
LICENSE AND SERVICES AGREEMENT

by and between

MILL CREEK CLEAN FUELS, LLC

and

LOUISVILLE GAS AND ELECTRIC COMPANY

January 16, 2019

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LICENSE AND SERVICES AGREEMENT

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

RECITALS:

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

WHEREAS, Producer desires to use certain portions of the Site for the operation and maintenance of a refined coal production facility that has been constructed and installed on the “Licensed Land” (as hereinafter defined) prior to the date hereof pursuant to the Operation Agreement (the “Facility”), and Generator desires to grant to Producer a license for such purposes pursuant to the terms and conditions contained in this Agreement; and

WHEREAS, Producer will require certain services during the operation of the Facility, and Generator is willing to provide such services pursuant to the terms and conditions contained 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.

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

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

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

“Commercial Operations Date” has the meaning given to such term in Section 5.4.

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

“Defaulting Party” has the meaning given to such term in Section 15.2(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 15.1.

“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.

“Facility Land” has the meaning given to such term in Section 5.1(a).

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

“Generator Indemnified Parties” has the meaning given to such term in Section 17.2.

“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 Generator Indemnified Parties, as applicable under Article XVII.

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

“Indemnity Acceptance Date” has the meaning given to such term in Section 17.3(a).

“Knowledge” means, as to Generator, 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 19.2(b).

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

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

“License and Services Fee” has the meaning given to such term in Section 10.1.

“Licensed Lands” means those portions of the Site that are subject to the Licenses, which may not be modified without Generator’s prior written consent.

“Licenses” means, collectively, the Operating Licenses and the Removal License.

“Non-Defaulting Party” has the meaning given to such term in Section 15.2(a).

“Notice of Commercial Operations” has the meaning given to such term in Section 5.4.

“Notices” has the meaning given to such term in Section 19.6.

“Operation Agreement” means the Operation Agreement effective as of July 30, 2018 by and between [REDACTED] a Colorado limited liability company, and Generator.

“Operating Licenses” has the meaning given to such term in Section 5.1.

“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 this Agreement, which shall be Tinuum 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.

“Plans and Specifications” means the plans and specifications for the installation, erection, assembly, support and further construction of the Facility provided by Producer to Generator and approved by Generator.

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

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

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

“Producer Indemnified Parties” has the meaning given to such term in Section 17.1.

“Project Documents” means: (a) this Agreement, (b) the Coal Handling and Consulting Agreement, (c) the Refined Coal Supply Agreement, (d) the Coal Feedstock Purchase Agreement, (e) the Pre-Closing Coal Inventory Purchase 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 Scales” has the meaning given to such term in the Refined Coal Supply Agreement.

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

“Removal License” has the meaning given to such term in Section 6.1.

“Removal Period” means the six month period commencing on the date that this Agreement expires or is otherwise terminated.

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

“Service” has the meaning given to such term in Section 11.3.

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

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

“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).

“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 Generator’s Representations.

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

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

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

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

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

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

(f) upon execution and delivery of this Agreement by it and Producer (and assuming this Agreement is the legal valid and binding obligation of Producer), Producer will have a valid license to the Licensed Lands for the limited purposes and upon the other terms and conditions set forth in this Agreement, subject to no pledge, security interest, lien, levy, charge or other similar encumbrance of any kind, except for (i) the Indenture, dated October 1, 2010 between Generator and The Bank of New York Mellon, as heretofore and hereinafter supplemented; and (ii) liens imposed by operation of Law for amounts not yet due and payable;

(g) neither Generator nor any of its Affiliates is in violation of any of the terms or conditions of any applicable Law as it pertains to the Site or the Licensed Lands, and the Site and the Licensed Lands currently are in compliance with all applicable Laws, in either case to the extent such violation or non-compliance would have a material adverse effect on Producer or the Facility under this Agreement or the ability of Generator to perform its obligations under this Agreement;

(h) except for information that, upon the advice of Generator's counsel, is subject to the attorney-client privilege, Generator has furnished or made available to Producer or its agents copies of all environmental documents (including environmental site assessment reports, environmental audit reports and data from samples collected to evaluate environmental conditions), made available to, or in the possession or control of, it or any of its Affiliates (other than documents solely derived from documents otherwise provided by it), including any auditor's assessments in the possession or control of any such Person, regarding the Site, the Licensed Lands, or the Power Plant, in each case to the extent such documents pertain to matters that could reasonably cause liability or risk to the Producer or adversely affect the operation of the Facility;

(i) there has been no release or threat of release of Hazardous Material (as that term is used in the Environmental Indemnity Agreement) from the Site, the Licensed Lands or the Power Plant that (i) could cause liability or risk to the Producer or adversely affect the operation of the Facility and (ii) has required or will require reporting, investigation or response actions (including remediation) pursuant to any applicable Laws or that could reasonably give rise to liability pursuant to any applicable Laws; and

(j) none of the Site, the Licensed Lands, it, its Affiliates or the Power Plant, to the extent that the same could cause liability or risk to the Producer or adversely affect the operation of the Facility, are subject to any order, decree, injunction or agreement with any Governmental Body or any other Person relating to or arising under any applicable Law, other than Laws

generally affecting the Power Plant or the Site that may empower the KPSC to dictate how the Power Plant or the Site must be used, operated, maintained, repaired or replaced from time to time.

SECTION 2.2 Producer's Representations.

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

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

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

(c) no Governmental Approval from, notice to, consent, approval, authorization or order of any court or other Governmental Body or Third Party not already given or obtained and in full force and effect is required with respect to Producer in connection with its execution and delivery of, and performance under, this Agreement or Producer's use or operation of the Facility or any Licensed Lands as contemplated in this Agreement or any other Project Document, 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 or to use or operate the Facility as contemplated in this or any other Project Document.

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 9.1, Article XIII, Section 15.2 or any other provision of this Agreement, will end upon the expiration of the term or other termination of the Refined

Coal Supply Agreement or the Coal Feedstock Purchase Agreement, whichever is earlier (the “Term”).

ARTICLE IV

AUTHORIZED REPRESENTATIVES AND OPERATOR

SECTION 4.1 Authorized Representatives.

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

SECTION 4.2 Operations and Operator.

(a) Producer shall be solely responsible for the operation and maintenance, at its sole expense, of the Facility, the Facility Land and the Licensed Lands, subject, in the case of the Facility Land and the Licensed Lands, to the right of Generator to access, use, operate, maintain, secure and modify the Facility Land and/or the Licensed Lands to the extent contemplated elsewhere in a Project Document, or to the extent required, in Generator’s reasonable discretion, for the use, operation, maintenance or repair of the Power Plant or any other facilities, equipment or improvements located on the Site. Generator acknowledges that Producer has retained Operator to operate and maintain the Facility on behalf of Producer on a day-to-day basis, subject to Producer’s oversight. Any replacement Operator engaged by Producer shall be a reputable operator with experience operating facilities analogous to the Facility; provided, however, that Producer shall provide Generator with ten (10) days’ written notice prior to appointing any replacement Operator. Producer shall, and shall cause its Operator, other contractors, employees and agents to, comply in all material respects with the Plans and Specifications, the Generator Procedures and the relevant provisions of the Project Documents, including, but not limited to, in their use, operation, maintenance or repair of the Facility, the Facility Land and the Licensed Lands.

(b) Operator and its subcontractors and Producer’s other contractors, employees and agents may enter upon the Facility Land and the Licensed Lands to the same extent that Producer may enter thereon under this Agreement, subject to all of the terms and conditions of this Agreement. Any subcontractor engaged in the day-to-day operation of the Facility (as opposed to repair and maintenance services associated with the Facility) on behalf of Producer shall be a reputable operator with experience operating facilities analogous to the Facility.

(c) Producer shall be responsible for the acts or omissions of Operator (and its subcontractors) and Producer's other contractors, employees and agents. In the absence of any written Notice to the contrary given by Producer to Generator, (i) Generator shall be entitled to rely on any deliverable or communication given to it by Operator as if it were a deliverable or communication given by Producer, and (ii) Producer shall be deemed to have received any deliverable or communication given by Generator to Operator; provided, however, that the foregoing shall not apply to Notices, which must be delivered as set forth in Section 19.6.

ARTICLE V

OPERATING LICENSES

SECTION 5.1 Operating Licenses.

Subject to the terms and conditions set forth herein, Generator grants and conveys unto Producer the Licenses set forth in this Section 5.1 for the limited purposes set forth below (collectively, the "Operating Licenses"), such Operating Licenses to terminate upon the expiration or termination of this Agreement or upon such time as Producer does not own sole title to the Facility or an exclusive lease to use and operate the Facility on the Site. Producer acknowledges and agrees that the licenses and the associated rights of Producer set forth in this Section 5.1 are being made or granted by Generator, and the Site, the Power Plant, the Licensed Lands, and the Facility Land are being accepted and will be used by Producer, in "AS IS, WHERE IS" condition with all faults, and Generator makes no warranties or guarantees that the Site, the Power Plant, the Licensed Lands, or the Facility Land is suitable for any purposes described in this Agreement or intended by Producer.

(a) Facility License. A non-exclusive, limited, revocable (in the manner provided for elsewhere in this Agreement), non-transferable (unless expressly permitted under Section 19.7) license to use that portion of land at the Site depicted on a diagram attached as Exhibit B (the "Facility Land"), solely for the support, use, operation, repair and maintenance of the Facility in accordance with the Project Documents and applicable industry standards, and the removal and relocation of any individual production line constituting part of the Facility (but, in the case of a relocation to another location on the Licensed Lands, solely to the extent that other location is approved by Generator in writing, in its sole discretion), and all other lawful activities reasonably required for any of the foregoing and the production of Refined Coal by Producer at the Facility for sale in accordance with the Project Documents, including, the right to use the drainage pipelines, ditches and culverts serving the Facility Land.

(b) Access License. A non-exclusive, limited, revocable (in the manner provided for elsewhere in this Agreement), non-transferable (unless expressly permitted under Section 19.7) license to use the portions of the Site solely to the extent required for pedestrian ingress, egress and regress, to, from, and between the Facility Land and the other Licensed Lands, for vehicular ingress, egress and regress to, from and between public rights-of-way, the Facility Land and the Licensed Lands, for the use of the roads located on the Site, and for the parking of vehicles of the agents, contractors or employees of Producer, and the invitees and licensees of any of them, in each case as reasonably required for the support, use, operation, repair and maintenance of the Facility and the other activities described in subsection (a) above.

(c) Utilities and Services License. A non-exclusive, limited, revocable (in the manner provided for elsewhere in this Agreement), non-transferable (unless expressly permitted under Section 19.7) license to use the Site solely for the construction, erection, support, installation, assembly, use, operation, repair, maintenance, removal and replacement of the lines, equipment and facilities for the following utilities and services to the Facility and/or to support Producer's or Operator's permitted activities on the Licensed Lands: electricity, telephone, potable water, service water, sewage, storm water (from the Licensed Lands), and washdown water (from the operations of the Facility), to extent such utilities and services are necessary or useful for the operation and maintenance of the Facility; provided, however, that Producer shall use the license granted pursuant to this Section 5.1(c) only as to such utilities and services which Generator is not required to or otherwise does not provide or make available to Producer under Article XI, and, then, in each such case, only in a manner that will not have a materially adverse effect on the Power Plant, Generator's other equipment or facilities located on the Site, or their use, operation, maintenance or repair. The location of any utility lines, equipment or facilities as contemplated under this Section 5.1(c) must be pre-approved by Generator, using its reasonable discretion. Once installed, any such lines, equipment or facilities may only be re-located or removed (other than routine replacements) with the prior written consent of Generator.

(d) Material Storage and Handling License. A non-exclusive, limited, revocable (in the manner provided for elsewhere in this Agreement), non-transferable (unless expressly permitted under Section 19.7) license to use a portion of the Site shown as "Stockpile" on Exhibit A or otherwise as approved by Generator solely for the storage of coal purchased from Generator pursuant to another Project Document, and to use other areas of the Site as approved by Generator for the storage of other non-fuel materials and equipment delivered to the Facility, and the unloading, transport or other movement of coal and other non-fuel materials and equipment from the delivery point of such coal and other materials and equipment at the Site to the applicable existing storage facilities or the Facility and the loading at such point as necessary, in each case in connection with the operation of the Facility and the performance by Producer under the Refined Coal Supply Agreement, but in the case of each of the foregoing, only to the extent such storage, unloading, transportation, movement, and loading services are not being provided by Generator for Producer pursuant to another Project Document; and further provided, that the foregoing license shall not entitle Producer to install or erect any buildings or structures on the Site without the prior written consent of Generator in its sole discretion.

(e) Refined Coal Storage and Handling License. A non-exclusive, limited, revocable (in the manner provided for elsewhere in this Agreement), non-transferable (unless expressly permitted under Section 19.7) license to use the Facility Land solely for the movement of Refined Coal from the Facility to the delivery point for Refined Coal under the Refined Coal Supply Agreement and for the storage of other non-fuel materials and equipment necessary for the unloading, storage, movement, and loading of Refined Coal, but in the case of each of the foregoing, only to the extent such movement or storage services are not being provided by Generator for Producer pursuant to a Project Document; provided, that the foregoing license shall not entitle Producer to install or erect any buildings or structures on the Site without the prior written consent of Generator in its sole discretion.

(f) Use of Licensed Lands. Notwithstanding anything to the contrary set forth elsewhere in this Agreement or any other Project Document, Producer shall use and occupy the

Facility Land, the Licensed Lands and the other designated portions of the Site contemplated above solely for the purposes of, and solely to the extent reasonably required for, installing, constructing, operating, maintaining, repairing and removing the Facility upon the terms and subject to the conditions set forth in the Project Documents, which Facility will be used solely for the production and sale of Refined Coal, and for the sale of other Coal, in accordance with the Project Documents, together with the performance of related rights, functions and activities, each as contemplated by this Agreement or the other Project Documents. Producer shall not use or permit the use of the Facility by anyone acting by, through or under Producer, for any purpose which is forbidden by Law.

(g) Lien Releases, Etc. Upon the request of Generator from time to time, Producer shall, at its expense, provide to Generator customary written evidence that no work, services or other activities by or for Producer, Operator or any of their respective contractors or subcontractors has resulted in any liens or security interests on or against the Power Plant, the Site or any other assets or properties of Generator

SECTION 5.2 Alterations of the Facility.

Producer shall have the right to make routine modifications, alterations, or changes to the Facility without the consent of Generator to the extent, but only to the extent, such modification, alteration or other change will not result in any breach or default under this Agreement or any other Project Document, will not require the movement of the Facility or any portion thereof to another location on the Licensed Lands or the Site not pre-approved by Generator in writing, and will not interfere in any material respect with Generator's use, operation, maintenance or repair of the Power Plant or Generator's other equipment, facilities or operations on the Site. All modifications, alterations or changes to the Facility shall be made by or for Producer in a good and workmanlike manner, shall comply with applicable Laws, and shall conform with all relevant industry standards associated with similar facilities. Any material modification, alteration or change to, or replacement of, the Facility shall require Generator's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed, and Producer shall give notice thereof to Generator and, at Producer's expense, obtain all applicable Governmental Approvals, and upon completion, certificates of final approval thereof. Producer shall not be entitled to make any modifications, alterations or changes to any equipment or facilities of Generator.

SECTION 5.3 Liens.

Producer shall promptly pay all undisputed claims for labor, services, materials and other things furnished to or for the performance of work by or on behalf of Producer upon the Licensed Lands, or furnished to or for Producer for the performance of its obligations under this Agreement. If any Person hired or retained by or under contract with Producer or its Affiliates, agents, contractors or any subcontractors shall file or perfect a lien against any portion of the Licensed Lands or any other assets or properties of Generator, Producer shall promptly discharge such lien by bond or otherwise and shall indemnify, protect and defend Generator against all losses or expenses in connection therewith, including reasonable attorneys' fees and costs. If any Person hired or retained by or under contract with Generator or its Affiliates, agents, contractors or any subcontractors shall file or perfect a lien against any portion of the Facility, Generator

shall promptly discharge such lien by bond or otherwise and shall indemnify, protect and defend Producer against all losses or expenses in connection therewith, including reasonable attorneys' fees and costs.

SECTION 5.4 Commercial Operations.

Producer shall provide notice to Generator of the date that commercial operation of the Facility shall commence for purposes of the Refined Coal Supply Agreement (the "Notice of Commercial Operations"), and the date specified in such Notice of Commercial Operations to Generator shall be deemed to be the "Commercial Operations Date."

SECTION 5.5 Operation of the Facility.

Producer, Operator and their respective business invitees shall comply in all material respects with, and shall cause the Facility to comply in all material respects with, all applicable Laws and Governmental Approvals with respect to its business and operations on the Site during the Term, including all applicable Environmental Laws. Producer shall, at all times during the Term, use commercially reasonable efforts to obtain, maintain and keep in force all material Governmental Approvals necessary for it to perform its obligations under this Agreement or to use, operate, maintain or repair the Facility. Producer shall maintain the Facility in good, safe and operable condition, reasonable wear and tear excepted.

SECTION 5.6 Suspension Rights.

During the Term of this Agreement, Generator shall have the right to cause Producer and Operator to suspend the use of the Facility, the Facility Land and/or the Licensed Lands if and to the extent necessary to (a) prevent long or short term damage to the Power Plant or any other equipment or facilities of Generator on the Site (other than normal wear and tear that would be caused by the use of Resold Coal as fuel in the Power Plant), (b) prevent long or short term material impairment or a material adverse effect to the Power Plant or any other equipment or facilities of Generator on the Site, (c) prevent the violation of any Law, Governmental Approval, regulation or governmental approval applicable to the Power Plant, or (d) respond to, end or prevent any event or circumstance creating a threat to the safety or security of Persons or property; in the case of each of the foregoing, as determined by Generator acting reasonably. If the Parties cannot agree on any remedial action within five (5) days of any suspension pursuant to this Section 5.6, then the Parties shall engage a third party engineering firm mutually acceptable to both Parties to promptly provide recommendations as to an appropriate remedial action. Producer shall pay the fees and expenses of such third party engineering firm.

SECTION 5.7 Conditions. Notwithstanding anything to the contrary set forth elsewhere in this Agreement or any other Project Document:

(a) The grant of licenses set forth in Section 5.1 is subject to (i) Producer maintaining all Governmental Approvals held by it or by Operator and required for it to operate and maintain the Facility on the Site; (ii) Producer maintaining ownership of or an exclusive lease to use the Facility throughout the Term of this Agreement; and (iii) Producer being responsible for all costs and expenses of using, operating, maintaining and repairing the Facility throughout the Term of this Agreement;

(b) Producer shall have no right to use or operate any equipment or facilities of Generator located on the Site without Generator's prior written permission;

(c) Generator shall have no obligation to modify, move or remove any of Generator's existing buildings, facilities, fixed equipment, utility facilities, roadways or other fixtures on the Licensed Lands or the Site in order to accommodate the location, repair or replacement of the Facility or any equipment necessary to the operation of the Facility;

(d) Any storage of any chemicals, materials or supplies by Producer or Operator on the Site shall be limited to the quantities of such chemicals, materials or supplies required for normal operation of the Facility for two (2) consecutive months, assuming the consumption of Refined Coal by the Power Plant at its full rated capacity; and

(e) The grant of licenses set forth in Section 5.1 shall be conditioned upon Producer maintaining throughout the Term of this Agreement the non-exclusive right or license to use all of the refined coal technology that may be required for the use or operation of the Facility, or for the production of Refined Coal for sale to Generator pursuant to the Refined Coal Supply Agreement.

ARTICLE VI

REMOVAL LICENSE

SECTION 6.1 Removal License.

In furtherance of the eventual removal of the Facility from the Site following the Term, Generator hereby grants and conveys unto Producer a non-exclusive, limited, irrevocable, non-transferable (unless expressly permitted under Section 19.7) license over the Licensed Lands for the purpose of removing the Facility (the "Removal License") from the Licensed Lands. The Removal License shall terminate at the end of the Removal Period. Notwithstanding the foregoing rights, Producer agrees not to remove the Facility from the Facility Land until the expiration or termination of this Agreement in accordance with its terms. In addition, no such removal of the Facility shall be permitted by Producer to materially interfere with Generator's use, operation, maintenance or repair of the Power Plant or Generator's other facilities, equipment or operations on the Site.

SECTION 6.2 Condition of Licensed Lands Upon Removal of the Facility.

During the Removal Period, Producer, at its expense, shall remove the Facility and all other personal property belonging to Producer (which, for purposes of clarification, shall not include the Refined Coal Scales) from the Site (unless otherwise agreed by the Parties), shall cause a disconnection of utility services to the Facility, and shall repair any damage to the Site, the Coal Yard or the Power Plant caused by the Facility or its removal; provided, however, that with Generator's prior written consent, Producer shall not be required to remove any foundations, pilings or concrete slabs, or any identified conduits or wiring or any alterations to the Site made in accordance with this Agreement. Generator will reasonably cooperate with Producer in connection with such removal. In the event Producer fails to remove the Facility or any of the other Producer's property as contemplated by the end of the Removal Period,

Generator shall have the right to have the Facility and/or such other Producer's property removed from the Site, to repair any damage to the Site, the Coal Yard or the Power Plant caused by the Facility and/or such other Producer's property or its removal, to store the Facility and/or such other Producer's property, and to charge the costs of such removal, repair and/or storage to Producer (which Producer agrees to promptly pay upon being invoiced for such costs). Producer agrees that Generator shall have no obligation or liability whatsoever to Producer or any of its successors or assigns for or with respect to any damages to the Facility and/or such other Producer's property (or any portion(s) thereof) occurring during the removal from the Site or storage of the Facility and/or such other Producer's property as contemplated above, unless and to the extent such damages result from the gross negligence or willful misconduct of Generator or its employees, agents or contractors.

ARTICLE VII

TITLE TO THE FACILITIES

SECTION 7.1 Title to the Facility.

It is the intention of each Party hereto that the Facility shall not constitute improvements or fixtures on the Licensed Lands or the Site, but that the Facility shall remain at all times the personal property of Producer. Generator shall notify in writing the holder of, or the agent for the holder of, any mortgage on the Licensed Land or the Site during the Term of this Agreement, and any purchaser of the Licensed Land or the Site during the Term of this Agreement prior to any sale, that the Facility does not constitute a fixture on the Licensed Land or the Site and is the personal property of Producer. Title to the Facility shall remain with Producer unless and until Producer transfers title thereof. For purposes of clarification, Producer acknowledges and agrees that the Refined Coal Scales were installed by Operator pursuant to the Operation Agreement but do not constitute part of the Facility and, upon installation, became the property of Generator, on an "as-is, where is" basis, free and clear of all liens, claims and other encumbrances, without any consideration being payable by Generator for the same. If requested by Generator, Producer agrees to (or to cause Operator to) execute and deliver to Generator a bill of sale in form reasonably satisfactory to the Parties, evidencing the vesting of title to the Refined Coal Scales in Generator as described above.

ARTICLE VIII

GOVERNMENTAL APPROVALS

SECTION 8.1 Governmental Approvals.

(a) Generator shall provide, or cause to be provided, such of Generator's information in its or any of its Affiliates' possession relating to the Site, the Power Plant, any other facilities at the Site and all operations conducted on the Site, but in each case only to the extent it is requested by Producer in connection with (i) Producer's compliance with all applicable Laws in connection with its use, operation, maintenance or repair of the Facility and (ii) application for and/or renewal of all necessary Governmental Approvals necessary for the use or operation of the Facility, but in either case excluding all information which is subject to the attorney-client

privilege, and all information that is considered by Generator to be confidential trade secret information (including, but not limited to, the terms of any contracts with any coal or other fuel providers, and the pricing paid by Generator for coal or other fuels) or that may be the subject of a confidentiality or non-disclosure commitment made by Generator to any other Person.

(b) Generator shall use its reasonable best efforts to obtain and maintain for the benefit of Producer the Governmental Approvals identified on Schedule 8.1(b), but at the sole expense of Producer if such Governmental Approvals are not otherwise required for Generator's ownership or use of the Power Plant or the Site.

(c) Producer shall provide, or cause to be provided, such information in its possession or otherwise available to Producer or its Affiliates relating to the Facility, the Facility Land and all operations conducted thereon that is requested by Generator in connection with (i) Generator's compliance with all applicable Laws and (ii) application for and/or renewal of all necessary Governmental Approvals.

SECTION 8.2 Producer's Use of Generator's Governmental Approvals.

In connection with Producer's use of and/or reliance on the Governmental Approvals maintained by Generator and listed on Schedule 8.1(b), Producer shall at all times (a) comply with such Governmental Approvals and (b) not take or omit to take any action that would (i) result in a violation of any such Governmental Approvals or (ii) cause any such Governmental Approvals to be revoked, rescinded, adversely modified or otherwise terminated.

SECTION 8.3 Coordination; Governmental Approvals.

Subject to the provisions of Sections 8.1 and 8.2, if, after the Effective Date, Producer or its operator shall be obligated to obtain additional Governmental Approvals for any of its operations on the Licensed Lands, Generator shall reasonably assist and cooperate with Producer in obtaining all such Governmental Approvals, all at Producer's cost.

ARTICLE IX

EARLY TERMINATION

SECTION 9.1 Termination of Agreement and Licenses Prior to Expiration of the Term.

In addition to any other termination rights provided for elsewhere in this Agreement, this Agreement and the Licenses (except Article VI and the Removal License, which shall terminate at the end of the Removal Period, and except for such other 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 Article III under the following circumstances:

(a) Upon the mutual written agreement of Producer and Generator, which termination shall be effective on the date agreed to by Producer and Generator;

(b) In accordance with the provisions of Article XIII;

(c) Upon the date specified in the termination notice sent by the Non-Defaulting Party, so long as such date follows the expiration of any applicable notice and/or cure period, in accordance with Section 15.2(b);

(d) Upon the date specified in a notice of termination from Generator to Producer or from Producer to Generator, 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 12.1, the suspension of such other Party's performance due to the Event of Force Majeure has continued for at least ninety (90) consecutive days;

(e) If, because all or any portion of such payment would exceed, or would cause the aggregate payments from Producer to exceed, the aggregate cap on Producer's liability provided in Section 19.9(a), any payment contemplated by any Project Document to be received by any Generator Indemnified Party is reduced below the amount to which such Generator Indemnified Party would be entitled under the applicable Project Document if Section 19.9(a) did not apply to such payment, Generator may terminate this Agreement at any time by written notice to Producer;

(f) If, because all or any portion of such payment would exceed, or would cause the aggregate payments from Generator to exceed, the aggregate cap on Generator's liability provided in Section 19.9(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 19.9(a) did not apply to such payment, Producer may terminate this Agreement at any time by written notice to Generator; or

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

SECTION 9.2 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 termination (including the obligation of Producer for accrued License and Services Fees) or, subject to Section 15.2 and Section 19.9, waive any rights or remedies with respect to a breach of this Agreement giving rise to such 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), the first (1st) sentence of Section 4.2(c), Section 5.3, Article VI, Sections 9.2, 10.2 (to the extent related to payments due from

Producer accruing prior to the termination date), 10.3, 10.4, 14.1 (to the extent set forth in Schedule 14.1), or 14.2, Article XV, Section 16.2(a) (to the extent relating to the Removal License or Producer's removal of the Facility or its other assets from the Site), Article XVII, Section 18.1(a), Section 19.1 or 19.2, Section 19.3 or 19.4 (to the extent relating to performance under Article VI), or Section 19.6, 19.9, 19.12, 19.16 or 19.17, all of which shall survive the expiration or termination of this Agreement.

ARTICLE X

COMPENSATION AND RELATED MATTERS

SECTION 10.1 Compensation.

Commencing on the Effective Date and continuing until the expiration of the Term, in consideration of Generator's grant of the Licenses and the provision of the Services and the infrastructure and connections necessary to make the Services available to Producer, Producer agrees to pay Generator 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 "License and Services Fee"). For the avoidance of doubt, the License and Services 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 License and Services 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 10.2 Invoicing and Payment.

(a) Within seven (7) Business Days following the end of each calendar month, Generator shall submit to Producer an invoice setting forth the License and Services Fee for such month along with any reimbursable expenses for Services provided under Article XI. Producer shall make payment of any undisputed amount due by electronic transfer in United States funds in accordance with Section 19.21 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 Tinnuum Group, LLC
5251 DTC Parkway, Suite 825
Greenwood Village, CO 80111
Email: gfeeder@tinnuumgroup.com
Facsimile: (303) 751-9210

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

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

(e) If Producer, in good faith, disputes any portion of an invoice on or before the payment date therefor, Producer shall, on or before the applicable payment date with respect to such invoice, provide Generator with a statement setting forth in reasonable detail all amounts disputed by Producer and the reason for the dispute and pay only the portion of such invoice not being disputed; provided, however, that, for purposes of clarification and not limitation, each of the Parties acknowledges and agrees that neither the making of any payment under this Agreement nor the failure to dispute any payment made under this Agreement shall preclude either Party from disputing the amount, accuracy, validity or other aspect of such payment in the future. In the event of a dispute regarding any invoice or payment, each Party (and its representatives) shall have the right to request, at its sole expense and during normal business hours (but not more than once every six (6) months) and subject to Section 19.1, documentation supporting the invoice or payment, and the other Party shall provide such documentation but only to the extent reasonably necessary to verify such invoice or payment. Generator shall not be required to provide any coal supply, transportation, fuel oil hedging or related agreements as part of its verification responsibility under this Section 10.2. 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 10.3 Books and Records; Audit Rights.

Generator and Producer shall each retain and maintain (and Producer agrees to cause its Operator to retain and maintain) books and records (updated promptly and consistently) in

accordance with good accounting practices in connection with the transactions contemplated in the Project Documents, throughout the Term and until the later of (a) two (2) years after the termination of this Agreement and (b) the date on which the audit of Producer's federal income tax return for the applicable calendar year has been closed by the Internal Revenue Service and is no longer subject to appeal or the applicable statute of limitations for the Internal Revenue Service to audit such tax return has expired, including any extension of the statute of limitations agreed to by Producer or any of its members. Each of Generator and Producer shall have the right (and Producer shall cause its Operator to afford Generator the right), at no additional expense but bearing its own costs, to inspect, copy and audit such books and records of the other Party at any reasonable time(s) upon reasonable prior written notice to the other Party during that retention period, and each Party shall (and Producer agrees to cause its Operator to) reasonably cooperate with such audit-related inquiries of the other Party, but in the case of inspections, copies and audits for purposes of Generator's rights under this Agreement, limited to books and records that are reasonably necessary to verify the License and Services Fees that have accrued under this Agreement.

SECTION 10.4 Taxes and Assessments.

Generator shall pay all real estate taxes, assessments (general and special), and other charges in the nature of real estate taxes that may be levied, assessed or charged against the Site, including the Licensed Lands, accruing or becoming due and payable during the period from the Effective Date until the end of the Removal Period; provided, however, that Producer shall be solely responsible for the payment or discharge of all taxes, assessments, and other charges levied, assessed or charged against the Facility and/or Producer's, its operator's or its other contractor's other assets or properties located on the Site, regardless of when or against whom such taxes or other charges are assessed. After ten (10) Business Days prior written notice and failure of the responsible notified Party to provide evidence of its ability to pay, the notifying Party shall have the right to pay the delinquent taxes and charges that were not paid as required by the foregoing sentence and charge or offset such payment to the Party obligated to make such payment. If a charge or offset of any such payment is unavailable, failure of either Party to reimburse the other Party making payment for delinquent taxes shall constitute an Event of Default under this Agreement. If a separate tax bill for the Facility is not provided by the taxing authority, the Parties shall confer with the taxing authority and, based on the information received therefrom, in the exercise of their reasonable judgment, shall agree upon an allocation of the taxes between their respective assets as contemplated above.

ARTICLE XI

UTILITIES AND SERVICES

SECTION 11.1 Potable Water, Service Water, Electricity, Sewage and Storm Water.

During the Term, Generator shall provide or make available to Producer the utilities and services set forth below at no cost to Producer (except as expressly provided below), in reasonable quantities as required for the installation, construction, use, operation, maintenance, repair and removal of the Facility and Producer's or Operator's related activities on the Licensed Lands:

- (a) potable water for the administrative office of Producer;
- (b) service water for the Facility;
- (c) electricity via a 4kV, three phase electric service connection for the administrative office of Producer and the Facility that Producer, at its expense, will step down to a 480V, three phase service using an approved transformer;
- (d) water for fighting fires, available on an emergency basis for that purpose; and
- (e) disposal of storm water from the Licensed Lands and washdown water from the operations of the Facility by such means as are necessary to provide such services, and the maintenance of the existing or replacement storm and surface water disposal or retention facilities as may be necessary to provide such services.

Producer shall, at its expense, install and maintain, on the Facility Land, a meter to measure the use of water for the purposes identified in the immediately preceding subsections (a) and (b) and shall reimburse Generator, at its cost, on a monthly basis for the amount of water so used, as measured by such meter. Producer shall, at its expense, install and maintain, on the Facility Land, a meter to measure the use of electricity for the purposes identified in the immediately preceding subsection (c) and shall pay Generator on a monthly basis for the amount of electricity so used, as measured by such meter, at standard rates in effect from time-to-time for such electricity; provided, however, that the amount of any electricity used by Producer prior to installation of such meter shall be determined by Generator and Producer using agreed upon estimation procedures. Producer will be solely responsible for obtaining and maintaining, at Producer's expense, any other utility services required for the Facility or Producer's operations on the Site, including sewage disposal services and propane gas services.

SECTION 11.2 Security and Telecommunications.

During the Term, Generator shall provide or make available to Producer the following utilities and services at no cost to Producer:

- (a) security services for the regulation of access to the Licensed Lands after the Effective Date by any Person;
- (b) access to internal telecommunications services for the linking of the electronic controls of the Facility to the facilities of Generator; and
- (c) firefighting and other emergency services at the levels provided by Generator for the Power Plant.

SECTION 11.3 Additional Provisions with Respect to Services.

During the Term, Generator agrees to deliver the utilities and services identified in Sections 11.1 and 11.2 (each such service, a "Service" and collectively the "Services") to Producer at the location specified in the approved Plans and Specifications (except that the security, firefighting and other emergency Services shall be provided in respect of the Site).

SECTION 11.4 Installation, Maintenance and Modification of Infrastructure.

During the Term, Generator shall: (a) provide the infrastructure for the Services and allow, at Producer's expense, connections necessary to provide Producer with the Services when and as required with respect to the Facility; (b) maintain and keep such infrastructure and connections in good and serviceable condition, subject to maintenance outages and forced outages; (c) upon Producer's request, repair such infrastructure and connections; and (d) upon Producer's reasonable request and at Producer's cost and expense, extend from its existing location to another location on the Site, and otherwise modify, the infrastructure and connections as reasonably necessary to make the Services available for the installation, construction, use, operation, maintenance, repair and removal of the Facility (but solely using such routes or other locations on the Site as are reasonably satisfactory to Generator).

SECTION 11.5 Exceptions.

Notwithstanding anything to the contrary set forth elsewhere in this Article XI, any utility services or other Services provided by Generator pursuant to this Article XI will be provided on an "AS IS" basis with all faults, and Generator makes no guarantees, representations or warranties that such Services will be adequate or suitable for Producer's purposes, or that such Services (to the extent provided by a third-party utility provider or other contractor) will not be disrupted or interrupted from time-to-time for reasons beyond the reasonable control of Generator. By way of example but not of limitation, Producer will be solely responsible for ensuring that the quality of the water provided for the Facility is suitable for the Facility's operations or for producing Refined Coal.

ARTICLE XII

FORCE MAJEURE

SECTION 12.1 Force Majeure.

(a) Except as otherwise provided in this Section 12.1, 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 XIII

CONDEMNATION

SECTION 13.1 Condemnation.

If all or any part of the Licensed Lands are taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with such public or quasi-public use, and such taking or appropriation shall be of such an extent and nature as to materially handicap, impede or impair Producer's use of the Licensed Lands in the manner contemplated in the Project Documents, as reasonably determined by Producer, Producer shall have the right, within thirty (30) days of receipt of notice of taking, to terminate this Agreement as of the date possession is taken by the condemning Governmental Body. No award for any partial or entire taking shall be apportioned, and Producer hereby assigns to Generator any award that may be made in such taking or condemnation, together with any and all rights of Producer now or hereafter arising in or to the award or any portion thereof; provided, however, that nothing contained herein shall be deemed to give Generator any interest in or to require Producer to assign to Generator any award made to Producer for the taking of personal property and fixtures belonging to Producer (including the Facility), for the interruption of or damage to the business of Producer, for the unamortized cost of improvements or for the removal of the Facility by Producer, and Producer shall have the right to prosecute its claim for an award based on the taking of personal property and fixtures belonging to Producer (including the Facility), for the interruption of or damage to the business of Producer, for the unamortized costs of improvements of Producer or the removal and relocating of the Facility by Producer. To the extent Generator receives proceeds from the condemning Governmental Body for claims of Producer, Generator shall immediately pay such proceeds to Producer. No temporary taking of the Licensed Lands or Producer's right therein or under this Agreement shall terminate this Agreement, any award made to Producer by reason of any such temporary taking of Producer's right in the Licensed Lands or under this Agreement shall belong entirely to Producer, and Generator shall not be entitled to any portion thereof. Producer shall have the right to claim, and prosecute such claim, against the condemning authority, for the taking of the Facility, expenses and costs of removing and relocating the Facility, and damage to Producer's business conducted at the Licensed Lands.

ARTICLE XIV

INSURANCE; RISK OF LOSS

SECTION 14.1 Insurance.

Each Party shall obtain, maintain and keep in force, or cause to be obtained, maintained and kept in force, insurance of the types, in amounts and for the time periods as indicated on Schedule 14.1.

SECTION 14.2 Risk of Loss.

As between Generator and Producer, Producer will bear all risks of loss or damage with respect to the Facility and all other assets and properties of Producer or its Operator, other contractors, employees and agents (including Producer's inventories of coal, Refined Coal or other materials and supplies), in each case to the extent not otherwise expressly provided for in this Agreement or any other Project Document, such as, but not limited to, the indemnification provisions in the Project Documents.

ARTICLE XV

EVENTS OF DEFAULT

SECTION 15.1 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 15.2 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 XVI

NON-INTERFERENCE

SECTION 16.1 Non-Interference with Licenses.

Subject to the terms and conditions of this Agreement and Producer's performance of and compliance with the same in all material respects, Generator hereby covenants that Producer shall have full use of the Licenses for all purposes consistent with the grant of such Licenses to Producer. Generator covenants that Generator and its Affiliates shall not, and shall not allow any of their respective lessees, licensees, agents, employees, contractors, successors or assigns, to (i) interfere with Producer's ownership, operation, or use of the Facility as contemplated in the Project Documents, or (ii) interfere with the use by Producer of the Licenses granted hereunder, in each case subject to the reservations of rights made by Generator elsewhere in this Agreement or in any other Project Document.

SECTION 16.2 Non-Interference with Generator Operations.

(a) Subject to the terms and conditions of this Agreement, Producer hereby covenants that Producer and its Operator, other contractors, employees, and agents shall use the Licenses only in accordance with the terms of such Licenses as granted hereunder, and shall conduct its or their operations or activities on the Site in a manner that does not materially interfere with Generator's use, operation, maintenance or repair of the Power Plant or Generator's other equipment, facilities or operations at the Site.

(b) So long as Producer is able to exercise all of its rights under the Coal Feedstock Purchase Agreement and the Refined Coal Supply Agreement, and so long as the “Coal Consultant” is performing its obligations under the Coal Handling and Consulting Agreement, Generator shall have the unobstructed and exclusive right to operate its coal yard at the Site, its equipment in the coal yard, and the Power Plant for any purposes and in its sole discretion, with no obligations to Producer other than as set forth in this Agreement and the other Project Documents.

(c) At any time and from time to time during the Term of this Agreement, subject to the terms and conditions of the other Project Documents, Generator shall be entitled in its sole discretion to shut down or reduce the operation of Power Plant, in whole or in part, if required by applicable Law or if deemed necessary by Generator in view of operating conditions, the conditions of any component(s) of the Power Plant, or Generator’s needs for energy from the Power Plant, in each case with no obligation to Producer other than to provide prompt notice thereof to Producer.

ARTICLE XVII

INDEMNIFICATION

SECTION 17.1 Generator’s Indemnification.

Without prejudice to Section 17.2, and subject to Section 17.4, Section 17.5, Section 17.6, Section 17.7 and Section 19.9 and Section 5.8 of the Refined Coal Supply Agreement, Generator shall:

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

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

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

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

SECTION 17.2 Producer's Indemnification.

Without prejudice to Section 17.1, and subject to Section 17.4, Section 17.5, Section 17.6, Section 17.7 and Section 19.9, Producer shall:

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

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

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

(d) indemnify, defend and hold harmless the Generator Indemnified Parties from and against any and all Claims for any injury or death to any of Producer's employees, unless caused

by the negligent or fraudulent act or omission or willful misconduct of Generator or its Affiliate, contractor, employee or agent; and

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

SECTION 17.3 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 XVII, 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 XVII, 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 XVII, 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 XVII.

SECTION 17.4 No Imputed Liability.

(a) For purposes of Section 17.1 and Section 17.2, all acts and omissions of Generator or any of the Generator Indemnified Parties, on the one hand, or of Producer or any of the Producer Indemnified Parties, on the other hand, shall be deemed solely acts and omissions of such Persons, whether committed in the course of providing services for or on behalf of another Party under one or more Project Documents, or otherwise, and in no event will any such acts or omissions be imputed to, or deemed to be acts or omissions of, the other Party, any of its Indemnified Parties or any contractors, subcontractors, agents or invitees thereof.

(b) Notwithstanding any other provision of this Agreement or the other Project Documents, no member, shareholder, officer, director, agent or employee of a Party shall have any personal liability hereunder solely by reason of that relationship with such Party, and no Affiliate of a Party, or any member, shareholder, officer, director, agent or employee of such Affiliate shall have any liability hereunder solely by reason of that relationship with such Party or Affiliate; provided, however, that, for purposes of clarification and not limitation, this Section 17.4(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 17.5 Environmental Matters.

Notwithstanding any other provision of this Agreement to the contrary, the remedies contained in this Article XVII 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 17.6 Offset.

In the event that either Generator, on the one hand, or Producer, on the other hand, is obligated to indemnify and hold harmless the Producer Indemnified Parties under Section 17.1 or the Generator Indemnified Parties under Section 17.2, 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 17.1 or 17.2 (as applicable) is recovered or otherwise received after payment of any amount otherwise required to be paid under Section 17.1 or 17.2, 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 17.1 or 17.2 had such recovery or other receipt occurred at the time of such payment.

SECTION 17.7 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 XVIII

DISPUTE RESOLUTION

SECTION 18.1 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 XVIII, 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 XIX

MISCELLANEOUS

SECTION 19.1 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 19.2, 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 19.1, 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 19.1 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 19.2 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 19.1 may make disclosure notwithstanding the provisions of Section 19.1; 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 19.1 or 19.2(a) to the contrary, Generator may file a copy of this Agreement with the Kentucky Public Service Commission (“KPSC”) to the extent required by Law. Prior to filing this Agreement with the KPSC, Generator shall seek confidential treatment of and KPSC approval to redact the financial terms of this Agreement, and such other terms as Generator reasonably believes may be redacted under applicable Law. Generator may also file with the KPSC any other information regarding this Agreement as is required by applicable Law, provided that Generator shall give reasonable prior written notice to Producer of such information it intends to provide and the reason therefore, and shall seek confidential treatment of such information if allowed under applicable Law.

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

SECTION 19.3 Compliance with Laws and Governmental Approvals.

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

SECTION 19.4 Safety Policies and Site Rules.

In connection with the performance of this Agreement, Producer shall, and shall cause its Affiliates, agents, contractors and subcontractors to, comply in all material respects with the safety, security and environmental policies and rules of Generator, to the extent that Generator provides such policies and rules to the Producer in writing.

SECTION 19.5 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 19.6 Notices.

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

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

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

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

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

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

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

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

Sherman & Howard L.L.C.
633 Seventeenth Street, Suite 3000

Denver, CO 80202
Attention: Joanne Norris

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

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

SECTION 19.7 Assignment.

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

SECTION 19.8 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 19.9 Limitations of Liability; Remedies.

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

(b) NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ITS AFFILIATES FOR CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE, LOSS OF PROFIT, LOSS OF GOODWILL OR ANY SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES RESULTING FROM ANY VIOLATION OF OR DEFAULT UNDER THIS AGREEMENT, INCLUDING BUSINESS INTERRUPTION DAMAGES, DAMAGES SUFFERED AS THE RESULT OF THE LOSS OF USE OF THE POWER PLANT OR THE FACILITY, COST OF PURCHASED OR REPLACEMENT POWER, DAMAGES SUFFERED BY CUSTOMERS OF SUCH PARTY FOR SERVICE INTERRUPTIONS, OR LOSS OF GOODWILL, LOSS OF USE OF EQUIPMENT AND COSTS OF REPLACEMENT OF PRODUCTS, IN EACH CASE, BY STATUTE, IN TORT OR CONTRACT, IN EQUITY, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, EXCEPT THAT THE FOREGOING SHALL NOT LIMIT AN INDEMNIFIED PARTY'S RIGHT TO INDEMNIFICATION, IF ANY, FOR ANY SUCH DAMAGES THAT RESULT FROM THE INDEMNIFYING PARTY'S FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR, PROVIDED SUCH DAMAGES ARE NOT PRECLUDED BY THE LIMITATIONS IN SECTION 19.9(C), THAT THE INDEMNIFIED PARTY IS LEGALLY REQUIRED TO PAY TO A THIRD PARTY AS A RESULT OF A CLAIM.

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

(d) THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE SOLE AND EXCLUSIVE REMEDIES OF THE PARTIES WITH RESPECT TO THIS AGREEMENT OR ANY CLAIMS RELATING TO THIS AGREEMENT AND THE TRANSACTIONS PROVIDED FOR HEREIN OR

CONTEMPLATED HEREBY SHALL BE LIMITED TO THE PARTIES' RESPECTIVE RIGHT, TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, TO SEEK SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF WITH RESPECT TO THIS AGREEMENT OR ANY PROVISION HEREOF, THE TERMINATION RIGHTS SET FORTH IN SECTION 9.1, ARTICLE XIII AND SECTION 15.2, AND THE INDEMNIFICATION RIGHTS SET FORTH IN ARTICLE XVII OR ELSEWHERE IN THIS AGREEMENT, IN ALL CASES SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 19.9; 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 19.9(C), THIS SECTION 19.9 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 19.9, 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 19.9 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 19.9 (IT BEING UNDERSTOOD THAT THIS SUBSECTION (H) SHALL CONTROL AND HAVE PRIORITY OVER ANY OTHER

PROVISION OF THIS SECTION 19.9), THE LIMITATIONS ON LIABILITY AND EXCLUSIVE REMEDY PROVISIONS SET FORTH IN THIS SECTION 19.9 SHALL NOT APPLY TO ANY CLAIMS PAID OR PAYABLE WITH RESPECT TO (I) ANY FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFYING PARTY, (II) ANY INDEMNIFICATION OBLIGATIONS WITH RESPECT TO CLAIMS ARISING FROM ANY ENVIRONMENTAL MATTERS, OR (III) ANY FAILURE OF AN INDEMNIFYING PARTY TO SATISFY ITS REGULAR PAYMENT OBLIGATIONS UNDER ANY PROJECT DOCUMENT.

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

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

SECTION 19.10 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 19.11 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 19.12 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 19.13 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 19.14 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 10.3, 19.1 and 19.2, and each Generator Indemnified Party and each Producer Indemnified Party is intended to be a third party beneficiary of this Agreement as expressly provided in Article XVII hereof.

SECTION 19.15 Estoppel Certificate.

Within thirty (30) days after written request from either Party to do so, the non-requesting Party shall provide to the requesting Party a written statement acknowledging the commencement and termination dates of this Agreement, that it is in full force and effect (if true), and that it has not been modified (or if it has, stating such modification).

SECTION 19.16 Recordation.

Producer shall have the right, at Producer's cost and expense, to record this Agreement or a memorandum of this Agreement in the Office of the Recorder of Deeds for the County in which the Site is located. Upon termination of this Agreement for any reason, the Parties shall execute a document, in recordable form, confirming that this Agreement is null and void.

SECTION 19.17 No Brokers.

Each Party represents and warrants to the other Party that such Party has not engaged the services of, and is not liable to, any real estate agent, broker, finder or any other Person for any brokerage or finder's fee, commission or other amount with respect to this Agreement. Each Party agrees to indemnify, defend and hold the other Party harmless against any Claims, including reasonable attorneys' fees and related legal costs, suffered by the other Party due to a breach of the foregoing representation, covenant and warranty.

SECTION 19.18 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 19.19 Guaranty.

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

SECTION 19.20 No Publicity.

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

SECTION 19.21 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 19.22 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 License and Services Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

Generator:

Louisville Gas and Electric Company

By: David S. Sinclair
Name: David S. Sinclair
Title: VP Energy Supply & Analysis

APP-
Etl

Producer:

Mill Creek Clean Fuels, LLC

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

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

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

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

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

Generator:

Louisville Gas and Electric Company

By: _____

Name: _____

Title: _____

Producer:

Mill Creek Clean Fuels, LLC

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

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

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

By:  _____

Name: Ron Eller

Title: President and Chief Executive Officer

EXHIBIT A

SITE

See attached.

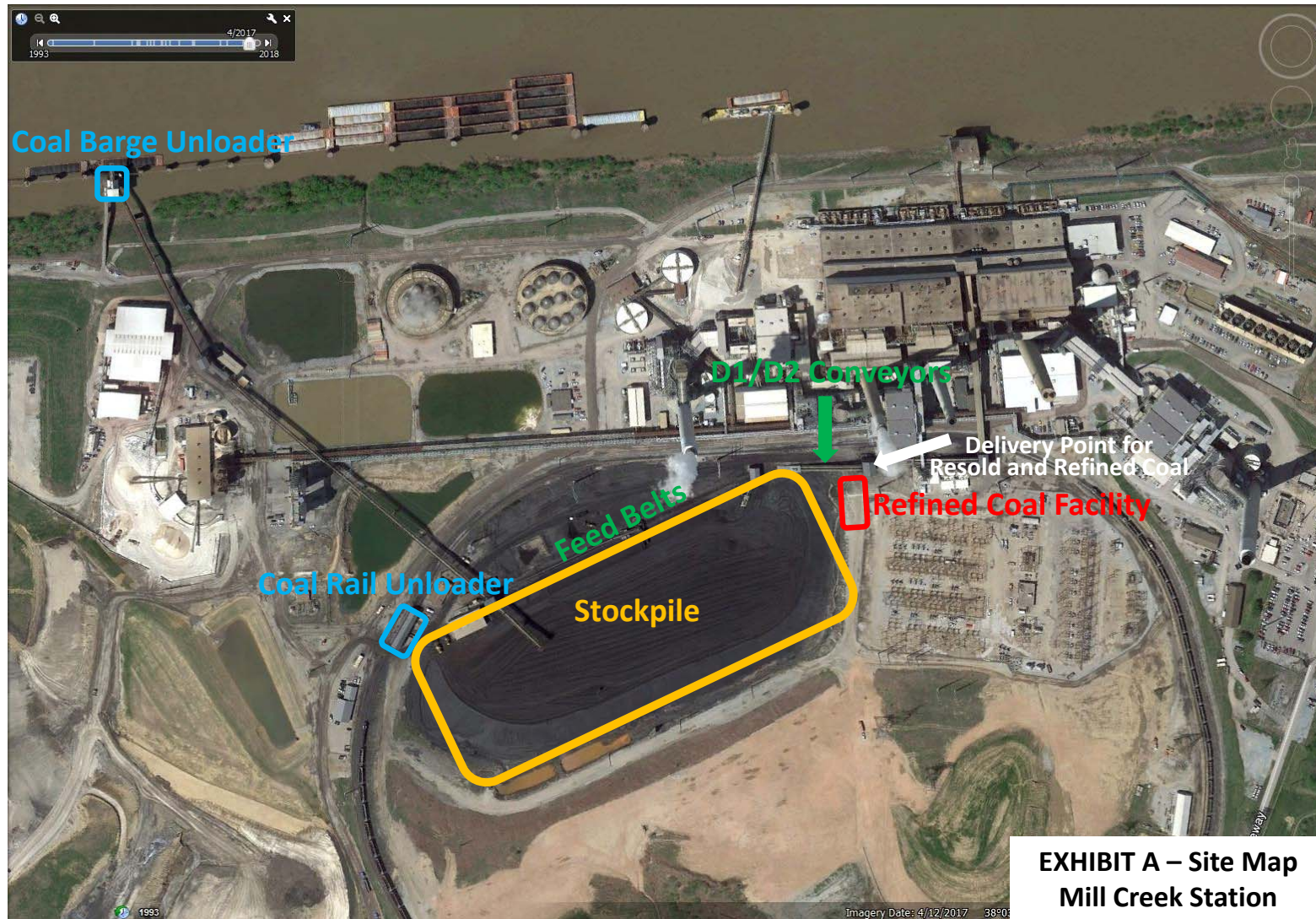
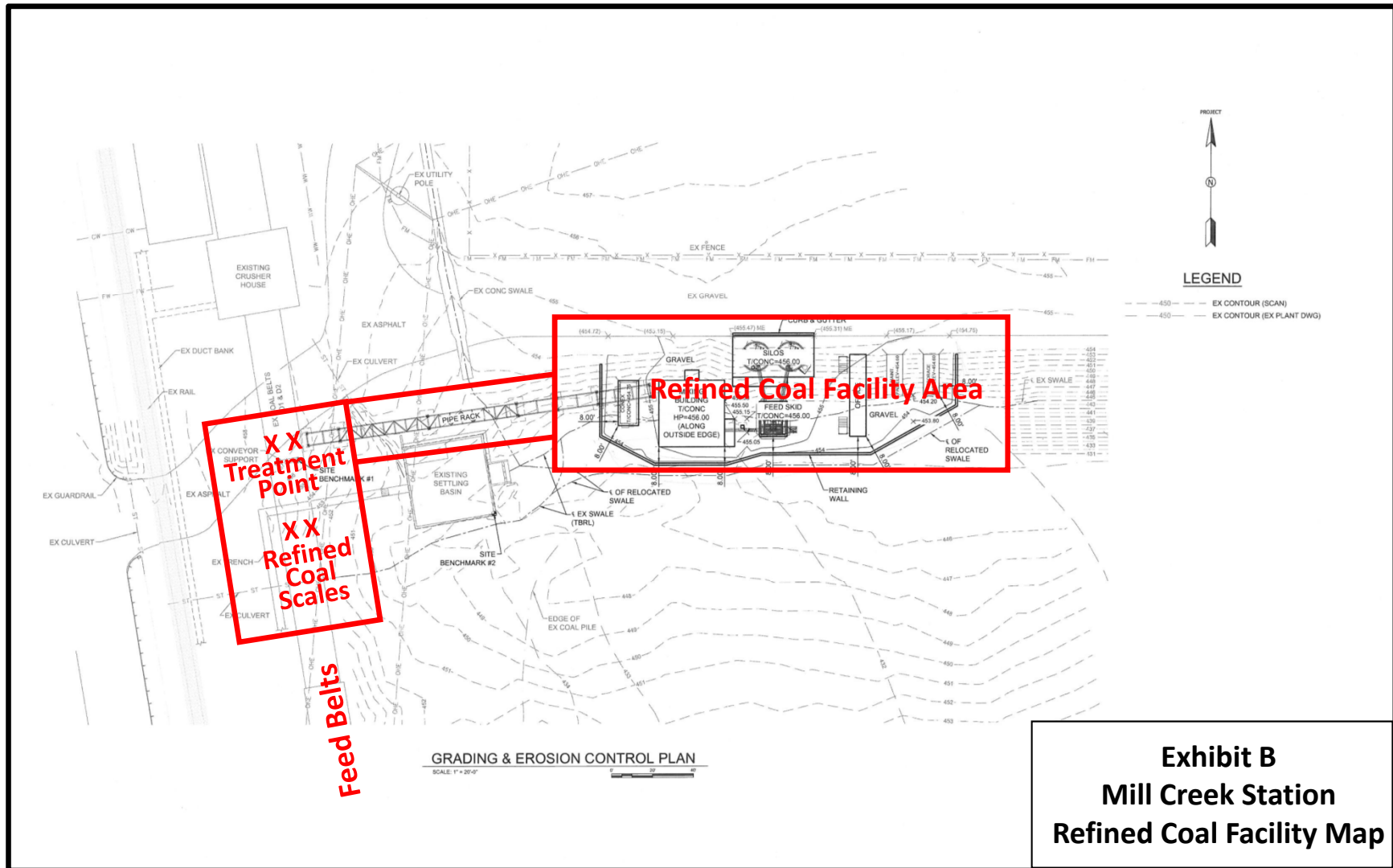


EXHIBIT B
FACILITY LAND

See attached.



SCHEDULE 1.1(a)

GENERATOR 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 8.1(b)

GOVERNMENTAL APPROVALS

- Kentucky Public Service Commission – Refined Coal Transaction Application/Approval Proceeding, Case No. 2015-00264
- Virginia State Corporation Commission – N/A
- Tennessee Public Utility Commission – N/A
- Federal Energy Regulatory Commission – Uniform Systems of Accounts Accounting Treatment Proceeding, Docket EL15-92-000
- Kentucky Department of Revenue – Refined Coal Transaction Concurrence Correspondence re. severance tax, clean coal tax credit and associated matters, July 2015-March 2017, et. seq.
- Louisville Metro Air Pollution Control District – Fuel Additive Facility Permit change requests/approval correspondence and/or administrative change/insignificant activity determination relating to Title V Permit # 145-97-TV, revisions (R3), (R4) and (R6), with respect to Emissions Unit #U21 – E47-g and construction activity or emissions points for fuel additive facility re. NOx/mercury emissions, including silos, make tank, mix tank, propane heater. August 2015-November 2018, et. seq.

SCHEDULE 14.1

INSURANCE

Producer's Insurance Obligations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Generator's Insurance Obligations

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

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

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

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

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

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

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

[End of Schedule 14.1]