
REFINED COAL SUPPLY AGREEMENT

by and among

TRIMBLE CLEAN FUELS, LLC,

KENTUCKY UTILITIES COMPANY

and

LOUISVILLE GAS AND ELECTRIC COMPANY

OCTOBER 24, 2018

TABLE OF CONTENTS

ARTICLE I DEFINITIONS; CONSTRUCTION	1
SECTION 1.1 Definitions	1
SECTION 1.2 Construction of Certain Terms and Phrases	9
ARTICLE II REPRESENTATIONS AND WARRANTIES	10
SECTION 2.1 Generator’s Representations	10
SECTION 2.2 Producer’s Representations	11
ARTICLE III TERM	12
SECTION 3.1 Term	12
ARTICLE IV AUTHORIZED REPRESENTATIVES	12
SECTION 4.1 Authorized Representatives	12
SECTION 4.2 Operator	12
SECTION 4.3 Agency	13
ARTICLE V PRODUCTION AND SALE OF REFINED COAL	13
SECTION 5.1 Annual Forecasts; Adjustments	13
SECTION 5.2 Production and Sale	14
SECTION 5.3 Suspension	15
SECTION 5.4 Sales to Third Parties	16
SECTION 5.5 Purchase by Generator at Termination	19
SECTION 5.6 Insurance	19
SECTION 5.7 Chemical Additive Records	19
SECTION 5.8 Generator Reporting	19
ARTICLE VI PURCHASE AND SALE OF PRODUCER COAL	20
SECTION 6.1 Purchase by Generator during Term	20
SECTION 6.2 Purchase by Generator at Termination	20
ARTICLE VII PRICE; BILLING AND PAYMENT	21
SECTION 7.1 Refined Coal Price	21
SECTION 7.2 Resold Coal Price	21
SECTION 7.3 Third Party Impositions	21
SECTION 7.4 Withholding	21
SECTION 7.5 Invoicing and Payment	21
SECTION 7.6 Books and Records; Audit Rights	23
SECTION 7.7 Taxes	23
SECTION 7.8 Terms and Conditions of Sale	24
ARTICLE VIII DELIVERIES; WEIGHTS; TITLE AND RISK OF LOSS	25
SECTION 8.1 Deliveries	25
SECTION 8.2 Weights	25
SECTION 8.3 Title and Risk of Loss	26

ARTICLE IX REFINED COAL AND RESOLD COAL SPECIFICATIONS	26
SECTION 9.1 Coal Specifications	26
SECTION 9.2 Refined Coal Specifications and Use	27
SECTION 9.3 Testing and Suspension	27
SECTION 9.4 Presumption Regarding Resold Coal and Refined Coal	28
SECTION 9.5 Warranty Disclaimer	28
ARTICLE X FORCE MAJEURE	29
SECTION 10.1 Force Majeure.....	29
ARTICLE XI INSURANCE.....	29
SECTION 11.1 Insurance.	29
ARTICLE XII EVENTS OF DEFAULT	30
SECTION 12.1 Event of Default.	30
SECTION 12.2 Remedies.	30
ARTICLE XIII SUSPENSION; EARLY TERMINATION	31
SECTION 13.1 Suspension; Early Termination	31
SECTION 13.2 Post-Expiration and Post-Termination Obligations; Survival.....	32
SECTION 13.3 Sale of Coal During Suspension.....	33
ARTICLE XIV INDEMNIFICATION.....	33
SECTION 14.1 Generator’s Indemnification.....	33
SECTION 14.2 Producer’s Indemnification	34
SECTION 14.3 Indemnification Procedures.....	35
SECTION 14.4 No Imputed Liability	36
SECTION 14.5 Environmental Matters	37
SECTION 14.6 Offset.....	37
SECTION 14.7 Mitigation.	37
ARTICLE XV DISPUTE RESOLUTION	38
SECTION 15.1 Dispute Resolution	38
ARTICLE XVI MISCELLANEOUS	38
SECTION 16.1 Confidentiality.....	38
SECTION 16.2 Required Disclosure	39
SECTION 16.3 Compliance with Laws and Governmental Approvals.....	39
SECTION 16.4 Entire Agreement; Integration; Successors and Assigns.....	40
SECTION 16.5 Notices.....	40
SECTION 16.6 Assignment.....	41
SECTION 16.7 Waiver; Invalidity.....	41
SECTION 16.8 Limitations of Liability; Remedies.....	42
SECTION 16.9 Headings.....	44
SECTION 16.10 Counterparts	44
SECTION 16.11 Applicable Law	44
SECTION 16.12 Amendment	45

SECTION 16.13	No Third Party Beneficiary	45
SECTION 16.14	Further Assurances.	45
SECTION 16.15	Forward Contract.	45
SECTION 16.16	No Partnership.	45
SECTION 16.17	Several Liability of Generator	45
SECTION 16.18	Guaranty.	46
SECTION 16.19	No Publicity.	46
SECTION 16.20	Payment Method.	46
SECTION 16.21	Equitable Remedies.	46

Exhibits

Exhibit A	Site
Exhibit B	Facility

Schedules

Schedule 1	Ownership Interests in Power Plant and Site
Schedule 1.1(a)	Generator Knowledge
Schedule 1.1(b)	Producer Knowledge
Schedule 1.1(c)	Refined Coal Price and Resold Coal Price
Schedule 9.1(a)	Coal Specifications
Schedule 9.2(a)	Refined Coal Specifications
Schedule 11.1	Insurance

REFINED COAL SUPPLY AGREEMENT

THIS REFINED COAL SUPPLY AGREEMENT (this “Agreement”) is made and entered into as of October 24, 2018 (the “Effective Date”), by and among Trimble Clean Fuels, LLC, a Colorado limited liability company (“Producer”), Kentucky Utilities Company, a Kentucky corporation (“KUC”), and Louisville Gas and Electric Company, a Kentucky corporation (“LG&E,” and together with KUC, “Generator”). Producer and Generator are also each referred to herein as a “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, Generator operates a two-unit coal-fired, steam-power, electric-generating plant and associated equipment, facilities and improvements known as the Trimble County Generating Station (the “Power Plant”) on certain property located near Bedford, Kentucky (more particularly described on Exhibit A, the “Site”). The Power Plant and the Site are co-owned by LG&E, KUC, Illinois Municipal Electric Agency (“IMEA”) and Indiana Municipal Power Agency (“IMPA”) as set forth in Schedule 1;

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

WHEREAS, Generator desires to purchase Refined Coal output from the Facility as provided herein; and

WHEREAS, the Parties also contemplate that Generator might from time to time buy Resold Coal from Producer pursuant to 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:

“Adverse Tax Event” means, subject to the proviso below, any one of the following occurring after the Effective Date:

(a) any repeal of the Code or any amendment or partial or complete repeal of Section 45 of the Code;

(b) a statement by the chairperson of the House Ways and Means Committee or Senate Finance Committee, Speaker of the House, House Majority Leader, Senate Majority

Leader or President of the United States of America (including senior staff of the executive office of the President speaking for the President) proposing to deny, reduce or repeal Section 45 Tax Credits for refined coal;

(c) the passage by the House Ways and Means Committee, the Senate Finance Committee, the House of Representatives or the Senate of a bill that, if enacted, would deny, reduce or repeal Section 45 Tax Credits for refined coal;

(d) the revelation in connection with any request for a private letter ruling, determination letter or pre-filing agreement that the IRS does not believe (i) the Refined Coal qualifies for Section 45 Tax Credits, or (ii) Producer is entitled to such Section 45 Tax Credits;

(e) the revocation of any private letter ruling previously received by Producer, provided that the revocation is no longer eligible for appeal, review or modification through administrative proceedings or otherwise;

(f) the Refined Coal fails to continue to qualify as “refined coal” pursuant to Section 45 of the Code or the IRS Guidance as then in effect;

(g) the announcement by the Treasury Department or IRS during any year that there will be a phase-out of Section 45 Tax Credits pursuant to Section 45(e)(8)(B) of the Code for such year;

(h) the adoption of a, or the issuance of any proposed, Federal Tax Rule the effect of which is (or, upon adoption, would be) the disallowance of Section 45 Tax Credits (or the carryback or carryforward rules in respect thereof);

(i) the issuance by the IRS of any (i) Notice of Proposed Adjustment (Form 5701), (ii) 30- or 60-day letter containing an examination report, or (iii) other written document, in the case of (i), (ii) or (iii) that reduces or proposes the reduction of the Section 45 Tax Credits on the Refined Coal allocated to any member of Producer receiving such document;

(j) the beginning of the first taxable period in which the maximum rate of federal income tax payable by corporations is reduced; or

(k) any combination of the foregoing;

(l) provided that the effect of the events described in (g), (h), (i), (j) or (k) reduces or proposes the reduction of the value of the Section 45 Tax Credits allocated to any member of the Producer (as to the events described in (g), (h), (j) or (k)) or any member of the Producer receiving such document (as to the events described in (i)) by more than 20 percent, where the value of the Section 45 Tax Credits is the maximum rate of federal income tax payable by corporations multiplied by the Section 45 Tax Credits allocated to such member of the Producer and the reference value for calculation of such 20 percent is determined based on the maximum rate of federal income tax payable by corporations on the Effective Date. As an example and not in limitation of the foregoing, if the maximum rate of federal income tax payable by corporations is reduced from 21 percent (as of the Effective Date) to 19 percent and a Notice of Proposed Adjustment (Form 5701) proposes to reduce the Section 45 Tax Credits on the Refined Coal

allocated to the receiving member of the Producer by 11.25 percent, an Adverse Tax Event will have occurred because the combination of the event described in (j) and (i) has resulted in a reduction of the value of the Section 45 Tax Credits on the Refined Coal by more than 20 percent.

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

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

“Annual Volume” means the number of tons of Refined Coal purchased by Generator from Producer during any 12-month rolling period.

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

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

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

“Chemical Additive” means the following chemical additives to be applied by Producer to Feedstock that is Conforming Coal in connection with the production of Refined Coal: (i) [REDACTED] and (ii) [REDACTED]

“Chemical Additive Records” means the detailed hourly records of the quantity of [REDACTED] measured in pounds, and [REDACTED] measured in milliliters per minute, used to produce Refined Coal at the Facility, in each case based upon the feed rate of Generator’s conveyor belts F1 and F2 (as shown on Exhibit B).

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

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

“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.

“Coal Specifications” means the coal type and other specifications set forth on the attached Schedule 9.1(a).

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

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder and guidance issued in conjunction therewith.

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

“Conforming Coal” means Producer Coal that satisfies the Coal Specifications in effect at the time purchased by Producer and shall include Producer Coal presumed to be Conforming Coal pursuant to Section 9.4.

“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).

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

“Defaulting Party” has the meaning given to such term in Section 12.2(a).

“Delivery Point” means (a) the Delivery Point for Refined Coal, (b) the Delivery Point for Resold Coal, (c) the Delivery Point set forth in Section 5.5, and/or (d) the Delivery Point set forth in Section 6.2, as applicable.

“Delivery Point for Refined Coal” means the end of Generator’s conveyor belts F1 and F2, immediately before the Refined Coal enters the bunkers of the Power Plant, shown as “Delivery Point for Refined Coal” on Exhibit A.

“Delivery Point for Resold Coal” means the end of Generator’s conveyor belts F1 and F2, immediately before the Resold Coal enters the bunkers of the Power Plant, shown as “Delivery Point for Resold Coal” on Exhibit 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 12.1.

“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.

“Federal Tax Rule” means any regulation, rule, order, decree, ruling, proclamation, resolution, judgment, decision, declaration, or interpretative or advisory opinion or letter by any Governmental Body with respect to federal tax matters, including (a) regulations of the United States Treasury Department, (b) IRS and United States Treasury Department materials such as Revenue Rulings, Revenue Procedures, Treasury Decisions, Technical Memoranda, Technical Advice Memoranda, determination letters, Chief Counsel’s Advice, Field Service Advice, General Counsel Memoranda, Office Memoranda, Technical Information Releases, Delegation Orders, Executive Orders, Treasury Department Orders, Notices, Announcements and News Releases, and (c) judgments and decisions of any federal court in connection with its exercise of original, trial or appellate jurisdiction over any case involving federal tax matters.

“Feedstock” means Producer Coal utilized as feedstock by the Facility for the production of Refined Coal.

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

“Generator Ancillary Rights” means the rights of IMEA and IMPA associated with the Power Plant, pursuant to their respective ownership interests in the Power Plant and the Site, their respective licenses and associated rights with respect to the Site and any improvements thereon, and their respective easements and associated rights with respect to the Site and any improvements thereon.

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

“Generator Coal Contract” has the meaning given to such term in Section 5.4(a)(iii).

“Generator Indemnified Parties” has the meaning given to such term in Section 14.2.

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

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

“Guarantor” has the meaning given to such term in the Coal Feedstock Purchase Agreement.

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

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

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

“Indemnifying Party” means LG&E, KUC or Producer, as applicable under Article XIV.

“Indemnity Acceptance Date” has the meaning given to such term in Section 14.3(a).

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

“IRS” means the Internal Revenue Service or any successor agency.

“IRS Guidance” means IRS Notice 2010-54, or any replacement or successor thereto, and any supplemental notice thereof.

“Knowledge” means, as to each of KUC and LG&E, 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 16.2(b).

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

“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 Producer may, from time to time, specify to Generator 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.

“LG&E” has the meaning given to such term in the introductory paragraph.

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

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

_____ means a combination of solid or liquid urea, ammonia or amine-based material with other inert chemicals used in the production of Refined Coal.

_____ means a liquid halogen solution that enhances removal of mercury and is used in the production of Refined Coal.

“Non-Defaulting Party” has the meaning given to such term in Section 12.2(a).

“Notices” has the meaning given to such term in Section 16.5.

“Operational Problems” means, with respect to the Power Plant, problems demonstrated to be attributable to the handling or burning of Refined Coal which would not have occurred had the Power Plant burned Resold Coal purchased from Producer pursuant to this Agreement, instead of Refined Coal, as determined by an engineer acting in good faith.

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

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

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

“Power Plant” has the meaning given to such term in the Recitals. The Power Plant does not include the gas-fired electric generating units and associated equipment, facilities and improvements on the Site.

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

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

“Producer Coal” means coal purchased by Producer and used as Feedstock or Resold Coal hereunder, including coal purchased by Producer pursuant to the Coal Feedstock Purchase Agreement or the Pre-Closing Coal Inventory Purchase Agreement, in all cases located in the Coal Yard and on all interconnecting conveyors prior to crossing the Delivery Point for Refined Coal or the Delivery Point for Resold Coal, as applicable.

“Producer Indemnified Parties” has the meaning given to such term in Section 14.1.

“Project Documents” means: (a) this Agreement, (b) the Coal Handling and Consulting Agreement, (c) the Coal Feedstock Purchase Agreement, (d) the Pre-Closing Coal Inventory Purchase Agreement, (e) the License Agreement, (f) the Environmental Indemnity Agreement, (g) the Security Agreement of even date herewith among Producer, LG&E and KUC, 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.

“Prudent Operating and Maintenance Standards” means those standards, methods and acts which, when engaged in, constitute lawful, safe, reliable, expeditious, efficient, prudent, commonly used and commercially reasonable practices with respect to the maintenance and operation of the applicable or similar power plants, production facilities and associated mechanical and handling facilities and equipment. Prudent Operating and Maintenance Standards are not limited to, and do not require, the optimum standard, practice, method or act.

“Reduction Event” has the meaning given to such term in Section 5.2(b).

“Refined Coal” means the coal-based solid fuel product that is eligible for Section 45 Tax Credits and produced by Producer at the Facility from Conforming Coal.

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

“Refined Coal Scales” means the belt scales that are owned by Generator and located next to the Facility at the beginning of conveyor belts F1 and F2, as shown on Exhibit B.

“Refined Coal Specifications” means the coal type and other specifications set forth on the attached Schedule 9.2(a).

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

“Resold Coal” means Producer Coal that satisfies the Coal Specifications.

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

“Section 45 Tax Credits” means the credits against federal income tax available under Section 45 of the Code.

“Site” has the meaning given to such term in the Recitals, provided that, for purposes of the representations and warranties in Section 2.1 and associated indemnification provisions in this Agreement, the Site also includes the gas-fired electric generating units and associated equipment, facilities and improvements on the Site. The description of the Site may not be modified without the prior written consent of each Party.

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

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

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

“Third Party Coal” has the meaning given to such term in Section 5.4(a).

“Third Party Impositions” has the meaning given to such term in Section 7.3.

“Ton” means 2,000 pounds avoirdupois weight.

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

“Weighing Standards” has the meaning given to such term in Section 8.2(d).

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.

Each of KUC and LG&E, severally, but not jointly, represents and warrants to Producer as of the Effective Date as follows:

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

(b) subject to the Generator Ancillary Rights (which it represents and warrants do not have an adverse effect on its ability to enter into and perform all of its obligations under this Agreement), this Agreement constitutes its legal, valid and binding obligation, enforceable against it 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 it in connection with its execution and delivery of, and performance under, this Agreement, including its purchase, transportation, handling and use of Refined Coal and Resold Coal as fuel at the Power Plant, 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) it 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 it 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 its Knowledge, threatened action, suit, investigation, arbitration or other proceeding that would reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement.

SECTION 2.2 Producer's Representations.

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

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

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

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

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

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

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

(g) Producer owns good, valid and marketable title to the Refined Coal and Resold Coal purchased by Generator hereunder, free and clear of all Liens, except for any Liens in favor

of Third Party suppliers of such Coal and the Lien contemplated by the Project Documents to be granted by Producer to Generator, and, on each purchase date of any such Refined Coal or Resold Coal, good, valid and marketable title to such Coal, free and clear of all Liens, except for any Liens in favor of Third Party suppliers of such Coal and the Lien contemplated by the Project Documents to be granted by Producer to Generator, shall pass to Generator.

ARTICLE III

TERM

SECTION 3.1 Term.

The term of this Agreement will commence on the Effective Date and, unless terminated earlier pursuant to the provisions of Section 12.2 or 13.1, or any other provision of this Agreement, will end on December 31, 2021 (the “Initial Term”). Within the ninety (90) day period prior to the end of the Initial Term and any subsequent Renewal Term, as defined below, either Party may notify the other Party that it desires to discuss the renewal of this Agreement, including the review and potential renegotiation of any pricing or other provisions in each of the Project Documents and the appropriate renewal term. If the Parties agree on the pricing and other provisions and the renewal term, the Project Documents shall be amended for any change in pricing and any other provisions and this Agreement shall be extended for the agreed upon term (each, a “Renewal Term”). The Initial Term and any Renewal Terms shall be the “Term.”

ARTICLE IV

AUTHORIZED REPRESENTATIVES

SECTION 4.1 Authorized Representatives.

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

SECTION 4.2 Operator.

Generator acknowledges that Producer has retained Operator to operate and maintain the Facility on behalf of Producer on a day-to-day basis, subject to Producer’s oversight. Generator acknowledges that Operator shall be permitted to act on behalf of Producer under this Agreement in connection with the performance of certain of Producer’s obligations hereunder, subject to the

terms and conditions of this Agreement, the License Agreement and Producer's separate contractual arrangements with Operator. Producer shall, and shall cause its Operator, other contractors, employees and agents to, comply in all material respects with the Generator Procedures (as defined in the License Agreement) and the relevant provisions of the Project Documents. Producer shall be responsible for the acts or omissions of Operator (and its subcontractors) and Producer's other contractors, employees and agents. In the absence of any written Notice to the contrary given by Producer to Generator, (a) Generator shall be entitled to rely on any deliverable or communication given to it by Operator as if it were a deliverable or communication given by Producer, and (b) Producer shall be deemed to have received any deliverable or communication given by Generator to Operator; provided, however, that the foregoing shall not apply to Notices, which must be delivered as set forth in Section 16.5.

SECTION 4.3 Agency.

Each of KUC and LG&E is hereby appointed as agent for the other, and shall be entitled to act for the other, in each case for all purposes under this Agreement, with full power and authority (but not any obligation) to perform any obligation of the other under this Agreement or any other Project Document. Any such performance will be deemed to be the performance of the principal and not the agent. Consistent with the foregoing, for all communications with Generator hereunder, including providing Notices under Section 16.5, Producer may communicate either with KUC or LG&E as agent for the other, and any communications from either KUC or LG&E to Producer, including any Notices under Section 16.5, shall be deemed given on behalf of either or both unless otherwise indicated. Producer may make all payments that are to be made to Generator hereunder to either KUC or LG&E, and Producer shall have no obligation to apportion any such payment between KUC and LG&E or among Generator and any other Third Parties. Any payment that is to be made to Generator that is timely made by Producer to either KUC or LG&E as set forth above shall be deemed timely made to Generator.

ARTICLE V

PRODUCTION AND SALE OF REFINED COAL

SECTION 5.1 Annual Forecasts; Adjustments.

For each Contract Year during the Term, Generator shall provide Producer with a good faith, non-binding projection (each, a "Generator Annual Forecast") of the aggregate quantity of Refined Coal and Resold Coal it expects to require for the Power Plant during each month of such Contract Year pursuant to the terms of this Agreement. The Generator Annual Forecast for the initial Contract Year shall be provided no later than the thirtieth (30th) day following the Commercial Operations Date. Each succeeding Generator Annual Forecast shall be delivered no later than November 10 preceding the start of such Contract Year. Generator shall update such forecast from time to time to reflect any material change in Generator's projections. Generator shall provide any such update to Producer as soon as reasonably practicable. The Generator Annual Forecast is to be used solely for scheduling purposes, and neither the Generator Annual Forecast nor any modification thereto shall in any way limit or expand Producer's obligation to produce or Generator's obligation to purchase Refined Coal as required by Section 5.2. For

purposes of this Section 5.1, Generator's forecasts may be derived from other reports that Generator may generate internally or for Third Parties.

SECTION 5.2 Production and Sale.

(a) Subject to the terms and conditions set forth in this Agreement, Generator shall procure and purchase from Producer, and Producer shall sell and deliver to Generator, all of Generator's requirements for Refined Coal for the Power Plant, free and clear of all Liens, except for any Liens in favor of Third Party suppliers of Feedstock and the Lien contemplated by the Coal Feedstock Purchase Agreement to be granted by Producer to Generator; provided, however, that Producer acknowledges that Generator's requirements for Refined Coal or Resold Coal for the Power Plant may be reduced as Generator determines is necessary due to, among other things, (i) one or more Reduction Events, (ii) the failure of Producer to produce, sell or deliver Refined Coal or Resold Coal, (iii) an Event of Force Majeure, (iv) reduction in demand for electricity, (v) dispatch by Generator's dispatcher based on economic and reliability considerations, (vi) a scheduled outage of the Power Plant for which Generator has provided not less than ten (10) days' prior written notice thereof to Producer, (vii) a forced or unscheduled outage of the Power Plant for which Generator provides written notice to Producer or (viii) an inspection, repair, replacement, test or analysis of any components of the Power Plant or a test or analysis of the fuel or fuel mix used by the Power Plant. During each Contract Year, except as otherwise provided in Sections 5.2(b), 5.2(e), 5.3, 9.2(b), 9.3 and 10.1 or other provisions of this Agreement, and assuming the timely performance of Generator under the Coal Feedstock Purchase Agreement and the License Agreement and of the Coal Consultant under the Coal Handling and Consulting Agreement, (y) Producer shall use commercially reasonable efforts, consistent with Prudent Operating and Maintenance Standards, to maximize production of, and shall provide for sale to Generator, Refined Coal up to the requirements for coal-based fuel for the Power Plant, and (z) Generator shall use its commercially reasonable efforts, consistent with Prudent Operating and Maintenance Standards, to maximize the amount of such Refined Coal used at the Power Plant.

(b) Generator's obligation to purchase Refined Coal pursuant to this Section 5.2 shall be reduced or suspended in the event that Generator determines, in its sole discretion, that (i) Refined Coal causes Operational Problems; (ii) continued burning of Refined Coal may cause Generator to be in violation of any applicable Law or Governmental Approval; (iii) it is necessary to reduce or suspend the delivery or burning of Refined Coal in order to respond to, end or prevent any event or circumstance creating a threat to the safety or security of Persons or property; or (iv) it is necessary during required scale calibration (any of the foregoing circumstances described in clauses (i), (ii), (iii) and (iv) being referred to as a "Reduction Event"). Generator shall notify Producer promptly when Generator determines that a Reduction Event has occurred, which notice may be given orally or by any other appropriate means, provided that any oral notice shall be followed by written notice as soon as reasonably practicable (but only if written notice is necessary under the circumstances). The Reduction Event will terminate when the circumstances giving rise to the Reduction Event are resolved or mitigated as agreed by Generator and Producer. The reduction or suspension, as applicable, of Generator's purchase of Refined Coal due to a Reduction Event shall be of no greater scope and no longer duration than that which Generator reasonably determines is necessary by reason of the Reduction Event. In the event Generator notifies Producer that a Reduction Event has occurred

and is continuing, Producer shall immediately suspend or reduce deliveries of Refined Coal to Generator. Immediately upon receipt of notice of a Reduction Event (and during the continuance thereof), Producer will only sell Resold Coal to Generator, unless Generator notifies Producer that it wishes to receive a specified amount of Refined Coal.

(c) During any Reduction Event, as soon as it is reasonably available, Generator will provide Producer with all available information reasonably requested by Producer regarding the cause of the Reduction Event and other operating data and other information relating to the use of Refined Coal, and Generator and Producer will cooperate, discuss and negotiate in good faith and use commercially reasonable efforts to develop and agree upon remedial actions they believe will avoid, limit or cure the circumstances leading to the Reduction Event and otherwise to improve, optimize and maximize the use of Refined Coal as a fuel at the Power Plant on a going-forward basis. Notwithstanding the foregoing, neither Party shall be required hereunder to agree to any remedial action that would require it to incur additional costs or expenditures. In addition, Producer need not agree to any remedial action (and may terminate any remedial action agreed to) that Producer believes, in its sole discretion, could impair or jeopardize the ability of the Refined Coal to qualify for Section 45 Tax Credits.

(d) Subject to resolution of any Reduction Event as may be in effect and consistent with the provisions of Section 5.2(a), Generator and Producer will cooperate and work together in good faith, using commercially reasonable efforts, to optimize and maximize as soon as reasonably practicable the use of Refined Coal as a fuel at the Power Plant.

(e) The Parties acknowledge and agree that from time to time, Generator will have to take conveyors out of service for repair and maintenance, and that during such time, such conveyors will be unavailable to convey Resold Coal, Feedstock or Refined Coal. Accordingly, during such period of unavailability, each Party's obligations regarding Refined Coal and Resold Coal under Section 5.2(a) will be suspended.

SECTION 5.3 Suspension.

Producer shall have the right to suspend immediately all deliveries of Refined Coal by giving notice of the suspension to Generator in the event it is necessary to respond to, end or prevent any event or circumstance creating a threat to the safety or security of Persons or property, and such notice may be given orally or by any other appropriate means, provided that any oral notice shall be followed by written notice as soon as reasonably practicable (but only if written notice is necessary under the circumstances). Such suspension shall remain in effect until such time as Producer provides written notice to Generator that deliveries of Refined Coal shall resume. Any such suspension by Producer shall not affect its ongoing obligation to deliver Resold Coal to Generator hereunder. During any such suspension, as soon as it is reasonably available, Producer will provide Generator with all available information reasonably requested by Generator regarding the cause of such suspension and other operating data and other information relating to the use of Refined Coal, and Generator and Producer will cooperate, discuss and negotiate in good faith and use commercially reasonable efforts to develop and agree upon remedial actions they believe will avoid, limit or cure the circumstances leading to such suspension and otherwise to improve, optimize and maximize the use of Refined Coal as a fuel at the Power Plant on a going-forward basis. Notwithstanding the foregoing, neither Party shall be

required hereunder to agree to any remedial action that would require it to incur additional costs or expenditures. In addition, Producer need not agree to any remedial action (and may terminate any remedial action agreed to) that Producer believes, in its sole discretion, could impair or jeopardize the ability of the Refined Coal to qualify for Section 45 Tax Credits.

SECTION 5.4 Sales to Third Parties.

(a) In the event Producer desires at any time to make purchases of Conforming Coal from one or more Persons other than Generator (“Third Party Coal”) for the production of Refined Coal from such Third Party Coal using the Facility, Producer shall first notify Generator in writing of that desire, including a statement of the total number of Tons of Third Party Coal proposed to be so purchased by Producer and the date(s) of the proposed delivery or deliveries of that Coal to the Coal Yard. Upon receiving that notice Generator shall, within five (5) Business Days thereafter, notify Producer in writing of whether or not Generator will supply such amount of Conforming Coal in accordance with the proposed delivery schedule and, if Generator does notify Producer that Generator will supply such amount of Conforming Coal, such Conforming Coal will be sold and delivered to Producer by Generator pursuant to the terms and conditions of the Coal Feedstock Purchase Agreement. If Generator does not notify Producer, within such five (5) Business Day period that it will supply such amount of Conforming Coal, then Generator shall, within ten (10) Business Days of its receipt of such notice from Producer, notify Producer of whether or not Generator approves of such purchase(s) and delivery or deliveries of that Third Party Coal to the Coal Yard, which approval will not be unreasonably withheld, conditioned or delayed by Generator (but which approval (y) may be withheld, among other reasons, due to Producer’s breach or suspension of any of its purchase or sale obligations under any of the Project Documents or for any of the reasons set forth in Section 5.4(a)(iii) or Section 5.4(d), and (z) shall not be deemed a consent from Generator to purchase Refined Coal produced from that Third Party Coal as contemplated in Section 5.4(a)(iv)). If that approval is granted by Generator as contemplated above, Producer may thereafter purchase those quantities of Third Party Coal for delivery to the Coal Yard and:

(i) produce Refined Coal from that Third-Party Coal for sale and delivery to Generator pursuant to Section 5.4(b) if consented to by Generator as contemplated in Section 5.4(a)(iv); and

(ii) produce Refined Coal from that Third-Party Coal and sell and deliver that Refined Coal to customers other than Generator pursuant to Section 5.4(b) (provided that such production and sales of Refined Coal by Producer to customers other than Generator shall be made only after the needs from time-to-time for Refined Coal by the Plant (as reasonably determined by Generator) have been satisfied).

(iii) By way of example but not of limitation, Generator may withhold its approval of Producer’s delivery and use of Third Party Coal in the Facility to the extent that use would, in Generator’s good faith judgment, interfere with Producer’s production and sale to Generator of Refined Coal in accordance with this Agreement or violate any Governmental Approval or any Generator Coal Contract (as defined below). All Third Party Coal purchases permitted pursuant to this Section 5.4(a) (A) shall be delivered to the Coal Yard (or another physical location in or near the Power Plant agreed to by the Parties), and (B) must be purchased

and transported by Producer (1) without material interruption or disruption of the operation of the Power Plant or the transportation, handling, storage, unloading or movement of Coal in the Coal Yard, (2) in conjunction with, and in compliance with all restrictions and conditions of, any Generator coal purchase, coal handling or coal transportation agreements (“Generator Coal Contracts”) or any labor agreements to which Generator is a party, and (3) without the need for Generator to modify or enhance its fuel handling equipment or capabilities, as reasonably determined by Generator in good faith. Generator makes no representations or warranties that Generator’s fuel handling equipment or facilities located at the Power Plant are or will be suitable or sufficient for the handling or movement of Third Party Coal purchased by Producer, or for the handling or movement of any Refined Coal for sale to Third Parties as contemplated in Section 5.4(b), each as may be contemplated by Producer. Any Third Party Coal purchased by Producer for sale to Generator and use in the Power Plant (which is subject to Generator’s approval as contemplated elsewhere in this Agreement) shall satisfy the Coal Specifications. Generator shall be provided promptly with copies of all invoices, bills of lading, or similar documents from Third Parties in respect of the quantity and purchase price for Third Party Coal sold by the Third Party to Producer. Producer shall at all times have ownership, physical possession and control of, and shall bear all risk of loss with respect to, any Third Party Coal located at the Plant, unless (and then only once) that Third Party Coal is sold and delivered to Generator as contemplated elsewhere in this Agreement.

(iv) Generator will not be obligated to purchase or accept delivery from Producer of any Third Party Coal (or Refined Coal produced therefrom), and Producer shall not attempt to sell or deliver such Third Party Coal (or Refined Coal produced therefrom) to Generator without first identifying that Third Party Coal (or Refined Coal produced therefrom) for Generator in writing and obtaining prior written consent from Generator to that purchase and sale in Generator’s sole discretion.

(b) Any Refined Coal produced at the Facility and not purchased by Generator, for any reason, may be sold by Producer to Third Parties or otherwise disposed of, but only if done in compliance with applicable Law, this Agreement and the Coal Feedstock Purchase Agreement. Subject to Generator’s purchase option provided for below, if for any given calendar month (i) Generator fails, or gives notice to Producer that it shall fail, to purchase and take delivery of all or some portion of the Refined Coal (other than Refined Coal produced from Third Party Coal) produced by the Facility, or (ii) Producer produces from Third Party Coal any Refined Coal using the Facility from time to time and Generator does not consent to purchase and take delivery of such Refined Coal in its sole discretion pursuant to the terms of this Agreement (the Refined Coal that Generator does not purchase and take delivery of described in the immediately preceding clauses (i) and (ii) is hereinafter referred to as “Excess Coal”), then subject to the notice requirement and purchase option of Generator set forth below, Producer, acting in a commercially reasonable manner, may sell such Excess Coal (in the case of Refined Coal described in clause (i) above, limited to the quantity that Generator fails to purchase and take delivery of) to a Person other than Generator; provided that (A) such sale does not unreasonably interfere with Generator’s operation of the Power Plant or use of its fuel handling facilities, (B) such sale does not interfere with or breach any of the Generator Coal Contracts or any labor agreements to which Generator is a party, and (C) such sale does not require Generator to modify or enhance its fuel handling equipment or capabilities, each as reasonably determined by Generator in good faith. In furtherance of the foregoing, Producer shall provide Generator ten

(10) days' advance written notice of its intention to make a sale of some or all of such Excess Coal to a Person other than Generator, which notice shall include the quantity, price and delivery schedule of such Excess Coal proposed to be sold and such other information as Generator may reasonably request (such notice, a "Third Party Sales Notice"), and Generator shall have the option to purchase and take from Producer at the Refined Coal Price all or any portion of such Excess Coal covered by the Third Party Sales Notice. In the event Generator chooses to exercise such option, Generator shall notify Producer in writing of Generator's agreement to purchase and take the amount of Excess Coal covered by the Third Party Sales Notice as Generator indicates in its written notice within thirty (30) days after its receipt of the Third Party Sales Notice (the "TP Sales Option Exercise Period"). After the last day of the TP Sales Option Exercise Period (but only if done in compliance with applicable Law, this Agreement and the Coal Feedstock Purchase Agreement), Producer may sell only to the Third Party specified in the Third Party Sales Notice, on terms no more favorable to such Third Party than those contained in the Third Party Sales Notice, the quantity of Excess Coal covered by the Third Party Sales Notice with respect to which Generator failed to exercise such option; provided, that if that sale is not consummated by Producer within sixty (60) days following the expiration of the TP Sales Option Exercise Period, Producer may not thereafter consummate that sale without once again offering that Excess Coal to Generator in accordance with this Section 5.4. Any purchase option exercised by Generator prior to the expiration or termination of this Agreement shall survive that expiration or termination, and Generator's corresponding right to purchase will thereafter be honored by Producer.

(c) Producer may sell Producer Coal purchased from Generator to a Person other than Generator only if (i) Generator fails to take and pay for Producer Coal it is obligated to take and pay for pursuant to this Agreement, (ii) an Event of Default has occurred and is continuing with respect to Generator, or (iii) Generator fails to exercise its option, pursuant to Section 6.2, to purchase all Producer Coal purchased from Generator.

(d) Notwithstanding any provisions of this Agreement to the contrary (including Section 5.4(a) and Section 5.4(b)), Generator (i) shall have no obligation to modify or enhance its systems, operations or practices to accommodate purchases or sales of Excess Coal, Third Party Coal (or Refined Coal produced therefrom) or Resold Coal (in the case of sales to Third Parties) by or on behalf of Producer or to provide storage space that is not, at the applicable time, ground-level storage space located in the Coal Yard and free of and segregated from (A) Generator's coal, (B) Refined Coal and/or Resold Coal purchased by Generator from Producer and (C) Producer Coal purchased by Producer from Generator (or any Refined Coal produced therefrom), and (ii) may refuse to commingle Excess Coal or Third Party Coal (or Refined Coal produced therefrom) with Generator's coal (including Generator's Refined Coal and/or Resold Coal) or any Producer Coal purchased by Producer from Generator (or any Refined Coal produced therefrom) that is not being sold to Third Parties.

(e) To the extent Producer desires to sell Third Party Coal (or Refined Coal produced therefrom) to Generator under this Agreement, Producer shall be required to demonstrate that such Coal was procured in accordance with all Laws, all Governmental Approvals and Generator's procedures, practices and policies.

(f) Except as provided in this Section 5.4, Producer shall not purchase coal for use at the Facility during the term of the Coal Feedstock Purchase Agreement that was not sold by Generator to Producer in accordance with the terms of the Coal Feedstock Purchase Agreement.

SECTION 5.5 Purchase by Generator at Termination.

On the last day of the Term, Producer shall offer to sell to Generator, and Generator shall have the option to purchase (exercisable in whole or in part within thirty (30) days of the end of the Term), all Refined Coal on hand at its fair market value. Notwithstanding any provision of this Agreement to the contrary, the Delivery Point for the Refined Coal sold pursuant to this Section (if any) will be at, and title and risk of loss, damage or destruction with respect to such Refined Coal will pass to Generator at, the location of such Refined Coal at the time of such sale.

SECTION 5.6 Insurance.

At all times during the Term, Producer will maintain or cause to be maintained “all risk” coverage up to the full replacement value for all Producer Coal and all Refined Coal owned by Producer. This policy shall include all risk, perils, vandalism and malicious mischief for injured property and locations specified in the policy, subject to the limits of liability, deductibles and all terms and conditions in the policy.

SECTION 5.7 Chemical Additive Records.

At all times during the Term and for a minimum of two (2) years thereafter, Producer will maintain and retain the Chemical Additive Records accurately. The Chemical Additive Records will be open to inspection, audit and copying by Generator from time to time upon not less than three (3) Business Days’ advance notice.

SECTION 5.8 Generator Reporting.

Except to the extent required by applicable Law or any change in applicable accounting or reporting principles, Generator covenants and agrees that it will not, and it will cause its Affiliates to not, in any applicable filing, return, ruling request, representation, allegation, notice or report with or to any Governmental Body or court that contains, or otherwise presents in accounting or financial records, reports or statements, or tax or information returns, characterizations of the transactions (or elements thereof) contemplated by the various Project Documents, report in a manner that is based on a determination that the sale of Coal Inventory by Generator under the Pre-Closing Coal Inventory Purchase Agreement and the sales of Coal by Generator under the Coal Feedstock Purchase Agreement are not sales, or that the purchases of Refined Coal and Resold Coal by Generator under this Agreement are not purchases. Generator has no obligation to change any current or future reporting that is consistent with the foregoing sentence. Notwithstanding any provision of this Agreement or any other Project Document to the contrary, Producer’s sole and exclusive remedy under this Agreement or any other Project Document for any failure by Generator to comply with this Section 5.8 is an immediate right to terminate the Project Documents; provided, for purposes of clarification and not limitation, that Producer shall not be entitled to seek indemnification under this Agreement or any other Project Document for any Claim caused by or resulting or arising from or in connection with any such failure to comply.

ARTICLE VI

PURCHASE AND SALE OF PRODUCER COAL

SECTION 6.1 Purchase by Generator during Term.

(a) To the extent that Generator's requirements for coal-based fuel at and for the Power Plant are not fully satisfied by Refined Coal, Producer shall sell and deliver to Generator (and Generator shall purchase) Resold Coal in amounts necessary to satisfy such requirements at the Resold Coal Price and otherwise as provided herein, free and clear of all Liens, except for any Liens in favor of Third Party suppliers of Feedstock and the Lien contemplated by the Coal Feedstock Purchase Agreement to be granted by Producer to Generator.

(b) At any point in time, to the extent that Producer has Resold Coal that Producer has determined in good faith is not needed as Feedstock, Producer shall notify Generator of such fact and Generator may request to purchase, and upon such request Producer will sell to Generator, or to other Persons to the extent so directed by Generator, all (or such portion requested by Generator) of such Resold Coal at the Resold Coal Price and otherwise as provided herein; provided, however, that, as to any Resold Coal that is to be sold to other Persons or shipped for use at a location or facility other than the Power Plant, Producer's obligation to sell such Resold Coal shall be subject to Generator's agreement to replace (or cause to be replaced) such Resold Coal with coal that satisfies the Coal Specifications, and provide for delivery of such replacement coal in such a manner that Producer's Feedstock requirements for production of Refined Coal, its Refined Coal production schedule, and its requirements for Resold Coal to be sold hereunder, in each case, will not be impaired.

(c) None of the provisions of this Section 6.1 shall prevent Generator from having the right to purchase any Resold Coal, pursuant to the terms and conditions hereof, to the extent Generator needs to acquire the same to address operational or reliability concerns associated with the Power Plant, in its sole discretion.

SECTION 6.2 Purchase by Generator at Termination.

At the end of the Term, Producer shall offer to sell to Generator, and Generator shall have the option to purchase (exercisable in whole or in part within thirty (30) days of the end of the Term), all Producer Coal at its fair market value. Notwithstanding any provision of this Agreement to the contrary, the Delivery Point for the Producer Coal sold pursuant to this Section (if any) will be at, and title and risk of loss, damage or destruction with respect to such Producer Coal will pass to Generator at, the location of such Producer Coal at the time of such sale.

ARTICLE VII

PRICE; BILLING AND PAYMENT

SECTION 7.1 Refined Coal Price.

For each Ton of Refined Coal produced and sold by Producer and purchased by Generator hereunder, Generator shall pay to Producer the Refined Coal Price applicable to such Ton of Refined Coal.

SECTION 7.2 Resold Coal Price.

For each Ton of Resold Coal sold by Producer and purchased by Generator hereunder, Generator shall pay to Producer the Resold Coal Price applicable to such Ton of Resold Coal.

SECTION 7.3 Third Party Impositions.

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

SECTION 7.4 Withholding.

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

SECTION 7.5 Invoicing and Payment.

(a) Within five (5) Business Days following the end of each calendar month, but in no event earlier than two (2) Business Days after the issuance by Generator of the invoice contemplated by the Coal Feedstock Purchase Agreement to be issued for such calendar month, Producer shall submit to Generator an invoice for the Refined Coal sold and delivered to Generator hereunder during such month. Such invoice will include the weight of Refined Coal sold and delivered, the Refined Coal Price, and the amount of any applicable adjustments. Generator shall make payment of any undisputed amount due, after the exercise of any applicable rights pursuant to Section 7.4, by electronic transfer in United States funds in

accordance with Section 16.20 by the later of (i) ten (10) Business Days following the end of each calendar month and (ii) five (5) Business Days after receipt of that invoice.

(b) Within five (5) Business Days following the end of each calendar month, but in no event earlier than two (2) Business Days after the issuance by Generator of the invoice contemplated by the Coal Feedstock Purchase Agreement to be issued for such calendar month, Producer shall submit to Generator an invoice for the Resold Coal sold and delivered to Generator hereunder during such month. Such invoice will include the weight of Resold Coal sold and delivered, the Resold Coal Price, and the amount of any applicable adjustments. Generator shall make payment of any undisputed amount due, after the exercise of any applicable rights pursuant to Section 7.4, by electronic transfer in United States funds in accordance with Section 16.20 by the later of (i) ten (10) Business Days following the end of each calendar month and (ii) five (5) Business Days after receipt of that invoice.

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

(d) 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.

(e) 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.

(f) If Generator, in good faith, disputes any portion of an invoice on or before the payment date therefor, Generator shall, on or before the applicable payment date with respect to such invoice, provide Producer with a statement setting forth in reasonable detail all amounts disputed by Generator 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 16.1, 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 7.5. 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.

(g) Generator shall have no obligation to pay an invoice under this Section 7.5 if it has not received timely payment of any outstanding invoices for coal sold to Producer under the Coal Feedstock Purchase Agreement.

SECTION 7.6 Books and Records; Audit Rights.

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

SECTION 7.7 Taxes.

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

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

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

(d) If Generator or Producer is contacted with respect to an audit, investigation, claim, action, or proceeding relating to the requirement to collect, remit, or pay over any Taxes that are the responsibility of another Party hereunder, the Party so contacted shall provide written notice of such contact to the other Party and the Party responsible for such Taxes hereunder shall (i) indemnify and hold the contacted Party harmless against such Taxes and assume responsibility for the defense of such audit, investigation, claim, action, or proceeding (in which case the contacted Party and the responsible Party shall reasonably cooperate and consult with one another (including providing reasonably requested information) and keep each other reasonably informed with respect to such defense); or (ii) promptly advance to or reimburse the contacted Party for such Taxes collected, remitted or paid.

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

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

SECTION 7.8 Terms and Conditions of Sale.

The terms and conditions of sale applicable to each sale of Refined Coal and each sale of Resold Coal under this Agreement will be those stated in this Agreement, unless the Parties otherwise agree in writing; provided, however, that any inconsistencies between the terms and conditions of this Agreement and any purchase order shall be resolved in favor of the terms and conditions set forth in this Agreement.

ARTICLE VIII

DELIVERIES; WEIGHTS; TITLE AND RISK OF LOSS

SECTION 8.1 Deliveries.

Refined Coal deliveries will be made at the Delivery Point for Refined Coal and Resold Coal deliveries will be made at the Delivery Point for Resold Coal, in each case on up to a 24-hour-per-day, 7-day-per-week basis based on Generator's fueling schedule for the Power Plant, and Producer and Generator shall work cooperatively on a daily or weekly basis, as appropriate, to adjust the delivery schedule as necessary to accommodate the reasonable operational requirements of Generator.

SECTION 8.2 Weights.

(a) The weight of Refined Coal sold to Generator hereunder during any applicable period will be the weight determined by the Refined Coal Scales during such applicable period.

(b) The weight of Resold Coal sold to Generator hereunder during any applicable period will be the weight of all coal determined by the Refined Coal Scales during the applicable period minus the weight of all Refined Coal determined by the Refined Coal Scales during such applicable period.

(c) Producer shall provide to Generator (i) within one (1) week after such Refined Coal and Resold Coal weights are recorded, the weight in Tons of Refined Coal purchased and taken by Generator (and the weight in Tons of Feedstock used to produce such Refined Coal) and the weight in Tons of all Resold Coal purchased and taken by Generator, as calculated in accordance with the immediately preceding subsections (a) and (b); provided, however, that a summary of all such Tons of Refined Coal (and Feedstock used to produce such Refined Coal) and Tons of Resold Coal for the preceding month shall be provided to Generator on or before the second (2nd) Business Day of the month, and (ii) the Chemical Additive application rates and related electronic signal of the Refined Coal Scale readings in real time. Such information shall be provided to Generator's Authorized Representative via email or other written communication. Producer shall maintain and preserve, during the Term and for at least two (2) years after any termination of this Agreement, records of all weights taken by the Refined Coal Scales under this Section 8.2.

(d) During the Term, Producer shall operate and maintain the Refined Coal Scales in accordance with procedures mutually acceptable to Producer and Generator to register not more than 0.5% over or under in weight (the "Weighing Standards"). Producer shall notify Generator at least one week (or as soon as practicable if one week's notice is not feasible under the circumstances) prior to any calibration, recalibration or other testing of the Refined Coal Scales. Generator or its representative shall have the right to witness the calibration, recalibration or other testing process; provided, however, that if Producer has given such notice to Generator and Generator is not present at the time specified, Producer may proceed with the calibration, recalibration or other testing process. Producer will send Generator evidence of such

calibration, recalibration or other testing within five (5) Business Days of Generator's request therefor.

(e) Producer shall, at its expense, calibrate the Refined Coal Scales at least twice per calendar year in accordance with the Weighing Standards; provided, however, that the timing of such calibrations shall be coordinated so as to not interfere with the operations of the Power Plant. The Refined Coal Scales shall be adjusted upon testing to register accurately within the tolerance allowed by the Weighing Standards.

(f) Producer shall pay all costs of operating, maintaining, testing and adjusting the Refined Coal Scales hereunder.

(g) During any period when the Refined Coal Scales are inoperable, determination of the quantities of Refined Coal and Resold Coal delivered hereunder shall be determined by a procedure to be established at such time by agreement of Producer and Generator and in accordance with applicable Law.

SECTION 8.3 Title and Risk of Loss.

(a) Title and risk of loss, damage or destruction with respect to the Refined Coal sold hereunder will pass to Generator upon delivery thereof by Producer at the Delivery Point for Refined Coal free and clear of all Liens, except for the Lien contemplated by the Project Documents to be granted by Producer to Generator.

(b) Title and risk of loss, damage or destruction with respect to the Resold Coal sold hereunder will pass to Generator upon delivery thereof by Producer at the Delivery Point for Resold Coal free and clear of all Liens, except for the Lien contemplated by the Project Documents to be granted by Producer to Generator.

ARTICLE IX

REFINED COAL AND RESOLD COAL SPECIFICATIONS

SECTION 9.1 Coal Specifications.

(a) The initial Coal Specifications shall be those set forth on Schedule 9.1(a). During the Term, Generator may change the Coal Specifications from time to time. Notification of any such change shall be made in writing to Producer and to the Coal Consultant. Upon notification of a change in the Coal Specifications, at Producer's request, Generator shall provide Producer with a sample of the new coal. Notwithstanding the preceding provisions of this Section 9.1(a), any change in the Coal Specifications shall apply only with respect to Producer Coal acquired by Producer after receipt of notification of such change.

(b) Generator's obligation to purchase and take Resold Coal under this Agreement is subject to such Resold Coal satisfying the Coal Specifications. Producer will provide Generator with prompt written notice of any determination by Producer that any Resold Coal does not satisfy the Coal Specifications. If the characteristics of Resold Coal delivered to Generator, as determined by Producer's analysis of any sample determined in a reasonable and reliable

manner, do not satisfy the Coal Specifications, Generator shall have the right, but not the obligation, by notice given orally to Producer followed promptly by written notice to Producer, to suspend acceptance of such Resold Coal pending either the resolution of any disputed analysis results or the reasonable resolution of other alleged non-compliance. If Generator elects to so suspend, Producer shall cease delivering any such Resold Coal to Generator until the issue has been reasonably resolved.

SECTION 9.2 Refined Coal Specifications and Use.

(a) Refined Coal produced and sold to Generator hereunder shall be produced from only Feedstock that (i) is Conforming Coal, and (ii) unless Generator expressly consents in writing in accordance with the terms of this Agreement to purchase Refined Coal produced from Third Party Coal, was purchased from Generator.

(b) Refined Coal produced and sold to Generator hereunder shall be produced only in accordance with the Refined Coal Specifications. Generator's obligation to purchase and take Refined Coal under this Agreement is subject to such Refined Coal satisfying the Refined Coal Specifications. Producer will provide Generator with prompt written notice of any determination by Producer that any Refined Coal does not satisfy the Refined Coal Specifications. If the characteristics of Refined Coal delivered to Generator, as determined by Producer's analysis of any sample determined in a reasonable and reliable manner, do not satisfy the Refined Coal Specifications, Generator shall have the right, but not the obligation, by notice given orally to Producer followed promptly by written notice to Producer, to suspend acceptance of such Refined Coal pending either the resolution of any disputed analysis results or the reasonable resolution of other alleged non-compliance. If Generator elects to so suspend, Producer shall cease delivering any such Refined Coal to Generator until the issue has been reasonably resolved.

(c) Generator will use all Refined Coal purchased hereunder solely for use as fuel in the Power Plant.

(d) If new environmental rules and/or Laws are issued that are applicable to the Power Plant, then, as requested by Generator, Producer will consult with Generator to determine the impact of such rules and/or Laws on the burning of Refined Coal alone or blended with other fuels to assist Generator in complying with such regulations and/or Laws as they become effective.

SECTION 9.3 Testing and Suspension.

In the event of a change to the Coal Specifications pursuant to Section 9.1, any new coal shall be promptly tested by Producer to ensure that the Section 45 Tax Credit requirements are satisfied and if acceptable test results are not obtained, Producer shall have the right to suspend immediately all deliveries of Refined Coal produced or to be produced from such new coal by giving notice of the suspension to Generator, and such notice may be given orally or by any other appropriate means, provided that any oral notice shall be followed by written notice as soon as reasonably practicable (but only if written notice is necessary under the circumstances). Such suspension shall remain in effect until such time as Producer provides written notice to Generator

that acceptable test results have been obtained or Generator provides Feedstock that satisfies the Coal Specifications in effect on the Effective Date or any subsequent Coal Specifications for which Producer has completed testing that ensures that coal satisfying such Coal Specifications will satisfy the Section 45 Tax Credit requirements.

SECTION 9.4 Presumption Regarding Resold Coal and Refined Coal.

GENERATOR AGREES THAT ANY RESOLD COAL OR FEEDSTOCK WILL BE CONCLUSIVELY PRESUMED TO HAVE BEEN CONFORMING COAL IF SUCH RESOLD COAL OR FEEDSTOCK (A) WAS PURCHASED BY PRODUCER PURSUANT TO THE PRE-CLOSING COAL INVENTORY PURCHASE AGREEMENT OR (B) WAS PURCHASED BY PRODUCER PURSUANT TO THE COAL FEEDSTOCK PURCHASE AGREEMENT, AND IN THE CASE OF (A) OR (B) WAS PREPARED, BLENDED AND DELIVERED TO THE APPLICABLE DELIVERY POINT BY THE COAL CONSULTANT PURSUANT TO THE COAL HANDLING AND CONSULTING AGREEMENT. ACCORDINGLY, GENERATOR WAIVES ANY RIGHT IT MIGHT HAVE TO REJECT OR TO REVOKE ACCEPTANCE OF, OR TO CLAIM DAMAGES OR ANY OTHER RELIEF OR REMEDY WITH RESPECT TO, ANY SUCH RESOLD COAL OR ANY REFINED COAL PRODUCED FROM SUCH FEEDSTOCK SOLELY BY REASON THAT SUCH RESOLD COAL OR FEEDSTOCK WAS NOT CONFORMING COAL.

SECTION 9.5 Warranty Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL RESOLD COAL AND REFINED COAL SOLD PURSUANT TO THIS AGREEMENT IS SOLD "AS IS" AND WITH ALL FAULTS AT THE APPLICABLE DELIVERY POINT PROVIDED HEREIN.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PRODUCER SHALL NOT BE LIABLE FOR AND HEREBY DISCLAIMS ALL WARRANTIES (OTHER THAN THE WARRANTY OF TITLE), WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY LIABILITY FOR OR WARRANTIES REGARDING (i) THE COMPATIBILITY OF ANY REFINED COAL WITH ANY GENERATOR EQUIPMENT (ii) THE ATTRIBUTES OR PERFORMANCE OF THE REFINED COAL PRODUCED BY THE FACILITY, (iii) THE ABILITY OR LIKELIHOOD OF REFINED COAL TO REDUCE EMISSIONS, INCLUDING NITROGEN OXIDE OR MERCURY EMISSIONS, OR (iv) THE ABILITY OR LIKELIHOOD OF THE PLANT TO SATISFY REQUIRED EMISSION LEVELS BY USING REFINED COAL AS A FUEL.

ARTICLE X

FORCE MAJEURE

SECTION 10.1 Force Majeure.

(a) Except as otherwise provided in this Section 10.1, and notwithstanding any other provisions of this Agreement to the contrary, a 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. No 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 a 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 a 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, no 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 XI

INSURANCE

SECTION 11.1 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 11.1.

ARTICLE XII

EVENTS OF DEFAULT

SECTION 12.1 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 any 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 12.2 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, any 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, subject to Section 5.8, including the Environmental Indemnity Agreement.

ARTICLE XIII

SUSPENSION; EARLY TERMINATION

SECTION 13.1 Suspension; Early Termination.

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

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

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

(c) The Non-Defaulting Party may terminate this Agreement upon the date specified in the termination notice sent by the Non-Defaulting Party, so long as such date follows the expiration of any applicable notice and/or cure period, in accordance with Section 12.2(b).

(d) During the occurrence and continuation of an Adverse Tax Event, Producer may (i) by written notice to Generator, suspend immediately its obligations to sell Refined Coal under this Agreement, and (ii) upon the date specified in a written notice of termination from Producer to Generator, so long as such date is at least thirty (30) days after the date such notice is received by Generator, terminate this Agreement; provided, however, that to the extent Producer terminates this Agreement in accordance with this Section 13.1(d), Producer shall not be required to produce and sell Refined Coal pursuant to Section 5.2 from the date Generator receives the notice of termination until the effective date of such termination.

(e) A Party may terminate this Agreement upon the date specified in a written notice of termination by one Party to the other Party, so long as such date follows the expiration of thirty (30) days' notice, if the other Party's obligation to perform hereunder is excused due to an Event of Force Majeure and, notwithstanding the provisions of Section 10.1, the suspension of such other Party's performance due to the Event of Force Majeure has continued for at least ninety (90) consecutive days.

(f) If a Party has completely suspended the delivery of all Refined Coal for at least three consecutive full calendar months, other than as permitted hereunder due to any action, inaction, election or non-performance by the other Party, the other Party may terminate this

Agreement upon the date specified in a written notice of termination, so long as such date is at least thirty (30) days after the date such notice is received by the suspending Party.

(g) If (i) the Annual Volume fails to equal or exceed [REDACTED] Tons and such failure is not the result of any breach by Producer of any of its obligations under any of the Project Documents, or (ii) the aggregate quantity of Refined Coal as shown in the Generator Annual Forecast is less than [REDACTED] for any 12-month rolling period, then Producer may, as its sole remedy, by delivering written notice to Generator within thirty (30) days after either the end of the applicable twelve (12) month rolling period (in the case of the immediately preceding clause (i)) or the delivery of the applicable Generator Annual Forecast or update thereto, terminate this Agreement upon the date specified in such written notice from Producer to Generator, so long as such date is at least thirty (30) days after the date such notice is received by Generator.

(h) Producer may terminate this Agreement upon the date specified in a written notice to Generator in connection with the dissolution of Producer, so long as such date is at least thirty (30) days after the date such notice is received by Generator.

(i) 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 16.8(a), any payment contemplated by any Project Document to be received by any Generator Indemnified Party is reduced below the amount to which such Generator Indemnified Party would be entitled under the applicable Project Document if Section 16.8(a) did not apply to such payment, Generator may terminate this Agreement at any time by written notice to Producer.

(j) 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 LG&E's and KUC's collective liability provided in Section 16.8(a), any payment contemplated by any Project Document to be received by any Producer Indemnified Party is reduced below the amount to which such Producer Indemnified Party would be entitled under the applicable Project Document if Section 16.8(a) did not apply to such payment, Producer may terminate this Agreement at any time by written notice to Generator.

(k) Producer, on the one hand, or LG&E and KUC acting together, on the other hand, may terminate this Agreement at any time for any reason, or for no reason, by giving the other Party(ies) 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(ies) and not less than one (1) year after the Commercial Operations Date.

SECTION 13.2 Post-Expiration and Post-Termination Obligations; Survival.

(a) Any expiration or termination of this Agreement, irrespective of the reason therefor, shall not release any Party of or from any obligations accrued or incurred prior to the effective date of such expiration or termination or, subject to Section 12.2 and Section 16.8, waive any rights or remedies with respect to a breach of this Agreement giving rise to such

expiration or termination, all of which shall survive the expiration or termination of this Agreement.

(b) Any expiration or termination of this Agreement, irrespective of the reason therefor, shall not release either Party of or from any applicable rights and/or obligations pursuant to Article I (to the extent relevant to the meaning or interpretation of any provision of this Agreement that is to survive its expiration or termination) or Section 4.2 (fourth sentence only), Sections 4.3, 5.4(a)(iii) (last sentence only), 5.4(b) (last sentence only), 5.5, 5.6, 5.7, 6.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 8.2(c) (last sentence only), 8.3, 11.1, 13.2, Article XIV, 16.1, 16.2, 16.5, 16.8, 16.11, 16.13, 16.15, 16.17, 16.19 or 16.21, all of which shall survive the expiration or termination of this Agreement.

SECTION 13.3 Sale of Coal During Suspension.

Notwithstanding any other provision of this Agreement to the contrary, during any suspension pursuant to this Agreement, Producer shall be obligated to sell Resold Coal to Generator.

ARTICLE XIV

INDEMNIFICATION

SECTION 14.1 Generator's Indemnification.

Without prejudice to Section 14.2, and subject to Section 5.8, Section 14.4, Section 14.5, Section 14.6, Section 14.7 and Section 16.8, LG&E or KUC (as applicable), severally, but not jointly, 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 that Generator (LG&E or KUC, but not the other) or any of its Affiliates (but as to LG&E, not KUC, or as to KUC, not LG&E) or any of their respective partners, members, shareholders, managers, officers, directors, employees, contractors, subcontractors, agents, representatives or invitees, except that such 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 that Generator or any of its Affiliates (but as to LG&E, not KUC, or as to KUC, not LG&E) 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 that 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 that Generator or any other breach by that 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 that Generator or its Affiliate (but as to LG&E, not KUC, or as to KUC, not LG&E), employee, contractor or agent.

SECTION 14.2 Producer's Indemnification.

Without prejudice to Section 14.1, and subject to Section 14.4, Section 14.5, Section 14.6, Section 14.7 and Section 16.8, Producer shall:

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

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

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

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

(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); and

(f) indemnify, defend and hold harmless the Generator Indemnified Parties from and against any and all Claims resulting or arising from any purchases or sales by or for Producer of any Third Party Coal or Refined Coal from or to any Person other than Generator, except for any Claims to the extent resulting from any act or omission of Generator or its Affiliate, contractor, employee or agent.

SECTION 14.3 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 XIV, 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 XIV, 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 XIV, 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 XIV.

SECTION 14.4 No Imputed Liability.

(a) For purposes of Section 14.1 and Section 14.2, unless undertaken pursuant to Section 4.3, all acts and omissions of LG&E or KUC (as applicable) or any of its 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, any 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 14.4(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 14.5 Environmental Matters.

Notwithstanding any other provision of this Agreement to the contrary, the remedies contained in this Article XIV 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 all Parties hereto, and shall continue as a part of this Agreement notwithstanding any termination or rejection of that separate Environmental Indemnity Agreement.

SECTION 14.6 Offset.

In the event that either Producer, on the one hand, or LG&E or KUC (as applicable), on the other hand, is obligated to indemnify and hold harmless the Producer Indemnified Parties under Section 14.1 or the Generator Indemnified Parties under Section 14.2, 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 14.1 or 14.2 (as applicable) is recovered or otherwise received after payment of any amount otherwise required to be paid under Section 14.1 or 14.2, 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 14.1 or 14.2 had such recovery or other receipt occurred at the time of such payment.

SECTION 14.7 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 XV

DISPUTE RESOLUTION

SECTION 15.1 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 XV, 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 XVI

MISCELLANEOUS

SECTION 16.1 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 16.2, 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 16.1, 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 any Party in pursuit of its rights or in the exercise of its remedies hereunder.

Notwithstanding the foregoing, this Section 16.1 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 any Party relating to such tax treatment and tax structure.

SECTION 16.2 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 16.1 may make disclosure notwithstanding the provisions of Section 16.1; 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 16.1 or 16.2(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 16.3 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 16.4 Entire Agreement; Integration; Successors and Assigns.

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

SECTION 16.5 Notices.

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

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

If to Producer, to: Trimble Clean Fuels, LLC
c/o Tinnuum 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 17th Street, Suite 3000
Denver, CO 80202
Attention: Joanne Norris

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

Notwithstanding the foregoing, standard, ongoing operational deliverables and communications may be delivered by a 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 16.6 Assignment.

Neither this Agreement, nor any of the rights and obligations hereunder, may be assigned, transferred or delegated by a Party, in whole or in part, whether by operation of Law or otherwise, without the express prior written consent of the other Parties, which consent may be withheld in the sole discretion of any Party, except that any Party may assign this Agreement to an Affiliate without the prior written consent of the other Party, provided, however, that (a) any assignment by LG&E or KUC to an Affiliate is to an Affiliate that is the assignee of the same ownership of the Site and Power Plant previously held by LG&E or KUC, respectively, and has agreed with Producer and Generator to assume all of the assigning Party'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 other Parties.

SECTION 16.7 Waiver; Invalidity.

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by such waiving Party. The failure or delay of either Party to require performance by the other Party of any provision of this Agreement shall not affect its right to require performance of such provision unless and until such performance has been waived by such Party in writing in accordance with the terms hereof. No waiver by either Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed

as a waiver of the same or any other term or condition of this Agreement on any future occasion. The invalidity or unenforceability of any provision of this Agreement shall be determined only by a court of competent jurisdiction. The Parties hereby agree to use good faith efforts to negotiate an equitable adjustment to any provisions of this Agreement determined to be invalid or unenforceable with a view toward effecting the purposes of this Agreement, and the validity or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

SECTION 16.8 Limitations of Liability; Remedies.

(a) PRODUCER'S AGGREGATE INDEMNIFICATION OBLIGATIONS ARISING OUT OF ALL OF THE PROJECT DOCUMENTS, EXCEPT THE ENVIRONMENTAL INDEMNITY AGREEMENT, COLLECTIVELY SHALL NOT EXCEED [REDACTED] LG&E'S AND KUC'S AGGREGATE COLLECTIVE INDEMNIFICATION OBLIGATIONS ARISING OUT OF ALL OF THE PROJECT DOCUMENTS, EXCEPT THE ENVIRONMENTAL INDEMNITY AGREEMENT, COLLECTIVELY SHALL NOT EXCEE [REDACTED]

(b) NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE UNDER THIS AGREEMENT TO ANY 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 16.8(C), THAT THE INDEMNIFIED PARTY IS LEGALLY REQUIRED TO PAY TO A THIRD PARTY AS A RESULT OF A CLAIM.

(c) NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, NO 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 5.8, SECTION 12.2 AND SECTION 13.1, AND THE INDEMNIFICATION RIGHTS SET FORTH IN ARTICLE XIV OR ELSEWHERE IN THIS AGREEMENT, IN ALL CASES SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 16.8; PROVIDED THAT, SUBJECT TO SECTION 5.8, 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 16.8(C), THIS SECTION 16.8 SHALL NOT LIMIT THE RIGHTS OF ANY 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 16.8, SUCH LOSS SHALL BE RECOVERABLE BY THE INDEMNIFIED PARTY, BUT ONLY TO THE EXTENT (AND IN THE AMOUNT) SUCH PROCEEDS ARE PAID TO SUCH INDEMNIFYING PARTY.

(g) EXCEPT AS MAY BE EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT WITH RESPECT TO ANY INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT OR ANY OTHER PROJECT DOCUMENT, THE PROVISIONS OF THIS SECTION 16.8 SHALL APPLY TO ALL CLAIMS BASED ON OR ARISING UNDER THIS AGREEMENT, WHETHER IN CONTRACT, EQUITY, TORT OR OTHERWISE, REGARDLESS OF FAULT, GROSS OR OTHER NEGLIGENCE (IN WHOLE OR IN PART), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY AND SHALL EXTEND TO ALL INDEMNIFIED PARTIES HAVING RIGHTS UNDER THIS AGREEMENT AND THE SUCCESSORS AND ASSIGNS OF THE PARTIES HERETO AND SUCH INDEMNIFIED PARTIES.

(h) **FOR PURPOSES OF CLARIFICATION AND NOT OF LIMITATION, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH ELSEWHERE IN THIS SECTION 16.8 (IT BEING UNDERSTOOD THAT THIS SUBSECTION (H) SHALL CONTROL AND HAVE PRIORITY OVER ANY OTHER PROVISION OF THIS SECTION 16.8), THE LIMITATIONS ON LIABILITY AND EXCLUSIVE REMEDY PROVISIONS SET FORTH IN THIS SECTION 16.8 SHALL NOT APPLY TO ANY CLAIMS PAID OR PAYABLE WITH RESPECT TO (I) ANY FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNIFYING PARTY, (II) ANY INDEMNIFICATION OBLIGATIONS WITH RESPECT TO CLAIMS ARISING FROM ANY ENVIRONMENTAL MATTERS, OR (III) ANY FAILURE OF AN INDEMNIFYING PARTY TO SATISFY ITS REGULAR PAYMENT OBLIGATIONS UNDER ANY PROJECT DOCUMENT.**

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

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

SECTION 16.9 Headings.

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

SECTION 16.10 Counterparts.

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

SECTION 16.11 Applicable Law.

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

SECTION 16.12 Amendment.

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

SECTION 16.13 No Third Party Beneficiary.

The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third party beneficiary rights upon any other Person; provided, however, that the members of Producer and their direct and indirect parents shall be third party beneficiaries under this Agreement as their respective interests may appear, including Sections 7.6, 16.1 and 16.2, 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 XIV hereof.

SECTION 16.14 Further Assurances.

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

SECTION 16.15 Forward Contract.

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

SECTION 16.16 No Partnership.

Except by operation of Section 4.3, no 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 any other Party, whether in the conduct of such Party's business or otherwise, or joint venturer or a member of a joint enterprise with any other Party.

SECTION 16.17 Several Liability of Generator.

Notwithstanding any other provision of this Agreement to the contrary, LG&E or KUC (as applicable) shall be severally, but not jointly, liable for any and all obligations undertaken by it hereunder, and shall not be liable for any obligations of the other of those Parties. In the event the several liability of LG&E and KUC for a particular obligation of Generator hereunder cannot reasonably be determined by Producer, and Generator has not provided Producer with written notice of the ratio of several liability as between LG&E and KUC, LG&E and KUC shall be severally, but not jointly, liable for such obligations in a 52% – 48% ratio, respectively, unless

LG&E and KUC subsequently provide written notice to Producer of different several liability which shall in any event total 100% as between LG&E and KUC.

SECTION 16.18 Guaranty.

In conjunction with the execution of this Agreement and the other Project Documents, Producer shall furnish to Generator a guaranty of Producer's performance obligations hereunder from Guarantor, in the form attached as Schedule 14.18 to the Coal Feedstock Purchase Agreement.

SECTION 16.19 No Publicity.

Neither Generator nor Producer may use any 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 or Parties.

SECTION 16.20 Payment Method.

Any payments or other amounts due from one Party to any 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 16.21 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, other than Section 5.8, is not performed in accordance with its specific terms or is otherwise breached. Accordingly, except for Section 5.8, 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.

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

Generator:

Kentucky Utilities Company


By: 
Name: DAVID S. SINCLAIR
Title: VP Energy Supply & Analysis JPF


Louisville Gas and Electric Company

By: 
Name: DAVID S. SINCLAIR
Title: VP Energy Supply & Analysis JPF

Producer:

Trimble Clean Fuels, LLC

By:  a Colorado limited liability company, its manager

By:  a Colorado limited liability company, its manager

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

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

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

Generator:

Kentucky Utilities Company

By: _____
Name: _____
Title: _____

Louisville Gas and Electric Company

By: _____
Name: _____
Title: _____

Producer:

Trimble Clean Fuels, LLC

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

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

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

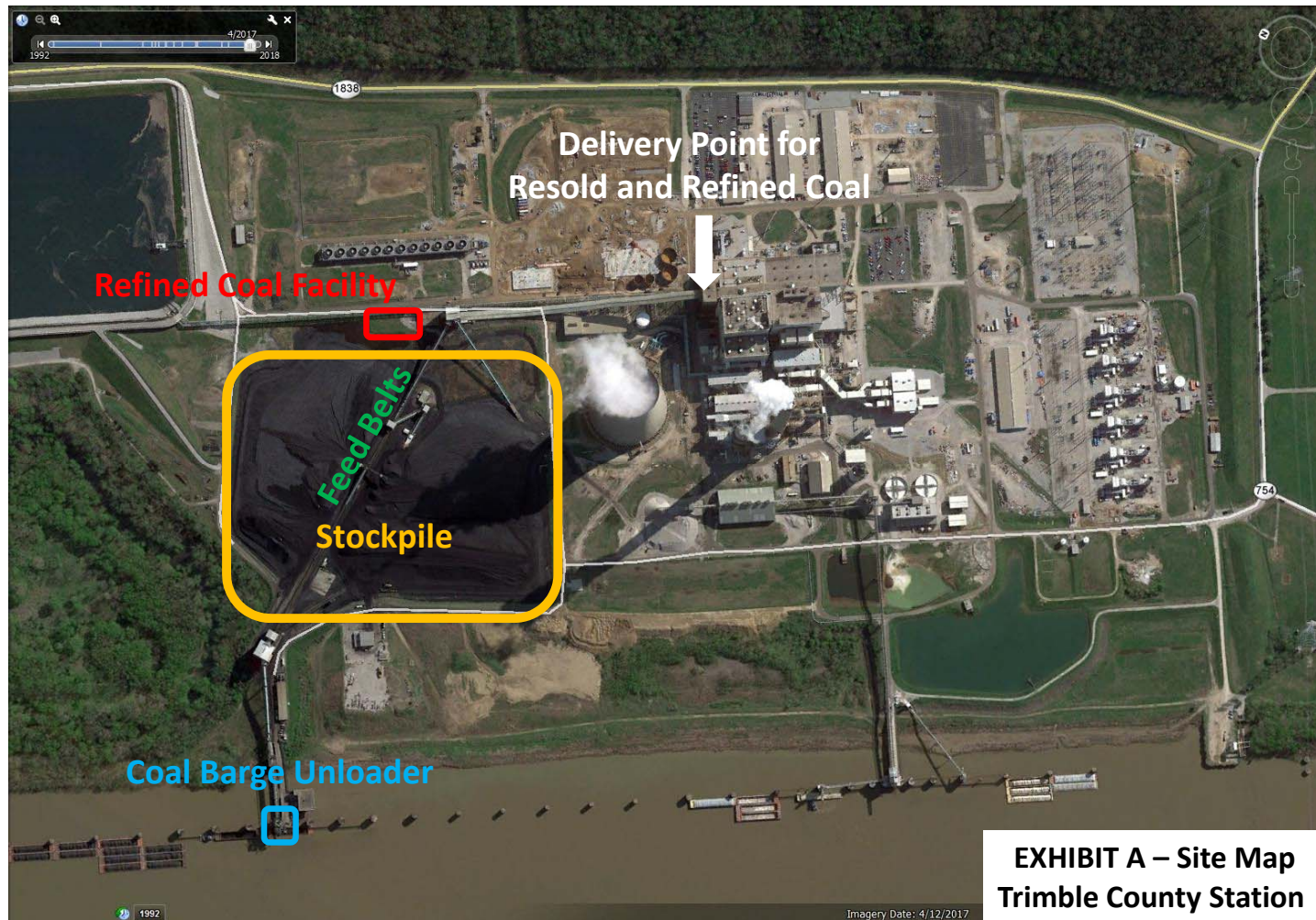
By:  _____
Name: Ron Eller
Title: President and Chief Executive Officer

CONFIDENTIAL INFORMATION REDACTED

EXHIBIT A

SITE

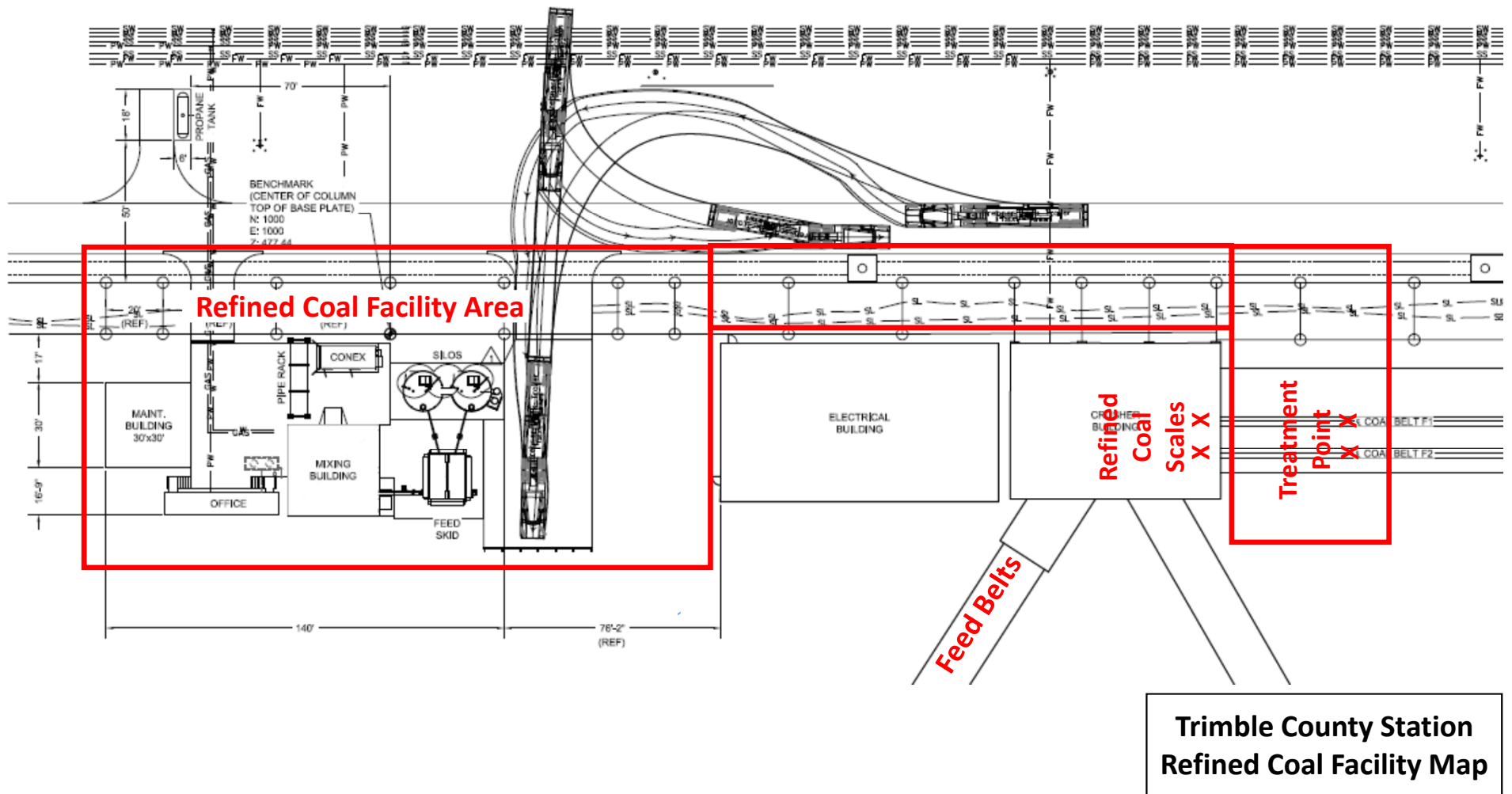
See attached.



CONFIDENTIAL INFORMATION REDACTED

EXHIBIT B
FACILITY

See attached.



SCHEDULE 1

OWNERSHIP INTERESTS IN POWER PLANT AND SITE

- Trimble County Unit 1 – Undivided ownership interests as tenants in common:
 - LG&E: 75%; IMEA: 12.12%; IMPA: 12.88%
- Trimble County Unit 2 - Undivided ownership interests as tenants in common:
 - LG&E: 14.25%; KUC: 60.75%; IMEA: 12.12%; IMPA: 12.88%
- Trimble County General Plant Facilities -
 - LG&E – 100%
 - Subject to non-exclusive license to KUC/IMEA/IMPA to use such facilities in a manner consistent with their Unit 1 & 2 ownership interests and associated contractual rights
- Trimble County Site -
 - LG&E: 100% of the Site less or subject to, as applicable, the interests of KUC, IMEA and IMPA otherwise set forth in this Schedule 1
 - Subject to non-exclusive easement to KUC/IMEA/IMPA to use such facilities for purposes consistent with their Unit 1 & 2 ownership interests and associated contractual rights

SCHEDULE 1.1(a)

GENERATOR KNOWLEDGE

Ralph Bowling
Michael Buckner
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 1.1(c)

REFINED COAL PRICE AND RESOLD COAL PRICE

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

“Coal” means coal owned by a Party that satisfies the Coal Specifications.

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

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

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

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

Section 2. ***Refined Coal Price; Resold Coal Price.***

(a) The Refined Coal Price for Refined Coal purchased by Generator from Producer pursuant to this Agreement shall be the Weighted Average Coal Cost for the calendar month when the Refined Coal is sold to Generator.

(b) The Resold Coal Price for Resold Coal purchased by Generator from Producer pursuant to this Agreement shall be the Weighted Average Coal Cost for the calendar month when the Resold Coal is sold to Generator.

SCHEDULE 9.1(a)

COAL SPECIFICATIONS

Specification for Bituminous Coal

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

Specification for Sub-bituminous Powder River Basin (PRB) Coal

Specification	Minimum	Maximum
Moisture Content (%)	N/A	32
Ash Content (%)	N/A	10
Calorific Value (BTU/lb)	8,400	N/A
Sulfur Content (lbs/mmBTU)	N/A	0.8

SCHEDULE 9.2(a)

REFINED COAL SPECIFICATIONS

Refined Coal shall be produced using (i) Feedstock satisfying the specifications set forth in Schedule 9.1(a) and (ii) the applicable Chemical Additives [REDACTED] and [REDACTED] at the add rates communicated to Generator by Producer in writing. On or before the Effective Date, Producer shall provide Generator with a general description of the process of producing Refined Coal using the Facility, the material data sheets and applicable add rates for each Chemical Additive and the specific composition, combinations and concentrations of each Chemical Additive and all of the chemicals and other materials that are included therein. Producer shall not make any change to (a) the process of producing Refined Coal using the Facility, (b) the add rates for either Chemical Additive, or (c) the composition, combination or concentration of either Chemical Additive (or any chemical or other material that is included therein), in each case, without the prior written consent of Generator, which consent will not be unreasonably withheld.

SCHEDULE 11.1

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 Operator) per occurrence and [REDACTED] in the case of Operator) general aggregate and products/completed operations aggregate. Such insurance shall be written as follow form or with a form that provides coverage that is at least as broad as the underlying insurance policies, and can satisfy the required minimum limits either through a single umbrella liability policy or a combination of umbrella liability and excess liability policies.

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

Generator's Insurance Obligations

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

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

contractors, subcontractors and related parties that own the Site or operate the Power Plant.

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

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

- (A) **Commercial General Liability Insurance** with limits of not less than [REDACTED] per occurrence for bodily injury and property damage, [REDACTED] any one person or organization for personal and advertising injury, [REDACTED] general aggregate, and [REDACTED] products completed operations aggregate covering: (i) property/operations liability; (ii) products/completed operations liability; (iii) personal and advertising injury liability; (iv) independent contractors liability; and (v) broad form contractual liability. Limits shall reinstate annually. Generator shall provide additional insured status to Producer and its contractors and subcontractors operating the Facility with respect to the Site, including the Power Plant, and the operations thereon through CG 20 10 07 04 or a substitute equivalent form and with respect to completed operations through CG 20 37 07 04 or a substitute equivalent form.
- (B) **Automobile Liability Insurance** covering liability arising from the ownership, maintenance, and operations of any automobile, whether such auto is owned, hired, and non-owned. Generator shall maintain insurance with a combined single limit for bodily injury and property damage of not less than the equivalent of [REDACTED] per accident. Such insurance shall insure Generator and its agents against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others caused by accident and arising from Generator's ownership of the Site or operation of the Power Plant and whether such operations are performed by Generator, Generator's agents, or by any one directly or indirectly employed by any of them.
- (C) **Workers Compensation Insurance** covering statutory benefits in all states where the Parties contemplate the performance of services under the Agreement. Such insurance shall include the employers' liability coverage with limits of not less than [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 11.1]