
COAL HANDLING AND CONSULTING AGREEMENT

by and between

MILL CREEK CLEAN FUELS, LLC

and

LOUISVILLE GAS AND ELECTRIC COMPANY

January 16, 2019

TABLE OF CONTENTS

ARTICLE I DEFINITIONS; CONSTRUCTION	1
SECTION 1.1 Definitions.....	1
SECTION 1.2 Construction of Certain Terms and Phrases.....	6
ARTICLE II REPRESENTATIONS AND WARRANTIES	6
SECTION 2.1 Coal Consultant’s Representations.	6
SECTION 2.2 Producer’s Representations.....	7
ARTICLE III TERM.....	8
SECTION 3.1 Term.....	8
ARTICLE IV APPOINTMENT OF COAL CONSULTANT; CONTRACTUAL RELATIONSHIP; AUTHORIZED REPRESENTATIVES	8
SECTION 4.1 Appointment.	8
SECTION 4.2 Independent Contractor.....	8
SECTION 4.3 Authorized Representatives.	9
SECTION 4.4 Operator.	9
ARTICLE V SERVICES.....	9
SECTION 5.1 Selection and Purchase of Coal.....	9
SECTION 5.2 Coal Management; Preparation and Handling	11
ARTICLE VI COMPENSATION AND RELATED MATTERS	12
SECTION 6.1 Compensation.	12
SECTION 6.2 Invoicing and Payment.	13
SECTION 6.3 Expenses.	14
SECTION 6.4 Books and Records; Audit Rights.....	14
SECTION 6.5 Taxes.....	15
ARTICLE VII FORCE MAJEURE.....	15
SECTION 7.1 Force Majeure.	15
ARTICLE VIII EARLY TERMINATION.....	16
SECTION 8.1 Suspension; Early Termination.....	16
SECTION 8.2 Post-Expiration and Post-Termination Obligations; Survival.	17
ARTICLE IX EVENTS OF DEFAULT.....	17
SECTION 9.1 Event of Default.....	17
SECTION 9.2 Remedies.....	18
ARTICLE X INDEMNIFICATION.....	18
SECTION 10.1 Coal Consultant’s Indemnification.	18
SECTION 10.2 Producer’s Indemnification.....	19
SECTION 10.3 Indemnification Procedures.	20

SECTION 10.4	No Imputed Liability.....	21
SECTION 10.5	Environmental Matters.....	21
SECTION 10.6	Offset.....	22
SECTION 10.7	Mitigation.....	22
ARTICLE XI DISPUTE RESOLUTION.....		22
SECTION 11.1	Dispute Resolution.....	22
ARTICLE XII MISCELLANEOUS.....		23
SECTION 12.1	Confidentiality.	23
SECTION 12.2	Required Disclosure.....	24
SECTION 12.3	Compliance with Laws and Governmental Approvals.....	24
SECTION 12.4	Entire Agreement; Integration; Successors and Assigns.	24
SECTION 12.5	Notices.	25
SECTION 12.6	Assignment.	26
SECTION 12.7	Waiver; Invalidity.	26
SECTION 12.8	Limitations of Liability; Remedies.	27
SECTION 12.9	Headings.	29
SECTION 12.10	Counterparts.....	29
SECTION 12.11	Applicable Law.....	29
SECTION 12.12	Amendment.....	29
SECTION 12.13	No Third Party Beneficiary.....	29
SECTION 12.14	No Partnership	30
SECTION 12.15	Guaranty.....	30
SECTION 12.16	No Publicity.	30
SECTION 12.17	Payment Method.....	30
SECTION 12.18	Equitable Remedies.	30

Exhibits

Exhibit A	Site
-----------	------

Schedules

Schedule 1.1(a)	Coal Consultant Knowledge
Schedule 1.1(b)	Producer Knowledge
Schedule 5.1	Coal Specifications

COAL HANDLING AND CONSULTING AGREEMENT

THIS COAL HANDLING AND CONSULTING 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 (“Coal Consultant” or “Generator”). Producer and Coal Consultant 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, pursuant to the Refined Coal Supply Agreement, Producer has agreed to provide, and Generator has agreed to purchase, Refined Coal produced at Producer’s Facility and Resold Coal, all in accordance with the terms and conditions set forth therein;

WHEREAS, Coal Consultant is experienced in, and knowledgeable concerning, (a) the specifications, characteristics and requirements of coal for use at the Power Plant, and (b) the handling and transportation of such coal, and Coal Consultant has been instructed by Producer regarding the specifications, characteristics and requirements of the coal to be used in the Facility that meets the Coal Specifications;

WHEREAS, Producer desires to retain Coal Consultant to perform certain services related to coal, Producer Coal, Refined Coal, Resold Coal and related materials and equipment as set forth herein; and

WHEREAS, Coal Consultant is willing to provide such services to Producer upon the terms and subject to the conditions set forth in this Agreement.

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(a).

“Authorized Representative” means the individual or individuals designated as such by each Party pursuant to Section 4.3.

“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.

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

“Coal Consultant Indemnified Parties” has the meaning given such term in Section 10.2.

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

“Coal Specifications” mean the specifications set forth on Schedule 5.1, which may be modified from time-to-time only with the written consent of the Parties.

“Coal Yard” means the coal storage areas located on the Site and designated by Coal Consultant from time-to-time (in its sole discretion) for use in the storage of coal on the Site.

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

“Consulting Fee” has the meaning given to such term in Section 6.1.

“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 9.2(a).

“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 9.1.

“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 Procedures” means Generator’s policies, guidelines, manuals, rules, regulations, procedures and practices for conduct by Producer, its Operator, other contractors, employees and agents on the Site as in effect from time to time, as the same have been or may be provided by Generator to Producer from time to time.

“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.

“Indemnified Party” means any of the Producer Indemnified Parties or Coal Consultant Indemnified Parties, as applicable under Article X.

“Indemnifying Party” means Coal Consultant or Producer, as applicable under Article X.

“Indemnity Acceptance Date” has the meaning given to such term in Section 10.3(a).

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

“KPSC” has the meaning given to such term in Section 12.2(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 Coal Consultant 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.

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

“Non-Defaulting Party” has the meaning given to such term in Section 9.2(a).

“Notices” has the meaning given to such term in Section 12.5.

“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 Coal” means coal purchased by Producer that is in the Coal Yard or in transit to Producer (or has been identified for delivery to Producer but is not yet in transit), including coal purchased by Producer pursuant to the Coal Feedstock Purchase Agreement or the Pre-Closing Coal Inventory Purchase Agreement.

“Producer Indemnified Parties” has the meaning given to such term in Section 10.1.

“Project Documents” means: (a) this Agreement, (b) the Refined Coal Supply Agreement, (c) the Coal Feedstock Purchase 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” means the coal-based solid fuel product that is eligible for Section 45 Tax Credits and produced by Producer at the Facility while it is located on the Facility Land.

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

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

“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.

“Services” means, collectively, all of the services to be performed by Coal Consultant pursuant to Article V, but subject to the limitations set forth in that Article V or elsewhere in this Agreement.

“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.

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

“Ton” means 2,000 pounds avoirdupois weight.

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 Coal Consultant’s Representations.

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

(a) the execution and delivery of, and performance under, this Agreement by Coal Consultant 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 Coal Consultant, 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 Coal Consultant’s ability to perform its obligations under this Agreement;

(b) this Agreement constitutes a legal, valid and binding obligation of Coal Consultant, enforceable against Coal Consultant 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 Coal Consultant in connection with its

execution and delivery of, and performance under, this Agreement, including Coal Consultant's transportation and handling of coal, Producer Coal, Refined Coal and Resold Coal at the Power Plant or the Site, 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) Coal Consultant 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 Coal Consultant has the right, power and authority to enter into this Agreement and to perform its obligations hereunder; and

(e) there is no pending or, to Coal Consultant'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.

SECTION 2.2 Producer's Representations.

Producer represents and warrants to Coal Consultant 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; and

(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.

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 Section 8.1, 9.2 or any other provision of this Agreement, will end upon the expiration of the term or other termination of the License Agreement, the Refined Coal Supply Agreement or the Coal Feedstock Purchase Agreement, whichever is earlier (the "Term").

ARTICLE IV

APPOINTMENT OF COAL CONSULTANT; CONTRACTUAL RELATIONSHIP; AUTHORIZED REPRESENTATIVES

SECTION 4.1 Appointment.

Producer hereby appoints Coal Consultant, and Coal Consultant hereby accepts such appointment, to act as an independent contractor to provide the Services to Producer throughout the Term, but only to the extent such Services are to be performed on the Site or in respect of the Facility, coal, Producer Coal, Refined Coal or Resold Coal as contemplated in the Project Documents. Coal Consultant will be the exclusive provider of such Services to Producer during the Term; provided, however, that Coal Consultant will be free to provide the same or similar services for its own account or the account of its Affiliates or other Persons without obligation to Producer. Consistent with the foregoing, neither Producer nor Operator will be entitled to retain any other Person to perform any of the Services or any similar services to them on the Site, nor shall they be entitled to perform the Services or any similar services for the account of Producer, so long as Coal Consultant is tendering the Services to Producer in accordance with this Agreement.

SECTION 4.2 Independent Contractor.

Coal Consultant (including its Authorized Representative) is an independent contractor in all aspects with respect to its duties and obligations under this Agreement. Coal Consultant and its officers and employees, including its Authorized Representative, are not employees, agents, servants or representatives of Producer. Coal Consultant and its Authorized Representative shall have no authority and shall not represent that they have the authority, to execute any agreements or other documents on behalf of Producer, or to assume, incur or undertake any obligation in the name of or for the account of Producer. Producer, its Operator, its Authorized Representative and its other representatives shall have no authority and shall not represent that they have the authority, to execute any agreements or other documents on behalf of Coal Consultant, or to assume, incur or undertake any obligation in the name of or for the account of Coal Consultant.

SECTION 4.3 Authorized Representatives.

The initial Authorized Representatives of Coal Consultant 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 4.3 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 4.4 Operator.

Coal Consultant 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. Coal Consultant acknowledges that Operator shall be permitted to act on behalf of Producer under this Agreement in connection with the performance of such services for Producer. Producer shall, and shall cause Operator, other contractors, employees and agents to, comply in all material respects with the Generator Procedures 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 Coal Consultant, (a) Coal Consultant 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 Coal Consultant to Operator; provided, however, that the foregoing shall not apply to Notices, which must be delivered as set forth in Section 12.5.

ARTICLE V

SERVICES

SECTION 5.1 Selection and Purchase of Coal.

For and during each Contract Year, the selection, purchase and transportation of Producer Coal hereunder shall be performed in accordance with the following procedures:

(a) Producer shall provide Coal Consultant with a good-faith projection for the Facility of the quantities of coal that it expects to require during each month of such Contract Year in order to fulfill Producer's obligations under the Refined Coal Supply Agreement (each, an "Annual Forecast"); provided, however, that an Annual Forecast shall not exceed the good faith projection made by Generator from time-to-time (and provided to Producer or Operator) with respect to the needs of the Power Plant for coal during the same period to meet the energy

needs of Generator during that period. The Annual Forecast for the first Contract Year of the Term shall be provided not later than the 20th day following the Commercial Operations Date. Each succeeding Annual Forecast shall be delivered no later than November 1 preceding the start of such Contract Year. Producer shall update such forecast from time to time to reflect any change in Producer's projections.

(b) Coal Consultant and Producer will consult on a regular basis to discuss the performance of the coal being used, current inventory levels, proposed shipment schedules and coal purchasing and transportation strategies.

(c) To the extent that the Annual Forecast is modified or the Coal Specifications are changed (by written agreement of the Parties) during the Contract Year, Coal Consultant will manage the procurement (for the account and at the sole expense of Producer) of sufficient quantities of coal under the Coal Feedstock Purchase Agreement that meets the Coal Specifications to satisfy Producer's obligations under the Refined Coal Supply Agreement.

(d) Coal Consultant shall arrange for and procure (for the account of Producer and, unless otherwise provided in another Project Document, at Producer's sole expense) all transportation services required for the coal that is to be purchased by Producer pursuant to the Pre-Closing Coal Inventory Purchase Agreement and/or the Coal Feedstock Purchase Agreement, through common carriers capable of providing such services.

(e) Coal Consultant shall assist Producer in administering the Coal Feedstock Purchase Agreement, including scheduling and coordinating orders by Producer and deliveries with coal suppliers, the Facility, and the Power Plant. Coal Consultant shall review the coal analysis reports from the coal suppliers and confirm that the coal delivered pursuant to the Coal Feedstock Purchase Agreement conforms to the applicable requirements under the Coal Feedstock Purchase Agreement, determining whether any coal delivered is non-conforming coal and notifying Producer of such nonconformance and assisting Producer in Producer's exercise of its rights to reject such coal or notifying Producer that any coal does conform to applicable requirements and assisting Producer in accepting such coal, all in strict conformance with the Coal Feedstock Purchase Agreement. Coal Consultant shall also assist Producer in reviewing coal analysis reports from coal suppliers and coal handlers at the Facility under the Coal Feedstock Purchase Agreement and determine whether such coal is consistent with the Coal Specifications.

(f) Producer shall provide Coal Consultant with the Coal Feedstock Purchase Agreement and any other documents and information reasonably required by Coal Consultant to provide the Services under this Agreement.

(g) In the event that any claims or disputes arise with or against a Third Party Supplier (as defined in the Coal Feedstock Purchase Agreement), under a coal purchase agreement(s) between Generator and such Third Party Supplier, that may materially adversely affect the quantities or quality of coal that are available for delivery under the Coal Feedstock Purchase Agreement, Producer and Coal Consultant agree to cooperate and work diligently together in good faith to pursue and resolve such claim and to seek to prevent any recurrence of the situation giving rise to such claim; provided, that Coal Consultant will control and have all

decision-making authority with respect to such claim(s) or dispute(s), and the prosecution or defense thereof, in its sole discretion.

(h) Coal Consultant shall provide to Producer such other information and data regarding coal type, source, quality and quantity purchased, delivered, processed, sold and on hand (but excluding all pricing information), as may be agreed to in writing by the Parties from time to time.

(i) Nothing contained in this Section 5.1 shall obligate Coal Consultant (i) to stockpile, arrange for or procure coal in quantities exceeding Coal Consultant's good faith projections of the quantities of coal needed by the Power Plant, which quantities of coal shall be based on load projections determined by Coal Consultant in its sole discretion, or (ii) to arrange coal purchases from Persons other than Third Party Suppliers or in quantities that would increase the coal stockpile beyond that deemed appropriate by Coal Consultant in its sole discretion, (iii) to store coal at any locations (whether on or outside of the Site) other than the Coal Yard, or (iv) to operate, maintain, or repair the Facility or provide any personnel for such purpose.

(j) Notwithstanding anything to the contrary contained in this Agreement, the performance of the Services by Coal Consultant shall be subordinate and subject to the reasonable needs of the Power Plant for coal loading, unloading, transportation, handling, movement and storage services, and Coal Consultant may prioritize the use of coal handling equipment, general operation of the Coal Yard and its other services and activities on the Site to meet the reasonable needs of the Power Plant, provided that it does so consistent with past practices.

(k) Coal Consultant shall have no obligations hereunder with respect to the operation, maintenance or repair of the Facility or any ancillary equipment, or to provide any personnel in connection therewith.

(l) Coal Consultant shall have no obligation, in performing any Services relative to any Third Party Coal, to arrange for purchases of such coal, sales of such coal directly to Producer, or the transportation or delivery of such coal to the Site.

(m) Coal Consultant shall have no obligation to materially modify any of its existing fuel loading, unloading, handling or other equipment or facilities in order to provide any Services to Producer, nor any obligation to acquire any new equipment or facilities other than such as are required, in Coal Consultant's reasonable judgment, for the needs of the Power Plant generally.

SECTION 5.2 Coal Management; Preparation and Handling.

Subject to Subsections 5.1(i), 5.1(j), 5.1(k), 5.1(l) and 5.1(m), for and during each Contract Year, Coal Consultant shall provide to Producer the following inventory management, preparation and handling services with respect to all Producer Coal at the Site in accordance with the terms and conditions of this Agreement:

(a) providing all equipment and all parts, supplies, personnel, and services required to physically deliver Producer Coal to the Facility from (i) the Coal Yard, (ii) Generator's unloading dock to the extent purchased pursuant to the Coal Feedstock Purchase Agreement, or

(iii) other commercially reasonable delivery point on the Site (that has been consented to in writing by Generator, which consent shall not be unreasonably withheld) for Third Party Coal, in each case as may be required from time to time to meet Producer's obligations under the Refined Coal Supply Agreement;

(b) performing all required coal sampling, analysis, testing, metering and measuring (other than at the Facility) necessary to confirm that coal delivered pursuant to the Coal Feedstock Purchase Agreement conforms to the Coal Feedstock Purchase Agreement;

(c) receiving and unloading Producer Coal from barges docked and rail cars parked at Generator's unloading facilities, along with all actions necessary to route that Producer Coal to the Coal Yard or Facility;

(d) handling and managing Producer Coal inventory in the Coal Yard; provided that Producer Coal may be comingled with Coal Consultant's coal in the Coal Yard;

(e) maintaining all equipment necessary to accomplish the Services in a prudent manner and consistent with the requirements of this Agreement (other than equipment that comprises part of the Facility);

(f) providing reports regarding the Producer Coal as reasonably required by the Producer to the extent based on information then in Coal Consultant's possession and control (but excluding any pricing information associated with Producer Coal acquired from Generator);

(g) performing an inventory of Producer Coal (i) that is on the Site and not comingled with Generator's or any other Person's coal as reasonably required by Producer, but no more than one time per calendar year and on a mutually agreed date, and (ii) in the same manner and at the same times as Coal Consultant conducts such an inventory of the coal of Generator in the Coal Yard generally, by means consistent with methods customarily used by Coal Consultant in connection with its coal inventory at the Power Plant and providing the results of such inventory to Producer; and

(h) reasonably coordinating all such Services with Producer's or Operator's operation of the Facility.

Notwithstanding anything to the contrary set forth in this Section 5.2 or in Section 5.1 above, the Services shall not include the storage, in the Coal Yard or elsewhere on the Site, of any Producer Coal that was purchased by Producer other than pursuant to the Coal Feedstock Purchase Agreement or the Pre-Closing Coal Inventory Purchase Agreement.

ARTICLE VI

COMPENSATION AND RELATED MATTERS

SECTION 6.1 Compensation.

Commencing on the Effective Date and continuing until the expiration of the Term, in consideration of Coal Consultant's Services under this Agreement, Producer agrees to pay Coal

Consultant a payment equal to [REDACTED] per Ton of Refined Coal produced using the Facility and sold by Producer to Generator or a Third Party (the “Consulting Fee”). For the avoidance of doubt, the Consulting Fee shall be payable on every Ton of coal treated by the Facility with the intent of being Refined Coal regardless of whether such coal ultimately qualifies for Section 45 Tax Credits, and such fees shall be non-refundable other than with respect to a mistake in the calculation thereof. For purposes of calculating the Consulting Fees accruing under this Agreement, the Tons of Refined Coal sold to Generator shall be determined based on each monthly report delivered by Producer to Generator under Section 8.2(c)(i) of the Refined Coal Supply Agreement, and the Tons of Refined Coal sold by Producer to any Third Party for any given month (if any) shall be determined based on the information provided by Producer to Generator, which Producer agrees to deliver to Generator together with each monthly report delivered under Section 8.2(c)(i) of the Refined Coal Supply Agreement.

SECTION 6.2 Invoicing and Payment.

(a) Within seven (7) Business Days following the end of each calendar month, Coal Consultant shall submit to Producer an invoice setting forth the Consulting Fee for such month. Producer shall make payment of any undisputed amount due by electronic transfer in United States funds in accordance with Section 12.17 by the later of (i) fifteen (15) Business Days following the end of each calendar month and (ii) ten (10) 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 Tinum Group, LLC
5251 DTC Parkway, Suite 825
Greenwood Village, CO 80111
Email: gfeeder@tinumgroup.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 Coal Consultant 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 12.1, 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. Coal Consultant 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 6.2. 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 6.3 Expenses.

Except as otherwise provided in Section 6.2, all expenses incurred by Coal Consultant or its Authorized Representative or Affiliates while performing the Services, including compensation, salary, employee benefits, and expenses of Coal Consultant and its Authorized Representative and all workers employed by Coal Consultant in performance of the Services, shall be paid by Coal Consultant.

SECTION 6.4 Books and Records; Audit Rights.

Coal Consultant 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 Coal Consultant and Producer shall have the right, (and Producer shall cause its Operator to afford Coal Consultant 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, but in the case of inspections, copies and audits for purposes of Coal Consultant's rights under this

Agreement, limited to books and records that are reasonably necessary to verify the Consulting Fees that have accrued under this Agreement.

SECTION 6.5 Taxes.

Coal Consultant shall be responsible for, and shall pay when they become due, all federal, state and local taxes plus all social security, unemployment compensation and withholding taxes based on Services performed by Coal Consultant's employees under this Agreement together with all other taxes, excises, assessments or other charges of any kind levied by any Governmental Body against Coal Consultant or its Authorized Representative as a direct result of Coal Consultant or its Authorized Representative (and all other workers employed by Coal Consultant) performing the Services; provided, however, that Coal Consultant shall not be responsible for any taxes on the income, net worth or existence or status of Producer.

ARTICLE VII

FORCE MAJEURE

SECTION 7.1 Force Majeure.

(a) Except as otherwise provided in this Section 7.1, 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 VIII

EARLY TERMINATION

SECTION 8.1 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) The Non-Defaulting Party may terminate this Agreement upon the date specified in a termination notice sent by the Non-Defaulting Party to the Defaulting Party, so long as such date follows the expiration of any applicable notice and/or cure period, in accordance with Section 9.2(b).

(c) 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 7.1, the suspension of such other Party's performance due to the Event of Force Majeure has continued for at least ninety (90) consecutive days.

(d) 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 12.8(a), any payment contemplated by any Project Document to be received by any Coal Consultant Indemnified Party is reduced below the amount to which such Coal Consultant Indemnified Party would be entitled under the applicable Project Document if Section 12.8(a) did not apply to such payment, Coal Consultant may terminate this Agreement at any time by written notice to Producer.

(e) If, because all or any portion of such payment would exceed, or would cause the aggregate payments from Coal Consultant to exceed, the aggregate cap on Coal Consultant's liability provided in Section 12.8(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 12.8(a) did not apply to such payment, Producer may terminate this Agreement at any time by written notice to Coal Consultant.

(f) During the Term of this Agreement, Coal Consultant shall have the right to suspend its provision of the Services, in whole or in part, as necessary in the event of a suspension under the License Agreement, the Refined Coal Supply Agreement or the Coal Feedstock Purchase Agreement.

(g) Producer, on the one hand, or Coal Consultant, 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 8.2 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 (including the obligation of Producer for accrued Consulting Fees) or, subject to Section 9.2 and Section 12.8, 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), Section 6.2 (to the extent related to payments due from Producer accruing prior to the termination date), Section 8.2, Article IX, Article X, or Sections 12.1, 12.2, 12.5, 12.8 or 12.11, all of which shall survive the expiration or termination of this Agreement.

ARTICLE IX

EVENTS OF DEFAULT

SECTION 9.1 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 9.2 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 X

INDEMNIFICATION

SECTION 10.1 Coal Consultant's Indemnification.

Without prejudice to Section 10.2, and subject to Section 10.4, Section 10.5, Section 10.6, Section 10.7 and Section 12.8 and Section 5.8 of the Refined Coal Supply Agreement, Coal Consultant 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 Coal Consultant 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 Coal Consultant'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 Coal Consultant under this 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 Coal Consultant 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 Coal Consultant under this 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 Coal Consultant'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 Coal Consultant under this 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 Coal Consultant or any other breach by Coal Consultant 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 Coal Consultant or its Affiliate, employee, contractor or agent.

SECTION 10.2 Producer's Indemnification.

Without prejudice to Section 10.1, and subject to Section 10.4, Section 10.5, Section 10.6, Section 10.7 and Section 12.8, Producer shall:

(a) indemnify, defend and hold harmless Coal Consultant and its Affiliates, and their respective partners, members, shareholders, managers, officers, directors, employees, contractors, subcontractors, agents and representatives (the "Coal Consultant 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 Coal Consultant under this Agreement), except that Producer's indemnity obligations hereunder shall exclude any Claims to the extent resulting from an act or omission of Coal Consultant or its Affiliate, contractor, employee or agent;

(b) indemnify, defend and hold harmless the Coal Consultant 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 Coal Consultant under this

Agreement), in connection with this Agreement, except for any Claims to the extent resulting from any act or omission of Coal Consultant or its Affiliate, contractor, employee or agent;

(c) indemnify, defend and hold harmless the Coal Consultant 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 Coal Consultant or its Affiliate, contractor, employee or agent; and

(d) indemnify, defend and hold harmless the Coal Consultant 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 Coal Consultant under this Agreement).

SECTION 10.3 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 X, 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 X, 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 X, 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 X.

SECTION 10.4 No Imputed Liability.

(a) For purposes of Section 10.1 and Section 10.2, all acts and omissions of Coal Consultant or any of the Coal Consultant 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 10.4(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 10.5 Environmental Matters.

Notwithstanding any other provision of this Agreement to the contrary, the remedies contained in this Article X 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 10.6 Offset.

In the event that either Coal Consultant, on the one hand, or Producer, on the other hand, is obligated to indemnify and hold harmless the Producer Indemnified Parties under Section 10.1 or the Coal Consultant Indemnified Parties under Section 10.2, 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 10.1 or 10.2 (as applicable) is recovered or otherwise received after payment of any amount otherwise required to be paid under Section 10.1 or 10.2, 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 10.1 or 10.2 had such recovery or other receipt occurred at the time of such payment.

SECTION 10.7 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 XI DISPUTE RESOLUTION

SECTION 11.1 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 XI, 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 XII

MISCELLANEOUS

SECTION 12.1 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 12.2, 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 12.1, 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 12.1 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 12.2 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 12.1 may make disclosure notwithstanding the provisions of Section 12.1; 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 12.1 or 12.2(a) to the contrary, Coal Consultant 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, Coal Consultant shall seek confidential treatment of and KPSC approval to redact the financial terms of this Agreement, and such other terms as Coal Consultant reasonably believes may be redacted under applicable Law. Coal Consultant may also file with the KPSC any other information regarding this Agreement as is required by applicable Law, provided that Coal Consultant 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 12.3 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.

SECTION 12.4 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 12.5 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 Coal Consultant, 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 Tinum 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 Coal Consultant) 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 12.6 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 Coal Consultant to an Affiliate is to an Affiliate that owns the Site and owns and operates the Power Plant and has agreed with Producer and Coal Consultant to assume all of Coal Consultant'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 Coal Consultant 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 12.7 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 12.8 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] COAL CONSULTANT'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 12.8(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 SECTIONS 8.1 AND 9.2, AND THE INDEMNIFICATION RIGHTS SET FORTH IN ARTICLE X OR ELSEWHERE IN THIS AGREEMENT, IN ALL CASES SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 12.8; 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 12.8(C), THIS SECTION 12.8 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 12.8, 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 12.8 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 12.8 (IT BEING UNDERSTOOD THAT THIS SUBSECTION (H) SHALL CONTROL AND HAVE PRIORITY OVER ANY OTHER PROVISION OF THIS SECTION 12.8), THE LIMITATIONS ON LIABILITY AND EXCLUSIVE REMEDY PROVISIONS SET FORTH IN THIS SECTION 12.8 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 Coal Consultant 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 12.9 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 12.10 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 12.11 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 12.12 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 12.13 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 6.4, 12.1, and 12.2, and each Coal Consultant Indemnified Party and each Producer Indemnified Party is intended to be a third party beneficiary of this Agreement as expressly provided in Article X hereof.

SECTION 12.14 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 12.15 Guaranty.

In conjunction with the execution of this Agreement and the other Project Documents, Producer shall furnish to Coal Consultant a guaranty of Producer's performance obligations hereunder from Tinum Group, LLC, a Colorado limited liability company, in the form attached as Schedule 14.17 to the Coal Feedstock Purchase Agreement.

SECTION 12.16 No Publicity.

Neither Coal Consultant 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 12.17 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 12.18 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 Handling and Consulting Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

Coal Consultant:

Louisville Gas and Electric Company

By: David S. Sinder
Name: David S. Sinder
Title: VP Energy Supply/Analysis

APP-
Etd

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: Tinum 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 Handling and Consulting Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

Coal Consultant:

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: Tinum 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 A – Site Map
Mill Creek Station**

SCHEDULE 1.1(a)

COAL CONSULTANT KNOWLEDGE

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

SCHEDULE 1.1(b)

PRODUCER KNOWLEDGE

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

SCHEDULE 5.1

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