shall immediately replace the insurance without lapse of coverage.
- (9) A lack of insurance coverage does not reduce or limit Producer's obligation to indemnify Generator as set forth in the Agreement or any of the Project Documents.

Producer shall maintain or shall cause to be maintained the following policies of insurance with the limits and coverages set forth below:

- (A) **Commercial General Liability Insurance** with limits of not less than [REDACTED] per occurrence for bodily injury and property damage, [REDACTED] any one person or organization for personal and advertising injury, [REDACTED] general aggregate, and [REDACTED] products completed operations aggregate covering: (i) property/operations liability; (ii) products/completed operations liability; (iii) personal and advertising injury liability; (iv) independent contractors liability; and (v) broad form contractual liability. Limits shall reinstate annually, be on a per project basis, dedicated entirely to the project or location for which services and work are to be performed by Producer under any of the Project Documents, and shall not be shared with any other obligations of Producer. Producer shall provide additional insured status to Generator with respect to the Facility and Producer's ongoing operations through CG 20 10 07 04 or a substitute equivalent form and with respect to completed operations through CG 20 37 07 04 or a substitute equivalent form.

- (B) **Automobile Liability Insurance** covering liability arising from the ownership, maintenance, and operations of any automobile, whether such auto is owned, hired, and non-owned. Producer shall maintain insurance with a combined single limit for bodily injury and property damage of not less than the equivalent of [REDACTED] per accident. Such insurance shall insure Producer and its agents against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others caused by accident and arising from Producer's operations under the Agreement and whether such operations are performed by Producer, Producer's agents, or by any one directly or indirectly employed by any of them.
- (C) **Workers Compensation Insurance** covering statutory benefits in all states where the Parties contemplate the performance of services under the Agreement. Such insurance shall include the employers' liability coverage with limits of not less than \$1,000,000 each accident for bodily injury by accident and [REDACTED] each employee and policy limit for bodily injury by disease.
- (D) **Umbrella/Excess Liability Insurance** providing coverage in excess of the commercial general liability, automobile liability and employers' liability insurance described above on an occurrence basis with limits of at least [REDACTED] per occurrence and [REDACTED] general aggregate and products/completed operations aggregate. Such insurance shall be written as follow form or with a form that provides coverage that is at least as broad as the underlying insurance policies, and can satisfy the required minimum limits either through a single umbrella liability policy or a combination of umbrella liability and excess liability policies.
- (E) **Contractors Pollution Liability Insurance** shall be maintained by Producer on behalf of itself and its contractors and subcontractors operating the Facility covering third party claims for bodily injury and property damage arising from Pollution Conditions caused by Producer's operations with limits in the amount of not less than the equivalent of [REDACTED] per occurrence and [REDACTED] general aggregate. Such insurance shall be endorsed to cover (a) on-site clean-up costs; and (b) third party liability arising out of (i) Pollution Conditions at designated locations owned, leased or the legal responsibility of Producer, (ii) Pollution Conditions at non-owned disposal sites, and (iii) Pollution Conditions arising from the transportation of Hazardous Material. Pollution Conditions shall be defined at a minimum as the discharge, dispersal, release, or escape of any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered.
- (F) **Commercial Property Insurance:** Producer shall maintain "All Risk" property insurance for Producer's tools including employee tools and equipment (not intended for installation), personal property, mobile equipment, scaffoldings and forms, etc., whether owned, rented, or leased, used on the Site. Whether Producer carries "All

Risk” property insurance or self-insures, it is agreed that Producer shall hold Generator and its Affiliates and their respective directors, officers, managers, representatives, agents, and employees harmless for any loss or damage to this property.

- (G) Producer shall cause its contractors and subcontractors operating the Facility to maintain the following policies of insurance with the limits and coverages set forth below in compliance with the duties, obligations and requirements set forth in the aforementioned General Provisions:

(1) **Commercial General Liability Insurance** with limits of not less than [REDACTED] per occurrence for bodily injury and property damage, [REDACTED] any one person or organization for personal and advertising injury, [REDACTED] general aggregate, and [REDACTED] products completed operations aggregate covering: (i) property/operations liability; (ii) products/completed operations liability; (iii) personal and advertising injury liability; (iv) independent contractors liability; and (v) broad form contractual liability. Limits shall reinstate annually, be on a per project basis, dedicated entirely to the project or location for which services and work are to be performed under any of the Project Documents and shall not be shared with any other obligations of Producer’s contractors or subcontractors operating the Facility, as the case may be. Such policy shall provide additional insured status to the Producer and Generator with respect to ongoing operations through CG 20 10 07 04 or a substitute equivalent form and with respect to completed operations through CG 20 37 07 04 or a substitute equivalent form.

(2) **Automobile Liability Insurance** covering liability arising from the ownership, maintenance, and operations of any automobile, whether such auto is owned, hired, and non-owned. Producer’s contractors and subcontractors operating the Facility shall maintain insurance with a combined single limit for bodily injury and property damage of not less than the equivalent of [REDACTED] per accident. Such insurance shall insure Producer’s contractors and subcontractors operating the Facility, as the case may be, and their respective agents against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others caused by accident and arising from such Producer’s contractors’ and subcontractors’ respective operations under the Agreement and whether such operations are performed by Producer’s contractors or subcontractors and their respective agents, or by any one directly or indirectly employed by any of them.

(3) **Workers Compensation Insurance** covering statutory benefits in all states where the Parties contemplate the performance of services under the Agreement. Such insurance shall include the employers’ liability coverage with limits of not less than [REDACTED] each accident for bodily injury by accident and [REDACTED] each employee and policy limit for bodily injury by disease. Producer and Generator are to be named as an “Alternate Employer” on such policy to preclude the insurance company from denying coverage to an employee of Producer’s

contractors or subcontractors operating the Facility, as the case may be, based on a claim by such employee of employment status with Producer or Generator.

- (4) **Umbrella/Excess Liability Insurance** providing coverage in excess of the commercial general liability, automobile liability and employers' liability insurance described above on an occurrence basis with limits of at least [REDACTED] in the case of Operator) per occurrence and [REDACTED] ([REDACTED] in the case of Operator) general aggregate and products/completed operations aggregate. Such insurance shall be written as follow form or with a form that provides coverage that is at least as broad as the underlying insurance policies, and can satisfy the required minimum limits either through a single umbrella liability policy or a combination of umbrella liability and excess liability policies.
- (5) **Property Insurance:** Producer's contractors and subcontractors operating the Facility shall maintain "All Risk" property insurance for Producer's contractors' and subcontractors' tools including employee tools and equipment (not intended for installation), personal property, mobile equipment, scaffoldings and forms, etc., whether owned, rented, or leased, used on the Site. Whether Producer's contractors or subcontractors operating the Facility carry "All Risk" property insurance or self-insure, it is agreed that such Producer's contractors and subcontractors shall each hold Generator and its Affiliates and their respective directors, officers, managers, representatives, agents, and employees harmless for any loss or damage to this property.

Generator's Insurance Obligations

Generator shall maintain or shall cause to be maintained the insurance policies set forth below in accordance with the following general provisions:

- (1) To the extent permitted by Law, Generator and each of its contractors, subcontractors and related parties that own the Site or operate the Power Plant waive on behalf of themselves and their insurers all rights to assert claims for any losses, damages, liabilities, and expenses, including attorneys' fees, against Producer and its contractors and subcontractors operating the Facility and their respective directors, officers, managers, agents and employees, for damages to the extent proceeds realized from policies of insurance maintained by Generator under the Agreement are applied to such losses, damages, liabilities, and expenses. Each policy required herein shall include an endorsement acknowledging such waiver of subrogation.
- (2) Any and all of the deductibles, retentions, and premiums associated with the policies providing the insurance coverage required herein of Generator shall be assumed by, for the account of, and at the sole risk of Generator and each of its contractors, subcontractors and related parties that own the Site or operate the Power Plant.

- (3) Each insurance company listed in a Certificate of Insurance (as defined above) shall be rated by AM Best Company as having a financial strength rating of “A-” or better and a financial size category of “VIII” or greater or otherwise be satisfactory to Producer.
- (4) Policies shall be written on an occurrence basis with the exception that Generator may maintain pollution liability insurance and professional liability insurance on claims made forms as detailed in those sections below.
- (5) For the commercial general liability, auto liability and umbrella/excess liability policies, such policies of insurance shall be primary and non-contributory to any insurance or self-insurance maintained by Producer with respect to Producer’s operations and other obligations under the Agreement.
- (6) For the commercial general liability, auto liability, umbrella/excess liability and pollution liability insurance, Generator and each of its contractors and subcontractors that own the Site or operate the Power Plant shall provide additional insured status to Producer, its contractors and subcontractors operating the Facility and their respective directors, officers, members, managers, representatives, agents and employees; and any additional interests as Producer may be contractually obligated to include as an additional insured but limited only to the extent required by applicable Law. Such policies providing an additional insured status as set forth above shall include a severability of interests provision allowing any additional insured to bring a claim against any named insured.
- (7) Generator shall furnish to Producer prior to the Commercial Operations Date under the Agreement and thereafter within ten days of the renewal of any policy required herein a Certificate of Insurance for itself and each of its contractors and subcontractors that own the Site or operate the Power Plant. The Certificate of Insurance shall include as evidence of insurance the following for each and every policy required herein: (i) insurance company name, (ii) policy number, (iii) policy period, (iv) per occurrence and aggregate limits, and (v) deductibles or self-insured retentions.
- (8) Generator agrees to send to Producer by certified mail at least 30 days’ advance written notice of cancellation, non-renewal, or material change with respect to any of the policies required herein. If any of the insurance policies required of Generator are canceled prior to expiration, Generator agrees to immediately replace the insurance without lapse of coverage.
- (9) A lack of insurance coverage does not reduce or limit Generator’s obligation to indemnify Producer as set forth in the Agreement or any of the Project Documents.

Generator shall maintain or shall cause to be maintained the following policies of insurance with the limits and coverages set forth below:

- (A) **Commercial General Liability Insurance** with limits of not less than [REDACTED] per occurrence for bodily injury and property damage, [REDACTED] any one person or organization for personal and advertising injury, [REDACTED] general aggregate, and [REDACTED] products completed operations aggregate covering: (i) property/operations liability; (ii) products/completed operations liability; (iii) personal and advertising injury liability; (iv) independent contractors liability; and (v) broad form contractual liability. Limits shall reinstate annually. Generator shall provide additional insured status to Producer and its contractors and subcontractors operating the Facility with respect to the Site, including the Power Plant, and the operations thereon through CG 20 10 07 04 or a substitute equivalent form and with respect to completed operations through CG 20 37 07 04 or a substitute equivalent form.
- (B) **Automobile Liability Insurance** covering liability arising from the ownership, maintenance, and operations of any automobile, whether such auto is owned, hired, and non-owned. Generator shall maintain insurance with a combined single limit for bodily injury and property damage of not less than the equivalent of [REDACTED] per accident. Such insurance shall insure Generator and its agents against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others caused by accident and arising from Generator's ownership of the Site or operation of the Power Plant and whether such operations are performed by Generator, Generator's agents, or by any one directly or indirectly employed by any of them.
- (C) **Workers Compensation Insurance** covering statutory benefits in all states where the Parties contemplate the performance of services under the Agreement. Such insurance shall include the employers' liability coverage with limits of not less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee and policy limit for bodily injury by disease.
- (D) **Umbrella/Excess Liability Insurance** providing coverage in excess of the commercial general liability, automobile liability and employers' liability insurance described above on an occurrence basis with limits of at least [REDACTED] per occurrence and [REDACTED] general aggregate and products/completed operations aggregate. Such insurance shall be written as follow form or with a form that provides coverage that is at least as broad as the underlying insurance policies, and can satisfy the required minimum limits either through a single umbrella liability policy or a combination of umbrella liability and excess liability policies.
- (E) **Pollution Liability Insurance** shall be maintained by Generator on behalf of itself and its contractors or subcontractors that own the Site or operate the Power Plant covering third party claims for bodily injury, property damage (including diminution in property value and natural resource damage) and clean up arising from Pollution Conditions caused by Generator's operations, endorsed to cover (i) any sudden and

accidental release arising from Pollution Conditions at designated locations owned, leased or the legal responsibility of Generator, (ii) Pollution Conditions that have caused off-site losses to third parties, (iii) Pollution Conditions arising from the transportation and disposal of Hazardous Material, and (iv) legal defense costs, fines and penalties related to such claims. Such insurance shall have limits in the amount of not less than the equivalent of [REDACTED] per occurrence and [REDACTED] general aggregate, but may be included under an excess or umbrella liability insurance policy. The policy may be on a claims made form provided that such policy has a retroactive date that is at least eight years prior to the Effective Date, and is maintained by Generator throughout the Term of the Agreement and for at least three years thereafter either through policies in force or through an extended reporting period. "Pollution Conditions" shall be defined at a minimum as the discharge, dispersal, release, or escape of any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, fuel, waste materials, asbestos and lead based paint, into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered.

- (F) **Commercial Property Insurance:** Generator shall maintain "All Risk" property insurance for Generator's tools including employee tools and equipment (not intended for installation), personal property, mobile equipment, scaffoldings and forms, etc., whether owned, rented, or leased, used on the Site. Whether Generator carries "All Risk" property insurance or self-insures, it is agreed that Generator shall hold Producer and the contractors and subcontractors operating the Facility, their Affiliates, and their respective directors, officers, managers, representatives, agents, and employees harmless for any loss or damage to this property.

[End of Schedule 9.1]

SCHEDULE 14.17
FORM OF GUARANTY

See attached.

**GUARANTY
BY
TINUUM GROUP, LLC**

THIS GUARANTY is executed effective as of the [●] day of [●], 2019 (the “Effective Date”) by TINUUM GROUP, LLC, a Colorado limited liability company (“Guarantor”), in favor of LOUISVILLE GAS AND ELECTRIC COMPANY, a Kentucky corporation (“Beneficiary”). Guarantor and Beneficiary are sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, [REDACTED] a Colorado limited liability company (“[REDACTED]”) is the Manager of Mill Creek Clean Fuels, LLC, a Colorado limited liability company (“Obligor”);

WHEREAS, [REDACTED] is a direct, wholly-owned subsidiary of [REDACTED] a Colorado limited liability company (“Holdco”), and Holdco is a direct, wholly-owned subsidiary of Guarantor;

WHEREAS, as of the Effective Date, Beneficiary and Obligor intend to enter into (i) that certain Refined Coal Supply Agreement, (ii) that certain Coal Feedstock Purchase Agreement, (iii) that certain Pre-Closing Coal Inventory Purchase Agreement, (iv) that certain License and Services Agreement, (v) that certain Coal Handling and Consulting Agreement, and (vi) that certain Environmental Indemnity Agreement (collectively, including all amendments or modifications to each of the foregoing, the “Project Documents”), with respect to, among other transactions, the purchase of Coal Inventory and Coal and the production of Refined Coal at the Facility by Obligor, and the sale of Refined Coal therefrom to Beneficiary;

WHEREAS, Beneficiary is willing to enter into the Project Documents and undertake the transactions contemplated thereby on the condition, among others, that certain of Obligor’s obligations under the Project Documents are guaranteed by Guarantor, on the terms and subject to the limitations set forth herein; and

WHEREAS, Guarantor, as the indirect owner of [REDACTED], anticipates that it will receive substantial economic benefit as a result of the transactions contemplated by the Project Documents and the entry by Obligor and Beneficiary into, and performance by Obligor and Beneficiary of, the Project Documents.

NOW, THEREFORE, to induce Beneficiary to enter into the Project Documents, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor enters into this Guaranty (referred to herein as the “Guaranty”) and hereby agrees as follows:

1. Guaranty.

(a) Guarantor hereby absolutely, irrevocably and unconditionally guarantees, as a primary obligor and not merely as a surety, to Beneficiary (and its successors and permitted transferees and assigns) the prompt and complete payment (as applicable) and performance when due, subject to any applicable grace or deferral period, of the Guaranteed Obligations (as defined

herein). “Guaranteed Obligations” shall mean: (i) all the performance obligations of Obligor under the Project Documents; (ii) any indemnification obligations of Obligor under the Project Documents due to any other person or entity entitled to indemnification thereunder, but in the case of this subclause (ii), only to the extent such indemnification obligations arise from acts or omissions to act by the Operator (the “Indemnification Obligations”).

(b) The Indemnification Obligations shall include interest or other charges that accrue on any portion thereof pursuant to the terms of the Project Documents or that would have accrued on any portion thereof pursuant to the terms of the Project Documents but for the commencement of any bankruptcy or insolvency proceedings, regardless of whether such obligations arise or accrue before, on or after the date of this Guaranty. With respect to the Guaranteed Obligations, this Guaranty is a continuing guaranty and a guaranty of payment and performance and not a guaranty of collection and is not conditioned upon or contingent upon the genuineness, validity, regularity or enforceability of the Project Documents.

(c) If, at any time Obligor fails, neglects, or refuses to timely or fully perform any of the Guaranteed Obligations as provided in the Project Documents after the expiration of any notice and cure period applicable thereto under the Project Documents, Guarantor shall promptly pay or perform, or cause to be paid or performed any such obligation, responsibility, or undertaking. The liability of Guarantor under this Guaranty shall not be conditional or contingent upon the pursuit of any remedy against Obligor, and Beneficiary need not join Obligor in any action against Guarantor hereunder. Beneficiary shall not be required to mitigate damages or take any other action to reduce, collect or enforce the Guaranteed Obligations, unless otherwise expressly provided in the relevant Project Document.

2. Waiver. Guarantor hereby waives: (a) notice of acceptance of this Guaranty, notices of default, and all notices of and any rights of consent to the creation, renewal, extension, accrual, modification or existence of any of the Guaranteed Obligations and of any action by Beneficiary in reliance hereon or in connection herewith; (b) presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest with respect to the Guaranteed Obligations and all other notices whatsoever, except as otherwise provided herein or in the Project Documents; (c) any requirement that suit be brought against, or any other action by Beneficiary be taken against, or any notice of default or other notice be given to, or any demand be made on, Obligor, Guarantor or any other person or entity, or that any other action be taken or not taken, as a condition to Guarantor’s liability for the Guaranteed Obligations or as a condition to the enforcement of this Guaranty against Guarantor; (d) any defense based upon a failure of Beneficiary to comply with the notice requirements of the applicable version of the Uniform Commercial Code Section 9-611; and (e) except as otherwise specifically set forth in this Guaranty, all other notices and demands otherwise required by law which Guarantor may lawfully waive. Except as otherwise specifically set forth in this Guaranty, Guarantor hereby expressly waives, to the maximum extent permitted by law, any and all protections or rights afforded to it as a guarantor under the laws of the State of New York, and expressly waives, to the maximum extent permitted by law, any and all protections or rights afforded to it as a guarantor under the laws of the Commonwealth of Kentucky.

3. Rights of Beneficiary. Beneficiary, at any time and from time to time, without the consent of or notice to Guarantor, and without impairing or releasing, discharging or modifying

the liabilities of Guarantor hereunder, may in its sole discretion (a) change the manner, place or terms of payment or performance of, or change or extend the time of payment or performance of, or other terms relating to any of the Guaranteed Obligations, (b) renew, increase, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Guaranteed Obligations, any other guaranties or other liabilities, or any collateral for any Guaranteed Obligations or guaranties or other liabilities, (c) apply any and all payments from any source whatsoever including any proceeds of any collateral, to any Guaranteed Obligations of Obligor in any order, manner and amount, (d) deal or refrain from dealing with any person or entity, in its sole discretion, with respect to any Guaranteed Obligations in such manner as Beneficiary deems appropriate, in its sole discretion, and/or (e) accept, sell, substitute, exchange, compromise, release, surrender, offset, realize upon or otherwise deal with in any manner and in any order any of the Guaranteed Obligations, any guaranty or other liability for any of the Guaranteed Obligations, or any collateral for any of the Guaranteed Obligations or for any guaranty or other liability relating to any of the Guaranteed Obligations. Irrespective of the taking of or refraining from taking of any of the foregoing actions, the obligations of Guarantor will remain in full force and effect and will not be affected, impaired, discharged, or released in any manner.

4. Termination. This Guaranty shall remain in full force and effect until the date that all the Project Documents expire or are terminated in accordance with their terms and all of the Guaranteed Obligations thereunder have been satisfied in full (the "Termination Date"). In no event shall this Guaranty be terminated if there are Guaranteed Obligations required to be paid or performed by Obligor or Guarantor prior to the Termination Date.

5. Guaranty Absolute. Except as set forth in Section 6, the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of: (a) the lack of validity or enforceability, defect, or deficiency of the Project Documents or any other document executed in connection therewith; (b) any change in the time, manner, terms or place of payment, or in any other term of all or any of the Guaranteed Obligations, or any other document executed in connection therewith; (c) any release, amendment, waiver, or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations; (d) failure, omission, delay, waiver, or refusal by Beneficiary to exercise, in whole or in part, any right or remedy held by Beneficiary with respect to the Guaranteed Obligations; (e) any change in the existence, structure, or ownership of Guarantor or Obligor, or any insolvency, bankruptcy, reorganization, or other similar proceeding, or any receivership or trusteeship affecting Obligor, Guarantor or Beneficiary, whether or not notice is given to Guarantor; and (f) any other circumstance that might otherwise constitute a defense available to, or discharge of, Guarantor not available to Obligor.

6. Guarantor Defenses. Guarantor reserves to itself those defenses and rights to set off that Obligor is or may be entitled to that arise out of the Project Documents, except for any of those defenses that are based upon: (a) the insolvency, bankruptcy, reorganization, dissolution, liquidation, or similar proceeding involving Obligor; (b) ultra vires, lack of good standing, authority, authorization or capacity, or similar, relating to Obligor; (c) any neglect, delay, or omission of Beneficiary to take or prosecute any action in connection with any lien or right of security (including perfection thereof) existing or to exist in connection with, or as security for, any of the Guaranteed Obligations; or (d) any defense otherwise expressly waived or excluded in this Guaranty. Guarantor hereby waives, to the maximum extent permitted by law, all defenses of

a surety to which it may be entitled by statute or otherwise. Guarantor acknowledges that time is of the essence with respect to Guarantor's obligations under this Guaranty.

7. Subrogation. Guarantor will not exercise any rights which it may acquire hereunder by way of subrogation, as a result of a payment hereunder, until all Guaranteed Obligations to Beneficiary shall have been performed and paid in full. Subject to the foregoing, upon payment and performance of all Guaranteed Obligations, Guarantor shall be subrogated to the rights of Beneficiary against Obligor with respect to such Guaranteed Obligations, and Beneficiary agrees to take, at Guarantor's expense, such steps as Guarantor may reasonably request to implement such subrogation. Any indebtedness, liability or other obligation of Obligor now or hereafter owed to Guarantor is hereby subordinated to the Guaranteed Obligations until all Guaranteed Obligations to Beneficiary shall have been performed and paid in full. Any amount paid to the Guarantor in violation of this Section 7 shall be held by Guarantor for the benefit of Beneficiary and shall forthwith be paid to Beneficiary to be credited and applied to any due and unpaid Indemnification Obligations.

8. Default. In the event of any of the following (each an "Event of Default"): (a) the filing by or against Obligor or Guarantor of a petition in bankruptcy, for a reorganization, arrangement or debt adjustment, or for a receiver, trustee or similar creditors' representative for its property or any part thereof, or of any other proceeding under any federal or state insolvency or similar law, or the making of any general assignment by Obligor or Guarantor for the benefit of creditors, or Obligor or Guarantor dissolves or is the subject of any dissolution, winding up or liquidation; (b) an event of default by Obligor in performance or payment of any undertakings, indebtedness, liabilities, or any part thereof or breach of any term or condition of the Project Documents, or any other document executed in connection with the Project Documents, including, but not limited to, anticipatory breach, insolvency, inability to pay debts as they mature, or assignments for the benefit of creditors or institution of similar proceedings by or against Obligor alleging any of these events; (c) any representation or warranty made by Guarantor hereunder or in any financial statement, certificate or other document delivered by Guarantor to Beneficiary to induce such Party to accept this Guaranty shall be false in any material respect; or (d) the failure of Guarantor to observe or perform any covenant or other agreement with Beneficiary under this Guaranty; Beneficiary shall be entitled to exercise its rights and remedies provided for hereunder or at law or in equity.

9. Representations and Warranties. Guarantor hereby represents and warrants to Beneficiary that:

(a) Guarantor is a limited liability company, duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation, and has full power, authority and legal right to execute, deliver, and perform this Guaranty.

(b) The execution, delivery, and performance of this Guaranty have been and remain duly authorized by all necessary action and do not contravene any provision of law or of Guarantor's organizational or governing documents or any contractual restriction binding on Guarantor or its assets.

(c) All consents, authorizations, and approvals of, and registrations and declarations with, any governmental authority necessary for the due execution, delivery, and performance of this Guaranty have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by and no notice to or filing with any governmental authority is required in connection with the execution, delivery, or performance of this Guaranty.

(d) This Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid, and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization, and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(e) There does not now exist any default or violation by Guarantor of or under, and neither the execution, delivery and performance of this Guaranty nor the consummation of any of the transactions contemplated hereby will result in a default or violation or in the creation of any lien or encumbrance, or give rise to any right of termination, amendment, cancellation or acceleration of, or under, any of the terms, conditions or obligations of: (i) its articles or operating agreement; (ii) any note, bond, indenture, lease or other agreement or instrument to which it is a party or by any of its assets are bound; or (iii) any law, regulation, ruling, order, injunction, decree, condition, or other requirement applicable to or imposed upon it by any law, court or governmental agency, authority or other body.

(f) Guarantor is fully aware of the financial condition of Obligor and is executing and delivery this Guaranty based solely on Guarantor's own independent investigation of all matters pertinent hereto and is not relying in any manner upon any representation or statement of Beneficiary.

(g) Guarantor desires that Beneficiary grant Obligor the rights under the Project Documents, deems it to be in the best business interests of Guarantor that Obligor obtain such rights from Beneficiary, and understands that Beneficiary is willing to grant such rights only on certain terms and conditions, including, but not limited to the condition that Guarantor guaranty the Guaranteed Obligations.

(h) Guarantor has received a copy of all of the Project Documents, has examined the Project Documents, and is familiar with all of the terms, conditions and provisions contained in the Project Documents.

(i) There are no actions, suits or proceedings at law or in equity by or before any governmental authority or other agency now pending or to the best of Guarantor's knowledge, threatened against or affecting Guarantor, which actions, suits or proceedings, if determined against Guarantor, would be reasonably likely to have or do have a material adverse effect on Guarantor or its ability to perform this Guaranty.

All representations and warranties made by Guarantor herein shall survive the execution hereof.

10. Financial Reporting. Upon reasonable request of Beneficiary, Guarantor shall furnish to Beneficiary financial information in form and substance satisfactory to Beneficiary in its reasonable discretion.

11. Notice. All notices, requests, demands, consents, and other communications or deliveries (collectively, "Notices") hereunder shall be in writing and (a) delivered in person or by courier, or (b) mailed certified first-class mail, postage prepared, return receipt requested, to the appropriate Party at the following addresses:

If to Guarantor:

Tinuum Group, LLC
5251 DTC Parkway, Suite 800
Greenwood Village, CO 80111
Attention: General Counsel

If to Beneficiary:

Louisville Gas and Electric Company
220 West Main Street
Louisville, KY 40202
Attention: Corporate Fuels and Byproducts
Department

with a copy
(which shall not
constitute notice) to:

Louisville Gas and Electric Company
220 West Main Street
Louisville, KY 40202
Attention: General Counsel

or such other address as a Party may designate to the other Party by notice given as provided herein. Such Notices shall be effective and deemed received (i) if delivered in person or by courier, upon receipt by the intended recipient or an employee that routinely accepts packages or letters from couriers or other persons for delivery to personnel at the address identified above (as confirmed by, if delivered by courier, the records of such courier), or (ii) if mailed, upon the date of delivery as shown by the return receipt therefor.

12. Election of Remedies. Each and every right, power and remedy herein given to Beneficiary, or otherwise existing, shall be cumulative and not exclusive, and be in addition to all other rights, powers and remedies now or hereafter granted or otherwise existing. Each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised, from time to time and as often and in such order as may be deemed expedient by Beneficiary. The failure of Beneficiary to enforce any provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce same. The rights of Beneficiary hereunder shall be in addition to all other rights provided by law. Guarantor agrees to pay all charges, expenses and costs, including reasonable attorneys' fees,

which may be incurred by Beneficiary in the enforcement of this Guaranty. This Section 12 shall survive the expiration or termination of this Guaranty.

13. Successors and Assigns. This Guaranty may not be assigned or transferred by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may, without the need for consent from or notice to the other Party, assign or transfer this Guaranty to a Permitted Transferee. For purposes of the foregoing, "Permitted Transferee" shall mean, with respect to a Party, (a) any successor corporation, limited liability company, partnership (including a general partnership, joint venture, limited partnership, limited liability partnership or partnership association) or any other entity resulting from a merger, consolidation or reorganization of such Party; or (b) the purchaser, licensee or lessee of all or substantially all of the assets or equity interests, as applicable, of or in such Party. Any Permitted Transferee of this Guaranty shall assume in writing all of the assigning or transferring Party's obligations under this Guaranty.

14. No Third-Party Beneficiaries. Except as expressly provided herein, none of the provisions of this Guaranty, express or implied, is intended to provide any rights or remedies to any person other than Beneficiary, its successors and permitted assigns.

15. Reinstatement; Repayments or Recovery from Beneficiary. Guarantor agrees that this Guaranty will continue to be effective or be reinstated, as the case may be, at any time payment received by Beneficiary in respect of the Guaranteed Obligations is rescinded or must be restored upon the bankruptcy, insolvency, dissolution or reorganization of Obligor.

16. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York without regard to its principles of conflicts of law.

17. WAIVER OF JURY TRIAL. EACH PARTY KNOWINGLY AND INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN AND AS TO ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTY AND FOR ANY CLAIM, COUNTERCLAIM, CROSS-CLAIM OR THIRD-PARTY CLAIM THEREIN.

18. Severability. If any term or other provision of this Guaranty or of any of the instruments evidencing part or all of the Guaranteed Obligations is invalid, illegal, or incapable of being enforced by any rule of applicable law, or public policy, all other conditions and provisions of this Guaranty shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated herein are not affected in any manner materially adverse to Beneficiary or Guarantor. Upon such determination, by a court of competent jurisdiction, that any term or other provision is invalid, illegal, or incapable of being enforced, Beneficiary and Guarantor shall negotiate an equitable adjustment in such provisions of this Guaranty with a view toward effecting the purpose of this Guaranty, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

19. Entire Agreement. This Guaranty constitutes the entire agreement among Guarantor and Beneficiary with respect to the subject matter hereof.

20. Amendment. This Guaranty may not be modified, amended, terminated, waived or revoked, in whole or in part, except by an agreement in writing signed by Beneficiary and Guarantor. No waiver of any term, covenant or provision of this Guaranty, or consent given hereunder, shall be effective unless given in writing by Beneficiary.

21. Counterpart Execution. This Guaranty may be executed in any number of counterparts, each of which, whether an original or a copy of such original, when so executed and delivered, shall be deemed an original by both Parties, but all of which shall together constitute one and the same agreement. Transmission by email or other form of electronic transmission of an executed counterpart of this Guaranty shall be deemed to constitute due and sufficient delivery of such counterpart.

22. Definitions. Capitalized terms in this Guaranty that are not otherwise defined herein shall have the meanings assigned to them in the Project Documents.

(Signature Page Follows)

The foregoing instrument is executed as of the Effective Date.

GUARANTOR:

TINUUM GROUP, LLC,
a Colorado limited liability company

By: _____

Name: Ron Eller

Title: President and Chief Executive Officer